Service Tax | Negative List Regime

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This Book is a compilation of legal provisions relating to Service Tax (Negative List Regime). For feedback/queries/ suggestions readers may write to capritam@gmail.com

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[1] Now, this Draft Circular is not available on the CBEC website http://www.cbec.gov.in/draft-circ/draft-circular.htm

1. About the book

- This book is a compilation of key Service Tax Legal provisions (as applicable from 1 July 2012). Wherever possible, relevant amendments have been shown in red colour/ track change. Also, Central Excise provisions which are applicable (vide sec. 83 of FA' 1994) to ST legislation are highlighted in green colour.
- The readers may note that many terms such as 'agriculture', 'agriculture extension', 'agriculture produce' ,'tax', 'prescribed', 'betting or gambling', 'goods', 'person' etc are defined in the Negative List. This book has been complied so that readers can easily search the legal terms / content [by using the "Control+F" function (i.e. find function].

Special Thanks

- I would like to thank Shri **J. C. Chaturvedi** (DG, DGCEI) who had suggested me the idea to write this book on Service Tax.
- I would also like to thank Shrimati **Sangita Sharma** (Commissioner of Central Excise, Pune) who was kind enough to spare time and give her valuable feedback for the book.
- **Suresh Nair** (Associate Director, Ernst & Young) for his valuable suggestions and expert guidance.

About the author

- CA Pritam Mahure works in the field of in Indirect Taxes (Service Tax, Excise and proposed GST) since more than a decade.
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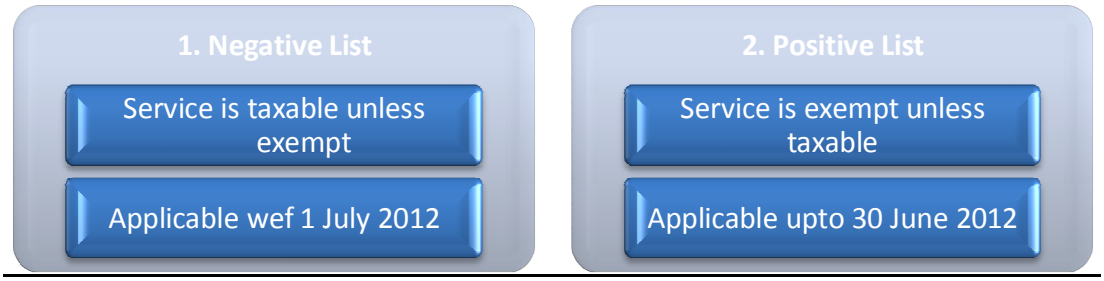
- For suggestion/ feedback/ queries readers may feel free to revert at **capritam@gmail.com/ +919920644648**

2. Negative List – In a nutshell

A. In a nutshell



B. Negative List regime vis-à-vis positive list regime – A comparative analysis

Current provisions (Negative List)	Coverage	Earlier provisions (Positive List)
65B	Definitions	65
66B	Charging Section	66 and 66A
66C	Determination of Place of Provision of services	Export and Import Rules
66D	Negative List	Service specific exclusions/ exemptions
66E	Declared services	65 (105)
66F	Interpretation Rules and Bundled services	65A (covers classification only)
67 and Valuation Rules (Amended)	Valuation	67 and Valuation Rules

67A and POTR	Date of determination tax rate, value and exchange Rate	POTR
25/2012-ST	One mega notification	Various notifications

C. Rules deleted/ substituted

SR	Rules	Particulars	Rationale for deletion of rules
1	Taxation of Services (Provided from Outside India & Received in India) Rules, 2006	Deleted	Introduction of 'Place of Provision of Services Rules, 2012'
2	Export of Services Rules, 2005	Deleted	Introduction of 'Place of Provision of Services Rules, 2012'
3	Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007	Deleted	Insertion of Rule 2A in the Service Tax Valuation Rules, 2006

D. Key provisions and effective date

Provisions	Particulars
Negative List regime	Applicable w.e.f. 1 July 2012
Applicable rate of Service Tax	12.36%
Service tax returns	- For the period 1 April 2012 to 30 June 2012 to be filed before **25th November 2012**[2] - Instructions are awaited for the period 1 July onwards

[2] Order 3/2012 dated 15 October 2012 read with Not. No. 47/2012-ST dated 28 September 2012

E. Abatement (Refer Not. No. 26/2012 and Valuation Rules)

SR	Service	Taxable	Condition
1	Goods Transport Agency (GTA)	25%	- No cenvat credit availed
2	Transport of goods by rail	30%	- Nil
3	Transport of passengers by rail	30%	- Nil
4	Transport of goods in a vessel from one port in India to another	50%	- No cenvat credit availed
5	Transport of passengers by air	40%	- Cenvat credit on inputs and CG is not availed
6	Supply of food or any other article of human consumption or any drink, in a restaurant / other premises	40%/ 60%	- Cenvat credit of goods in Ch. 1 to 22 not taken. Further, Rule 6 reversal required.
7	Supply of food in convention centre, pandal, shamiana etc	70%	- As above
8	Accommodation in hotels, inns etc	60%	- Cenvat credit on inputs and CG is not availed
9	Renting of any motor vehicle designed to carry passengers	40%	- No cenvat credit availed
10	Package tour	25%	- As above - Bill incl. of charges for tour
11	Booking accommodation	10%	- No cenvat credit availed - Bill indicates so - NA if invoice only for service charges
12	Services other than 11 and 12 provided in relation to tour	40%	- No cenvat credit availed - Invoice is for gross amount
13	Financial leasing services including hire purchase	10%	- Nil
14	Services in relation to chit	70%	- No cenvat credit availed
15	Construction of complex, building civil structure where consideration received before Completion certificate	25%	- Cenvat credit on inputs not availed - Land value is included
16	Works contracts entered into for execution of **original works**	40%	- Cenvat credit on inputs not availed
17	Works contracts entered into for maintenance or repair or reconditioning or restoration or	70%	- Cenvat credit on inputs not availed

	servicing of any **goods**		
18	For **other works contracts**, not covered under sr. no. 16 and 17 , including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property,	60%	- Cenvat credit on inputs not availed

F. Reverse Charge Mechanism (Refer Not. No. 30/2012-ST)

SR	Service	Service recipient	% of ST payable	
			Provider	Recipient
1	Provided by person who is located in non-taxable territory and received by any person located in taxable territory	Any person[3]	Nil	100%
2	Works contract services by individual, HUF, firm or AOP	Body corporate	50%	50%
3	Manpower supply for any purposes or security services by individual, HUF, firm or AOP	Body corporate	25%	75%
4	Renting of vehicle to any person who is not engaged in the similar line of business to carry passenger by individual, HUF, firm or AOP - With abatement - Without abatement	Body corporate	 Nil 60%	 100% 40%
5	Support services by Government (excluding renting and 66D (a) (i) to (iii)	Business entity	Nil	100%
6	Provided or agreed to be provided by a director of a company to the said company (w.e.f. 7 August 2012 vide Not. 45/2012)	Company	Nil	100%

[3] Exemption provided to certain persons vide Sr. No. 34 of Not. No. 25/2012-ST

7	Individual advocate	Business entity[4]	Nil	100%
8	Arbitral Tribunal	Business entity[5]	Nil	100%
9	Sponsorship	Body corporate or PF	Nil	100%
10	GTA	Company, P. Firm, Factory, Society, excise registered assessee	Nil	100%
11	Insurance agent to insurance companies	Insurance business	Nil	100%

G. Brief Note on Negative List regime[6]

1.1 What is the significance of the changes due to the new system of taxation?

Budget 2012 proposes to usher a paradigm shift in the manner services will be taxed in future. The transition involves shift from taxation of 119 service-specific descriptions to a new regime whereby all services will be taxed unless they are covered by any of the entries in the negative list or are otherwise exempted. The new system is a marked shift by way of comprehensive taxation of the entire service sector without getting into complex issues of classification of services.

1.4 What is the broad the scheme of new taxation?

In the new system, service tax will be levied on all services provided in a taxable territory other than the services specified in the negative list. The key features of this system are as follows:

- *At the outset 'service' has been defined in clause (44) of section65B of the Act.*
- *Section 66B specifies the charge of service tax which is essentially that service tax shall be levied on all services provided or agreed to be provided in a taxable territory, other than services specified in the negative list.*

[4] Exemption provided to certain persons vide Sr. No. 6 of Not. No. 25/2012-ST
[5] Exemption provided to certain persons vide Sr. No. 6 of Not. No. 25/2012-ST
[6] Relevant paras from TRU DOF No 334/1/2012-TRU dated 16 March 2012

- *The negative list of services is contained in section 66D of the Act.*
- *Since provision of service in the taxable territory is an important ingredient of taxability, section 66C empowers the Central Government to make rules for determination of place of provision of service. Under these provisions the Place of Provision of Services Rules, 2012 have been made for which a separate and detailed guidance paper (GPB) has been issued.*
- *To remove some ambiguities certain activities have been specifically defined by description as services and are referred as Declared Services (listed in section 66E).*
- *In addition to the services specified in the negative list, certain exemptions have been given. Most of the exemptions are proposed to be consolidated in a single mega exemption for ease of reference.*
- *Principles have been laid down in section 66F of the Act for interpretation wherever services have to be treated differentially for any reason and also for determining the taxability of bundled services.*
- *The system of valuation of services for levy of service tax and of availment and utilization of Cenvat credits essentially remains the same with only incidental changes required for the new system of taxation*

2. What is service?

In the existing system, only the services specified in clause (105) of section 65 of the Finance Act, 1994 are taxed under the charging section 66. In the new system, all services, other than services specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another would be taxed under section 66B. This Note explains the various ingredients and aspects of the definition of service. Service' has been defined in clause (44) of the new section 65B and means –

- any activity

- for consideration

- carried out by a person for another

- and includes a declared service.

The said definition further provides that 'Service' does not include –

- any activity that constitutes only a transfer in title of (i) goods or (ii) immovable property by way of sale, gift or in any other manner

- a transaction only in (iii) money or (iv) actionable claim

- any service provided by an employee to an employer in the course of the employment.

- fees payable to a court or a tribunal set up under a law for the time being in force

There are three explanations appended to the definition of 'service' which are dealt with in later part of this Guidance Note. Each of the ingredients bulleted above have been explained in the points below.

3. Taxability of service

The taxability of services or the charge of service tax has been specified in section 66B of the Act. To be a taxable a service should be –

- provided or agreed to be provided by a person to another

- in the taxable territory

- and should not be specified in the negative list.

3.2 Provided in the taxable territory

- Taxable territory has been defined in section 65B of the Act as the territory to which the Act applies i.e the whole of territory of India other than the State of Jammu and Kashmir.

- Detailed rules called the Place of Provision of Service Rules, 2012 have been made which determine the place of provision of service depending on the nature and description of service.

- Please refer to the Place of Provision of Service Rules, 2012

7. Rules of interpretation

3. Existing Indirect Tax System in India

Despite doing away with the service-specific descriptions, there will be some descriptions where some differential treatment will be available to a service or a class of services. Section 66F lays down the principles of interpretation of specified descriptions of services and bundled services. These are explained in paras below –

7.1 Principles for interpretation of specified descriptions of services

Although the negative list approach largely obviates the need for descriptions of services, such descriptions continue to exist in the following areas –

- In the negative list of services.

- In the declared list of services.

- In exemption notifications.

- In the Place of Provision of Service Rules, 2012

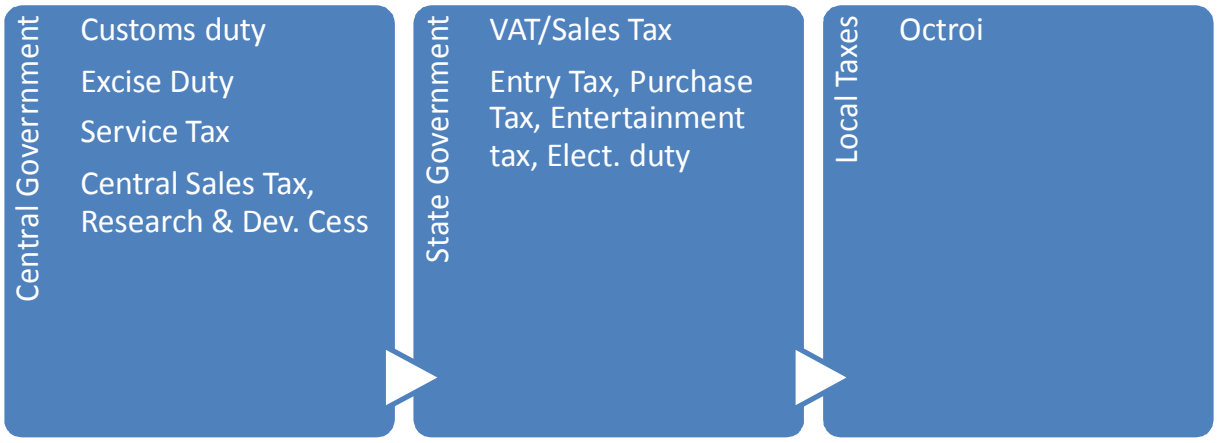
- In few other rules and notifications.

As per the Constitution of India, the taxing powers of the Central Government encompass taxes on income (except agricultural income), excise duty on goods manufactured in India (other than alcohol for human consumption), customs duty, inter-state sale of goods etc. The taxing powers of the State Governments include the power to tax agricultural income, excise duty on alcohol for human consumption, sales tax on intra-State sale of goods etc.

On a high level basis, indirect taxes in the country can be categorised in three baskets

- Central level indirect taxes : Customs duty, Excise duty, Service Tax etc
- State level indirect taxes: VAT, Entry Tax, Purchase Tax etc
- Local level indirect taxes: Octroi etc

The following diagram captures the aforesaid:



Key features of specified indirect taxes:

SR	Indirect Tax	Key features
1	Customs duty	- Customs duty is applicable on import of goods into India - Customs duty is payable by the importer - Rate of Customs duty is specified in the Customs Tariff - Generic rate of Customs duty is 28.85% which comprises the following: a. Basic Customs Duty (generic rate is 10%) b. Additional Duty of Customs in lieu of excise[7] (generic rate is 12%) c. Additional Duty of Customs in lieu of VAT[8] (generic rate is 4%) d. Education cess[9] @ 3% - Customs duty is levied and governed under the Customs Act, 1962 and the Rules made thereunder
2	Excise duty	- Excise duty is applicable on 'manufacture' of goods in India - 'Manufacture' typically implies a process at end the end of which a new and different article, having a distinctive name, character or use, emerges. - Excise duty is payable by the manufacturer - Rate of Excise duty is specified in the Excise Tariff

[7] Also known as Counter-Veiling Duty/ CVD

[8] Also known as Special Additional Duty of Customs / SACD

[9] Education cess @ 2% *plus* Secondary and Higher Education cess @ 1%

		- Generic rate of Excise duty is 12.36% (including Cess 3%). Further, certain goods are liable to concessional rate of Excise duty of (i.e. 2.06%, 6.18%) - Excise duty is levied and governed under the Excise Act, 1944 and the Rules made thereunder
3	Service Tax	- Service tax is applicable on provision of all services - Service tax is not applicable on 'Negative list[10]' services and certain exempt services[11] - Service tax is payable by Service provider. However, in certain case service recipient is also liable to pay service tax[12]. - Rate of Service Tax is 12.36% (including Cess 3%). Further, for certain services abatement is provided[13] - Service tax is levied and governed under the Finance Act, 1994 and the Rules made thereunder
4	Research and Development Cess	- Research and Development (R&D) cess is applicable on import of technology through foreign collaborator - The rate of R&D cess is 5% - R&D cess is levied and governed under Research and Development Cess Act, 1986 and the Rules made thereunder
5	VAT/ Sales Tax	- VAT / Sales tax is applicable on sale of goods within a State - VAT is payable by the seller - Rate of VAT is State specific. Rate of VAT is specified the VAT schedule of the State - Typically, the rate of VAT varies from 0% to 15% - VAT is levied and governed under the State specific VAT Act and the Rules made thereunder
6	CST	- CST is applicable on inter –State sale of goods - CST is payable by the seller - Rate of CST is 2% provided the buyer issues C form. If the buyer doesn't issue C form then CST is applicable at the rate equal to rate of VAT in the State from which goods are sold - CST is levied and governed under The Central Sales Tax Act, 1956 and the Rules made thereunder
7	Entry Tax	- Entry tax is applicable on entry of specified goods in the State for sale, use or consumption - Entry tax is levied by various States in India

[10] Negative List of services comprises of 17 services and is specified under Section 66D of Finance Act, 1994

[11] Exemption is provided to 39 services vide Not. No. 25/2012-ST

[12] Situations where service recipient is liable to pay service tax as a recipient of service is specified in Not. No. 30/2012-ST

[13] Abatement to various services is specified under Not. No. 26/2012-ST and Service Tax (Determination of Value of Services) Rules, 2006

		- Entry tax is levied and governed under State specific Entry Tax Act and the Rules made thereunder
8	Octroi	- Octroi is levied by the Municipal Corporation on entry of specified goods in their jurisdiction for sale, use or consumption - Octroi is levied by various Municipal Corporations in the State of Maharashtra (such as Mumbai, Thane, Pune etc) - Octroi is levied and governed under Rules made by the Municipal Corporations
9	Purchase Tax	- Purchase tax is applicable on purchase of specified goods - Purchase Tax is a major source of revenue for Punjab and Haryana - In Punjab, Purchase Tax is levied under Punjab Value Added Tax Act, 2005 - Its pertinent to note that in 2012, Maharashtra has also introduced Purchase Tax on cotton and oil seeds
10	Entertainment tax	- Entertainment tax is applicable on movie tickets, commercial shows etc - Entertainment tax is levied by the State Governments - The rate of entertainment tax varies from 0% to 110%[14] - This source of revenue has grown with the advent of Pay Television Services in India. Since, entertainment is being provided through the services such as Broadcasting Services, DTH Services, Pay TV Services, Cable Services, etc. The component of entertainment is intrinsically intertwined in the transaction of service, that it cannot be separated from the whole transaction. Given the nature of transaction of service, it is being subjected to tax by the Union and the State governments both[15]

Current Indirect tax implications on various transactions

A transaction in an economy can be one of the following type:

a. Transaction in goods:
   - Trading (i.e. buying and subsequently selling the goods)
   - Manufacturing and subsequently selling of goods

b. Transaction is services (such as provision of logistics services, advisory services, courier services etc)

[14] Source www.filmtvguildindia.org

[15] Source www.en.wikipedia.org

c. Transaction involving both goods and services (i.e. works contract such as contract for construction of compound wall wherein material alongwith labour is provided by the contractor)
d. Transaction in immovable property
e. Other transactions (such as employment, grants etc)

Transactions in an economy are subject to indirect taxes. We have given below the typical indirect tax implications on the aforesaid transactions:

SR	Activity	Tax applicable
1	Trading – Sale to a customer located in same State (Intra-State sale)	Value Added Tax[16] (VAT) would be applicable on the sale to the customer
2	Trading – Sale to a customer located in different State (inter-State sale)	Central Sales Tax (CST) would be applicable on the customer sale to the customer
3	Manufacturing and subsequently intra-State sale of goods	- Excise duty on manufacture of goods - VAT on sale of goods
4	Manufacturing and subsequently inter-State sale of goods	- Excise duty on manufacture of goods - CST on sale of goods
5	Provision of services	Service Tax[17]
6	Works contracts (i.e. transaction involving both goods and services)	- VAT on 'goods' portion in works contract - Service Tax on 'service' portion in the works contract
7	Transaction of sale of an **completed**[18] immovable property	Stamp duty
8	Other transactions (such as employment, donation etc)	Income from salary, donation etc is subject matter of Income Tax

Apart from the aforesaid taxes, certain States and Municipal Corporations also levy Entry Tax, Octroi for entry of goods for consumption/ sale in their respective jurisdiction.

From the aforesaid discussion, it can be observed from the above that currently the indirect tax system in the India is governed by the 'taxable events' (such as manufacture, sale, provision of service etc). However, this approach to levy and

[16] Also known as Sales tax

[17] However, certain specified services such as entertainment, advertisement etc ,may be liable to State VAT

[18] W.e.f. 1 July 2010, Service tax has been made applicable on sale of property before completion certificate is received for the same.

collect indirect tax has its own limitations and it results in inefficiency in certain cases due to non-availability of input tax credit.

4. SERVICE TAX — STATUTORY PROVISIONS

SECTIONS 64 TO 96-I (CHAPTERS V and VA) OF THE FINANCE ACT, 1994 PROVIDING FOR SERVICE TAX

SECTION 64. Extent, commencement and application. — (1) This Chapter extends to the whole of India except the State of Jammu and Kashmir.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(3) It shall apply to taxable services provided on or after the commencement of this Chapter.

'65B. Interpretations[19].

In this Chapter, unless the context otherwise requires~~,—~~,-

-

***(1)* "actionable claim"** shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882~~;~~ (4 of 1882.);

***(2)* "advertisement"** means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person;

***(3)* "agriculture"** means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products;

***(4)* "agricultural extension"** means application of scientific research and knowledge to agricultural practices through farmer education or training;

[19] Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

(*5*) "agricultural produce" means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;

(*6*) "Agricultural Produce Marketing Committee or Board" means any committee or board constituted under a State law for the time being in force for the purpose of regulating the marketing of agricultural produce;

(*7*) "aircraft" has the meaning assigned to it in clause (*1*) of section 2 of the Aircraft Act, 1934~~;~~ (22 of 1934.);

(*8*) "airport" has the meaning assigned to it in clause (*b*) of section 2 of the Airports Authority of India Act, 1994~~;~~ (55 of 1994.);

(*9*) "amusement facility" means a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided;

(*10*) "Appellate Tribunal" means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962~~;~~ (52 of 1962.);

(*11*) "approved vocational education course" means~~;~~—,-

(*i*) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961~~;~~ (52 of 1961.); or

(*ii*) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Union Ministry of Labour and Employment; or

(*iii*) a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India;

(12) **"assessee"** means a person liable to pay tax and includes his agent;

(13) **"associated enterprise"** shall have the meaning assigned to it in section 92A of the Income-tax Act, 1961; (43 of 1961.);

(14) **"authorised dealer of foreign exchange"** shall have the meaning assigned to "authorised person" in clause (*c*) of section 2 of the Foreign Exchange Management Act, 1999; (42 of 1999.);

(15) **"betting or gambling"** means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring;

(16) **"Board"** means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963; (54 of 1963.);

(17) **"business entity"** means any person ordinarily carrying out any activity relating to industry, commerce or any other business; or profession;

(18) **"Central Electricity Authority"** means the authority constituted under section 3 of the Electricity (Supply) Act, 1948; (54 of 1948.);

(19) **"Central Transmission Utility"** shall have the meaning assigned to it in clause (*10*) of section 2 of the Electricity Act, 2003; (36 of 2003.);

(20) **"courier agency"** means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles;

(21) **"customs station"** shall have the meaning assigned to it in clause (*13*) of section 2 of the Customs Act, 1962; (52 of 1962.);

(22) **"declared service"** means any activity carried out by a person for another person for consideration and declared as such under section 66E;

(23) "electricity transmission or distribution utility" means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003; (36 of 2003.); or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government;

(24) "entertainment event" means an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic film, circus, concerts, sporting event, pageants, award functions, dance, musical or theatrical performances including drama, ballets or any such event or programme;

(25) "goods" means every kind of movable property other than actionable claim and money; and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(26) "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;

(27) "India" means,—,-

(*a*) the territory of the Union as referred to in clauses (*2*) and (*3*) of article 1 of the Constitution;

(*b*) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976; (80 of 1976.);

(*c*) the seabed and the subsoil underlying the territorial waters;

(*d*) the air space above its territory and territorial waters; and

(*e*) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

(*28*) "information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment;

(*29*) "inland waterway" means national waterways as defined in clause (*h*) of section 2 of the Inland Waterways Authority of India Act, 1985 (82 of 1985.) or other waterway on any inland water, as defined in clause (*b*) of section 2 of the Inland Vessels Act, 1917; (1 of 1917.);

(*30*) "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charges in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has been utilised;

(*31*) "local authority" means-

(*a*) a Panchayat as referred to in clause (*d*) of article 243 of the Constitution;

(*b*) a Municipality as referred to in clause (*e*) of article 243P of the Constitution;

(*c*) a Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;

(*d*) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006; (41 of 2006.);

(*e*) a regional council or a district council constituted under the Sixth Schedule to the

Constitution;

(*f*) a development board constituted under article 371 of the Constitution; or

(*g*) a regional council constituted under article 371A of the Constitution;

(*32*) "metered cab" means any contract carriage on which an automatic device, of the~~-~~ type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 (59 of 1988.) and the rules made thereunder;

(*33*) "money" means ~~Indian~~ legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any similar instrument but shall not include any currency that is held for its numismatic value;

(*34*) "negative list" means the services which are listed in section 66D;

(*35*) "non-taxable territory" means the territory which is outside the taxable territory;

(*36*) "notification" means notification published in the Official Gazette and the expressions "notify'' and "notified" shall be construed accordingly;

(*37*) "person" includes~~,—,~~-
(*i*) an individual,
(*ii*) a Hindu undivided family,
(*iii*) a company,
(*iv*) a society,
(*v*) a limited liability partnership,
(*vi*) a firm,
(*vii*) an association of persons or body of individuals, whether incorporated or not,
(*viii*) Government,

(*ix*) a local authority, or

(*x*) every artificial juridical person, not falling within any of the preceding sub-clauses;

(*38*) "port" has the meaning assigned to it in clause (*q*) of section 2 of the Major Port Trusts Act, 1963 (38 of 1963.) or in clause (*4*) of section 3 of the Indian Ports Act, 1908~~;~~ (15 of 1908.);

(*39*) "prescribed" means prescribed by rules made under this Chapter;

(*40*) "process amounting to manufacture or production of goods" means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944.) or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force;

(*41*) "renting" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property;

(*42*) "Reserve Bank of India" means the bank established under section 3 of the Reserve Bank of India Act, 1934~~;~~ (2 of 1934.);

(*43*) "securities" has the meaning assigned to it in clause (*h*) of section 2 of the Securities Contract (Regulation) Act, 1956~~;~~ (42 of 1956.);

(*44*) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include~~—~~-

(*a*) an activity which constitutes merely~~;——~~,-

(*i*) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ia) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or".

(*ii*) a transaction in money or actionable claim;

(*b*) a provision of service by an employee to the employer in the course of or in relation to his employment;

(*c*) fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1.— For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—

(*A*) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(*B*) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(*C*) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 1A- For the purposes of this clause, transaction in money shall not include, any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged:".

Explanation 2.—.- For the purposes of this Chapter,—,-

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 3.—.- A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;

(*45*) "Special Economic Zone" has the meaning assigned to it in clause (*za*) of section 2 of the Special Economic Zones Act, 2005; (28 of 2005.);

(*46*) "stage carriage" shall have the meaning assigned to it in clause (*40*) of section 2 of the Motor Vehicles Act, 1988; (59 of 1988.);

(*47*) "State Electricity Board" means the Board constituted under section 5 of the Electricity (Supply) Act, 1948; (54 of 1948.);

(*48*) "State Transmission Utility" shall have the meaning assigned to it in clause (*67*) of section 2 of the Electricity Act, 2003; (36 of 2003.);

(*49*) "support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis;

(*50*) "tax" means service tax leviable under the provisions of this Chapter;

(*51*) "taxable service" means any service on which service tax is leviable under section 66B; ;

(52) "taxable territory" means the territory to which the provisions of this Chapter apply;

(53) "vessel" has the meaning assigned to it in clause (*z*) of section 2 of the Major Port Trusts Act, 1963; (38 of 1963.);

(54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

-

(55) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 (1 of 1944.) or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.'

66B. Charge of service tax on and after Finance Act, 2012[20]. There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

66C. Determination of place of provision of service[21]. (*1*) The Central Government may, having regard to the nature and description of various services, by rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.

[20] Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012
[21] Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

(*2*) Any rule made under sub-section (*1*) shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory.

66D. Negative list of services[22]. The negative list shall comprise of the following services, namely:––

(*a*) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

(*i*) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;

(*ii*) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(*iii*) transport of goods or passengers; or

(*iv*) support services, other than services covered under clauses (*i*) to (*iii*) above, provided to business entities;

(*b*) services by the Reserve Bank of India;

(*c*) services by a foreign diplomatic mission located in India;

(*d*) services relating to agriculture or agricultural produce by way of —

(*i*) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;

(*ii*) supply of farm labour;

(*iii*) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

(*iv*) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

(*v*) loading, unloading, packing, storage or warehousing of agricultural produce;

(*vi*) agricultural extension services;

[22] Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

(*vii*) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

(*e*) trading of goods;

(*f*) any process amounting to manufacture or production of goods;

(*g*) selling of space or time slots for advertisements other than advertisements broadcast by radio or television;

(*h*) service by way of access to a road or a bridge on payment of toll charges;

(*i*) betting, gambling or lottery;

(*j*) admission to entertainment events or access to amusement facilities;

(*k*) transmission or distribution of electricity by an electricity transmission or distribution utility;

(*l*) services by way of—

(*i*) pre-school education and education up to higher secondary school or equivalent;

(*ii*) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;

(*iii*) education as a part of an approved vocational education course;

(*m*) services by way of renting of residential dwelling for use as residence;

(*n*) services by way of—

(*i*) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;

(*ii*) *inter se* sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers;

(*o*) service of transportation of passengers, with or without accompanied belongings, by—

(*i*) a stage carriage;

(*ii*) railways in a class other than—

(*A*) first class; or

(*B*) an airconditioned coach;

(*iii*) metro, monorail or tramway;

(*iv*) inland waterways;

(*v*) public transport, other than predominantly for tourism purpose, in a vessel, between places located in India; and

(*vi*) metered cabs, radio taxis or auto rickshaws;

(*p*) services by way of transportation of goods—

(*i*) by road except the services of—

(*A*) a goods transportation agency; or

(*B*) a courier agency;

(*ii*) by an aircraft or a vessel from a place outside India up to the customs station of clearance; or

(*iii*) by inland waterways;

(*q*) funeral, burial, crematorium or mortuary services including transportation of the deceased.

66E Declared Services[23]. The following shall constitute declared services, namely:––

(*a*) renting of immovable property;

(*b*) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

Explanation.— For the purposes of this clause,—

(*I*) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:––

(*A*) architect registered with the Council of ~~Arhitecture~~Architecture constituted under the Architects Act, 1972÷ (20 of 1972.); or

(*B*) chartered engineer registered with the Institution of Engineers (India); or

(*C*) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

[23] Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

(*II*) the expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure;

(*c*) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(*d*) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(*e*) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

(*f*) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;

(*g*) activities in relation to delivery of goods on hire purchase or any system of payment by instalments;

(*h*) service portion in the execution of a works contract;

(*i*) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.

66F **Principles of interpretation of specified descriptions of services or bundled services**[24]. (*1*) Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service.

(*2*) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

(*3*) Subject to the provisions of sub-section (*2*), the taxability of a bundled service shall be determined in the following manner, namely:––

(*a*) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;

[24] Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

(*b*) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

Explanation.— For the purposes of sub-section (*3*), the expression "bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.';

SECTION [67. Valuation of taxable services for charging service tax. — (1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, —

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation. — For the purposes of this section, —

(a) "consideration" includes any amount that is payable for the taxable services provided or to be provided;

~~(b)~~[25] ~~"money" includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;~~

(c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.]]

67A. Date of determination of rate of tax, value of taxable service and rate of exchange [26]. The rate of service tax, value of a taxable service and rate of exchange, if any, shall be the rate of service tax or value of a taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided.

Explanation.— For the purposes of this section, "rate of exchange" means the rate of exchange referred to in the *Explanation* to section 14 of the Customs Act, 1962 (52 of 1962.).

SECTION [68. Payment of service tax. — (1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66B[27]~~66~~ in such manner and within such period as may be prescribed.

[25] Omitted wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012
[26] With effect from 28 May 2012 ie date of Presidential assent
[27] Substituted vide Service Tax (Removal of Difficulty) Order, 2012

(2) Notwithstanding anything contained in sub-section (1), in respect of such taxable services as may be notified[28] ~~any taxable service notified~~ by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section ~~66~~ 66B[29] and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.]

Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider[30].

SECTION [69. Registration. —

[(1)] Every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the [Superintendent of Central Excise].

[(2) The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed.]

SECTION [70. Furnishing of returns. —

[(1)] Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency [and with such late fee not exceeding [twenty thousand rupees,] for delayed furnishing of return, as may be prescribed.]

[28] Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012
[29] Substituted vide Service Tax (Removal of Difficulty) Order, 2012
[30] Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

[(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.]

SECTION [71. Scheme for submission of Returns through Service Tax Preparers. — (1) Without prejudice to the provisions of section 70, the Board may, by notification in the Official Gazette, frame a Scheme for the purposes of enabling any person or class of persons to prepare and furnish a return under section 70, and authorise a Service Tax Return Preparer to act as such under the Scheme.

(2) A Service Tax Return Preparer shall assist the person or class of persons to prepare and furnish the return in such manner as may be specified in the Scheme framed under this section.

(3) For the purposes of this section, —

(a) "Service Tax Return Preparer" means any individual, who has been authorised to act as a Service Tax Return Preparer under the Scheme framed under this section;

(b) "person or class of persons" means such person, as may be specified in the Scheme, who is required to furnish a return required to be filed under section 70.

(4) The Scheme framed by the Board under this section may provide for the following, namely :—

(a) the manner in which and the period for which the Service Tax Return Preparer shall be authorised under sub-section (1);

(b) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Service Tax Return Preparer;

(c) the code of conduct for the Service Tax Return Preparer;

(d) the duties and obligations of the Service Tax Return Preparer;

(e) the circumstances under which the authorisation given to a Service Tax Return Preparer may be withdrawn;

(f) any other matter which is required to be, or may be, specified by the

Scheme for the purposes of this section.]

SECTION [72. Best judgment assessment. — If any person, liable to pay service tax, —

(a) fails to furnish the return under section 70;

(b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder,

the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.]

72A Special audit[31]. (*1*) If the Commissioner of Central Excise, has reasons to believe that any person liable

to pay service tax (herein referred to as ''such person''),––

(*i*) has failed to declare or determine the value of a taxable service correctly; or

(*ii*) has availed and utilised credit of duty or tax paid-

(*a*) which is not within the normal limits having regard to the nature of taxable service provided, the extent of capital goods used or the type of inputs or input services used, or any other relevant factors as he may deem appropriate; or

(*b*) by means of fraud, collusion, or any wilful misstatement or suppression of facts; or

(*iii*) has operations spread out in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts from the registered premises falling under the jurisdiction of the said Commissioner, he may direct such person to get his accounts audited by a chartered accountant or

[31] With effect from 28 May 2012 ie date of Presidential assent

cost accountant nominated by him, to the extent and for the period as may be specified by the Commissioner.

(*2*) The chartered accountant or cost accountant referred to in sub-section (*1*) shall, within the period specified by the said Commissioner, submit a report duly signed and certified by him to the said Commissioner mentioning therein such other particulars as may be specified by him.

(*3*) The provisions of sub-section (*1*) shall have effect notwithstanding that the accounts of such person have been audited under any other law for the time being in force.

(*4*) The person liable to pay tax shall be given an opportunity of being heard in respect of any material gathered on the basis of the audit under sub-section (*1*) and proposed to be utilised in any proceeding under the provisions of this Chapter or rules made thereunder.

Explanation.— For the purposes of this section,––

(*i*) "chartered accountant" shall have the meaning assigned to it in clause (*b*) of sub-section (*1*) of section 2 of the Chartered Accountants Act, 1949(38 of 1949.);

(*ii*) "cost accountant" shall have the meaning assigned to it in clause (*b*) of sub-section (*1*) of section 2 of the Cost and Works Accountants Act, 1959(23 of 1959.).'

SECTION [73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded. — (1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, [Central Excise Officer] may, within eighteen months[32] ~~one year~~ from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :

[32] With effect from 28 May 2012 ie date of Presidential assent

Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "~~one year~~eighteen months[33]", the words "five years" had been substituted.

Explanation. — Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of ~~one year~~eighteen months[34] or five years, as the case may be.

(*1A*)[35] Notwithstanding anything contained in sub-section (*1*) (except the period of eighteen months of serving the notice for recovery of service tax), the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.

[(1A) * * * *]

(2) The [Central Excise Officer] shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from, or erroneously refunded to, such

[33] With effect from 28 May 2012 ie date of Presidential assent
[34] With effect from 28 May 2012 ie date of Presidential assent
[35] With effect from 28 May 2012 ie date of Presidential assent

person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined :

[* * * * *]

(3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the [Central Excise Officer] of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid :

Provided that the [Central Excise Officer] may determine the amount of short-payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, the [Central Excise Officer] shall proceed to recover such amount in the manner specified in this section, and the period of "~~one year~~eighteen months[36]" referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

Explanation.[1] — For the removal of doubts, it is hereby declared that the interest under section 75 shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of service tax or erroneously refunded service tax, if any, as may be determined by the [Central Excise Officer], but for this sub-section.

*[**Explanation 2.*** — For the removal of doubts, it is hereby declared that no penalty under any of the provisions of this Act or the rules made thereunder shall be imposed in respect of payment of service tax under this sub-section and interest thereon.]

(4) Nothing contained in sub-section (3) shall apply to a case where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —

[36] With effect from 28 May 2012 ie date of Presidential assent

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax.

[(4A) Notwithstanding anything contained in sub-sections ~~(3) and~~ (4), where during the course of any audit, investigation or verification, it is found that any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, but the true and complete details of transactions are available in the specified records, the person chargeable to service tax or to whom erroneous refund has been made, may pay the service tax in full or in part, as he may accept to be the amount of tax chargeable or erroneously refunded along with interest payable thereon under section 75 and penalty equal to one per cent. of such tax, for each month, for the period during which the default continues, up to a maximum of twenty-five per cent. of the tax amount, before service of notice on him and inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the amount so paid and proceedings in respect of the said amount of service tax shall be deemed to have been concluded :

Provided that the Central Excise Officer may determine the amount of service tax, if any, due from such person, which in his opinion remains to be paid by such person and shall proceed to recover such amount in the manner specified in sub-section (1).

Explanation. — For the purposes of this sub-section and section 78, "specified records" means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of account shall be considered as the specified records.]

(5) The provisions of sub-section (3) shall not apply to any case where the service tax had become payable or ought to have been paid before the 14th day of

May, 2003.

(6) For the purposes of this section, "relevant date" means, —

(i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid —

(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;

(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;

(ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;

(iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.]

SECTION [73A. Service tax collected from any person to be deposited with Central Government. — (1) Any person who is liable to pay service tax under the provisions of this Chapter or the rules made thereunder, and has collected any amount in excess of the service tax assessed or determined and paid on any taxable service under the provisions of this Chapter or the rules made thereunder from the recipient of taxable service in any manner as representing service tax, shall forthwith pay the amount so collected to the credit of the Central Government.

(2) Where any person who has collected any amount, which is not required to be collected, from any other person, in any manner as representing service tax, such person shall forthwith pay the amount so collected to the credit of the Central Government.

(3) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (2) and the same has not been so

paid, the Central Excise Officer shall serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.

(4) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (3), determine the amount due from such person, not being in excess of the amount specified in the notice, and thereupon such person shall pay the amount so determined.

(5) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (2) or sub-section (4), shall be adjusted against the service tax payable by the person on finalisation of assessment or any other proceeding for determination of service tax relating to the taxable service referred to in sub-section (1).

(6) Where any surplus amount is left after the adjustment under sub-section (5), such amount shall either be credited to the Consumer Welfare Fund referred to in section 12C of the Central Excise Act, 1944 (1 of 1944) or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B of the said Act and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Central Excise Officer for the refund of such surplus amount.]

SECTION [73B. Interest on amount collected in excess. — Where an amount has been collected in excess of the tax assessed or determined and paid for any taxable service under this Chapter or the rules made thereunder from the recipient of such service, the person who is liable to pay such amount as determined under sub-section (4) of section 73A, shall, in addition to the amount, be liable to pay interest at such rate not below ten per cent. and not exceeding twenty-four per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the amount ought to have been paid under this Chapter, but for the provisions contained in sub-section (4) of section 73A, till the date of payment of such amount :

Provided that in such cases where the amount becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B of the Central Excise Act, 1944 (1 of 1944), and such amount payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction, as the case may be, no interest shall be payable and in other cases, the interest shall be payable on the whole amount, including the amount already paid.

[**Provided** further that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice issued under sub-section (3) of section 73A or during the last preceding financial year, as the case may be, such rate of interest shall be reduced by three per cent. per annum.]

Explanation 1. — Where the amount determined under sub-section (4) of section 73A is reduced by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under this section shall be on such reduced amount.

Explanation 2. — Where the amount determined under sub-section (4) of section 73A is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under this section shall be on such increased amount.]

SECTION [73C. Provisional attachment to protect revenue in certain cases. — (1) Where, during the pendency of any proceeding under section 73 or section 73A, the Central Excise Officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Central Excise, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 73 or sub-section (3) of section 73A, as the case may be, in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section

(1) :

Provided that the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years.]

SECTION [73D. Publication of information in respect of persons in certain cases. — (1) If the Central Government is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings under this Chapter in respect of such person, it may cause to be published such names and particulars in such manner as may be prescribed.

(2) No publication under this section shall be made in relation to any penalty imposed under this Chapter until the time for presenting an appeal to the Commissioner (Appeals) under section 85 or the Appellate Tribunal under section 86, as the case may be, has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation. — In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, shall also be published if, in the opinion of the Central Government, circumstances of the case justify it.]

SECTION 74. Rectification of mistake. — (1) With a view to rectifying any mistake apparent from the record, the [Central Excise Officer] who passed any order under the provisions of this Chapter may, within two years of the date on which such order was passed, amend the order.

(2) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the [Central Excise Officer] passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(3) Subject to the other provisions of this section, the [Central Excise Officer] concerned -

(a) may make an amendment under sub-section (1) of his own motion; or

(b) shall make such amendment if any mistake is brought to his notice by the assessee or the [Commissioner] of Central Excise or the [Commissioner] of Central Excise (Appeals).

(4) An amendment, which has the effect of enhancing [the liability of the assessee or reducing a refund], shall not be made under this section unless the [Central Excise Officer] concerned has given notice to the assessee of his intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(5) Where an amendment is made under this section, an order shall be passed in writing by the [Central Excise Officer] concerned.

(6) Subject to the other provisions of this Chapter where any such amendment has the effect of reducing the [liability of an assessee or increasing the refund], the [Central Excise Officer] shall make any refund which may be due to such assessee.

(7) Where any such amendment has the effect of enhancing the [liability of the assessee] or reducing the refund already made, the [Central Excise Officer] shall make an order specifying the sum payable by the assessee and the provisions of this Chapter shall apply accordingly.

SECTION [75. Interest on delayed payment of service tax. — Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest [at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette] for the period] by which such crediting of the tax or any part thereof is delayed.]

[**Provided** that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice or during the last preceding financial

year, as the case may be, such rate of interest, shall be reduced by three per cent. per annum.]

SECTION [75A. * * * *]

SECTION [76. Penalty for failure to pay service tax. — Any person, liable to pay service tax in accordance with the provisions of section 68 or the rules made under this Chapter, who fails to pay such tax, shall pay, in addition to such tax and the interest on that tax in accordance with the provisions of section 75, a penalty which shall not be less than [one hundred rupees] for every day during which such failure continues or at the rate of [one per cent.] of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax :

Provided that the total amount of the penalty payable in terms of this section shall not exceed [fifty per cent of] the service tax payable.

[*Illustration*

X, an assessee, fails to pay service tax of ten lakh rupees payable by the 5th March. X pays the amount on the 15th March. The default has continued for ten days. The penalty payable by X is computed as follows :—

1% of the amount of default for 10 days

1		10	
100	* 10,00,000	31	= 3,225.80

Penalty calculated @ Rs.100 per day for 10 days = Rs.1,000

Penalty liable to be paid is Rs. 3,226.00.]

SECTION [77. Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere. — (1) Any person, —

(a) who is liable to pay service tax, or required to take registration, fails to

take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to pay a penalty which may extend to [ten thousand rupees] or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

(b) who fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made thereunder, shall be liable to a penalty which may extend to [ten thousand rupees];

(c) who fails to —

(i) furnish information called by an officer in accordance with the provisions of this Chapter or rules made thereunder; or

(ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder; or

(iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry,

shall be liable to a penalty which may extend to [ten thousand rupees] or two hundred rupees for everyday during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

(d) who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to [ten thousand rupees];

(e) who issues invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to [ten thousand rupees].

(2) Any person, who contravenes any of the provisions of this Chapter or any rules made thereunder for which no penalty is separately provided in this Chapter,

shall be liable to a penalty which may extend to [ten thousand rupees.]

SECTION 78. Penalty for suppressing, etc. of value of taxable services. — [(1) Where any service tax has not been levied or paid or has been short-levied or short- paid or erroneously refunded, by reason of -

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax,

the person, liable to pay such service tax or erroneous refund, as determined under sub-section (2) of section 73, shall also be liable to pay a penalty, in addition to such service tax and interest thereon, if any, payable by him, which shall be equal to the amount of service tax so not levied or paid or short-levied or short-paid or erroneously refunded :

Provided that where true and complete details of the transactions are available in the specified records, penalty shall be reduced to fifty per cent. of the service tax so not levied or paid or short-levied or short-paid or erroneously refunded :

Provided further that where such service tax and the interest payable thereon is paid within thirty days from the date of communication of order of the Central Excise Officer determining such service tax, the amount of penalty liable to be paid by such person under the first proviso shall be twenty-five per cent. of such service tax :

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

Provided also that in case of a service provider whose value of taxable services does not exceed sixty lakh rupees during any of the years covered by the notice or during the last preceding financial year, the period of thirty days shall be extended to ninety days.

(2) Where the service tax determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the service tax as reduced or increased, as the case may be, shall be taken into account :

Provided that in case where the service tax to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the second proviso to sub-section (1), shall be available, if the amount of service tax so increased, the interest payable thereon and twenty-five per cent. of the consequential increase of penalty have also been paid within thirty days or ninety days, as the case may be, of communication of the order by which such increase in service tax takes effect :

Provided further that if the penalty is payable under this section, the provisions of section 76 shall not apply.

***Explanation.* —** For the removal of doubts, it is hereby declared that any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the second proviso to sub-section (1) or the first proviso to sub-section (2) shall be adjusted against the total amount due from such person.]

SECTION [79. * * * *]

SECTION 80. Penalty not to be imposed in certain cases. — (1) Notwithstanding anything contained in the provisions of section 76, [section 77 or [first proviso to sub-section (1) of section 78]], no penalty shall be imposable on the assessee for any failure referred to in the said provisions if the assessee proves that there was reasonable cause for the said failure.

[37](*2*) Notwithstanding anything contained in the provisions of section 76 or section 77 or section 78, no penalty shall be imposable for failure to pay service tax payable, as on the 6th day of March, 2012, on the taxable service referred to in sub-clause (*zzzz*) of clause (*105*) of section 65, subject to the condition that the

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amount of service tax along with interest is paid in full within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President."

SECTION [81. * * *]

SECTION 82. Power to search premises. — (1) [If the [Joint Commissioner of Central Excise] has reason to believe] that any documents or books or things which in his opinion will be useful for or relevant to any proceeding under this Chapter are secreted in any place, he may authorise [any] [Superintendent of Central Excise] [to search for and seize or may himself search for and seize such documents or books or things].

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches, shall, so far as may be, apply to searches under this section as they apply to searches under that Code.

SECTION 83. Application of certain provisions of Act 1 of 1944. — The provisions of the following sections of the [Central Excise Act, 1944], as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise :-

[9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F[38] ~~12E, 14, 14AA, 15, 33A, 34A, 35F~~], [35FF,] to 35O (both inclusive), 35Q, [35R,] 36, 36A, 36B, 37A, 37B, 37C, 37D [38A] and 40.

SECTION [83A. Power of adjudication. — Where under this Chapter or the rules made thereunder any person is liable to a penalty, such penalty may be adjudged by the Central Excise Officer conferred with such power as the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, by notification in the Official Gazette, specify.]

SECTION [84. Appeals to Commissioner of Central Excise (Appeals). — (1) The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority

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subordinate to him has passed any decision or order under this Chapter for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order.

(2) Every order under sub-section (1) shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.

(3) Where in pursuance of an order under sub-section (1), the adjudicating authority or any other officer authorised in this behalf makes an application to the Commissioner of Central Excise (Appeals) within a period of one month from the date of communication of the order under sub-section (1) to the adjudicating authority, such application shall be heard by the Commissioner of Central Excise (Appeals), as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Chapter regarding appeals shall apply to such application.

Explanation. — For the removal of doubts, it is hereby declared that any order passed by an adjudicating officer subordinate to the Commissioner of Central Excise immediately before the commencement of clause (C) of section 112 of the Finance (No. 2) Act, 2009, shall continue to be dealt with by the Commissioner of Central Excise as if this section had not been substituted.]

SECTION 85. Appeals to the [Commissioner] of Central Excise (Appeals). — [(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).]

(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) An appeal shall be presented within three months from the date of receipt of the decision or order of [such adjudicating authority], relating to service tax, interest or penalty under this Chapter , made before the date on which the

Finance Bill, 2012 receives the assent of the President[39] :

Provided that the [Commissioner] of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

(*3A*)[40] An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month."

(4) The [Commissioner] of Central Excise (Appeals) shall hear and determine the appeal and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty :

Provided that an order enhancing the service tax, interest or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the [Commissioner] of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the [Central Excise Act, 1944] (1 of 1944).

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[40] With effect from 28 May 2012 ie date of Presidential assent

SECTION 86. Appeals to Appellate Tribunal. — (1) Any assessee aggrieved by an order passed by a [Commissioner] of Central Excise under [section 73 or section 83A [* * *]], or an order passed by a [Commissioner] of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order[41].

[(1A)(i) The Board may, by notification in the Official Gazette, constitute such Committees as may be necessary for the purposes of this Chapter.

(ii) Every Committee constituted under clause (i) shall consist of two Chief Commissioners of Central Excise or two Commissioners of Central Excise, as the case may be.]

[(2) The [Committee of Chief Commissioners of Central Excise] may, if it objects to any order passed by the Commissioner of Central Excise under [section 73 or section 83A [* * *]], direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order :

[**Provided** that where the Committee of Chief Commissioners of Central Excise differs in its opinion against the order of the Commissioner of Central Excise, it shall state the point or points on which it differs and make a reference to the Board which shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise is not legal or proper, direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.

[(2A) The Committee of Commissioners may, if it objects to any order passed by the Commissioner of Central Excise (Appeals) under section 85, direct any Central Excise Officer to appeal on its behalf to the Appellate Tribunal against the order :]

[**Provided** that where the Committee of Commissioners differs in its opinion against the order of the Commissioner of Central Excise (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise (Appeals) is not legal

[41] With effect from 28 May 2012 ie date of Presidential assent

or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against the order.

Explanation. — For the purposes of this sub-section, "jurisdictional Chief Commissioner" means the Chief Commissioner having jurisdiction over the concerned adjudicating authority in the matter.]

(*3*) Every appeal under sub-section (*2*) or sub-section (*2A*) shall be filed within four months from the date on which the order sought to be appealed against is received by the Committee of Chief Commissioners or, as the case may be, the Committee of Commissioners.

~~(3) Every appeal under sub-section (1) [or sub-section (2) or sub-section (2A)] shall be filed within three months of the date on which the order sought to be appealed against is received by the assessee, the [Committee of Chief Commissioners or the Committee of Commissioners], as the case may be.~~

(4) [The Commissioner of Central Excise or [any Central Excise Officer subordinate to him] or the assessee, as the case may be, on receipt of a notice that an appeal against the order of the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals) has been preferred under sub-section (1) or sub-section (2) or sub-section (2A)] by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within forty-five days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the [Commissioner] of Central Excise or the [Commissioner] of Central Excise (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4) if it is satisfied that there was sufficient cause for not presenting it within that period.

[(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, irrespective of the date of demand of service tax and interest or of levy of penalty in relation to which the

appeal is made, be accompanied by a fee of, —

(a) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

(b) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;

(c) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees :

Provided that no fee shall be payable in the case of an appeal referred to in sub-section (2) or sub-section (2A) or a memorandum of cross-objections referred to in sub-section (4).

(6A) Every application made before the Appellate Tribunal, —

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by a fee of five hundred rupees :

Provided that no such fee shall be payable in the case of an application filed by the Commissioner of Central Excise or Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be under this sub-section.]

(7) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercises and follows in hearing the appeals and making orders under the [Central Excise Act, 1944] (1 of 1944).

SECTION [87. Recovery of any amount due to Central Government. — Where any amount payable by a person to the credit of the Central Government under any of the provisions of this Chapter or of the rules made thereunder is not paid, the Central Excise Officer shall proceed to recover the amount by one or more

of the modes mentioned below :—

(a) the Central Excise Officer may deduct or may require any other Central Excise Officer or any officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the said Central Excise Officer or any officer of customs;

(b) (i) the Central Excise Officer may, by notice in writing, require any other person from whom money is due or may become due to such person, or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government either forthwith upon the money becoming due or being held or at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom a notice is issued under this section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in a case where the person to whom a notice under this section is sent, fails to make the payment in pursuance thereof to the Central Government, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and all the consequences of this Chapter shall follow;

(c) the Central Excise Officer may, on an authorisation by the Commissioner of Central Excise, in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the

amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

(d) the Central Excise Officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.]

SECTION [88. Liability under Act to be first charge. — Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of ~~duty~~tax[42], penalty, interest, or any other sum payable by an assessee or any other person under this Chapter, shall, save as otherwise provided in section 529A of the Companies Act, 1956 (1 of 1956) and the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of 2002), be the first charge on the property of the assessee or the person as the case may be.]

SECTION [89. Offences and penalties. — (1) Whoever commits any of the following offences, namely :—

(*a*[43]) knowingly evades the payment of service tax under this Chapter; or ~~(a) provides any taxable service chargeable to service tax under sub-section (1) of section 68 or receives any taxable service chargeable to tax under sub-section (2) of said section, without an invoice issued in accordance with the provisions of this Chapter or the rules made~~

[42] With effect from 28 May 2012 ie date of Presidential assent
[43] With effect from 28 May 2012 ie date of Presidential assent

~~thereunder; or~~

(b) avails and utilises credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or

(c) maintains false books of account or fails to supply any information which he is required to supply under this Chapter or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(d) collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, shall be punishable,—

(i) in the case of an offence where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to three years :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months;

(ii) in any other case, with imprisonment for a term, which may extend to one year.

(2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to three years :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term less than six months.

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of

imprisonment for a term of less than six months, namely :—

(i) the fact that the accused has been convicted for the first time for an offence under this Chapter;

(ii) the fact that in any proceeding under this Act, other than prosecution, the accused has been ordered to pay a penalty or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a secondary party in the commission of offence;

(iv) the age of the accused.

(4) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Chief Commissioner of Central Excise.]

SECTIONS [90 to 92 * * * *]

SECTION [93. Power to grant exemption from service tax. — (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally or subject to such conditions as may be specified in the notification, taxable service of any specified description from the whole or any part of the service tax leviable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt any taxable service of any specified description from the payment of whole or any part of the service tax leviable thereon, under circumstances of exceptional nature to be stated in such order.]

SECTION [93A. Power to grant rebate. — Where any goods or services are exported, the Central Government may grant rebate of service tax paid on taxable services which are used as input services for the manufacturing or processing or removal or export of such goods[44] ~~of such goods~~ or for providing any taxable services and such rebate shall be subject to such extent and manner as may be prescribed :

Provided that where any rebate has been allowed on any goods or services under this section and the sale proceeds in respect of such goods or consideration

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in respect of such services are not received by or on behalf of the exporter in India within the time allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), such rebate shall [except under such circumstances or conditions as may be prescribed,] be deemed never to have been allowed and the Central Government may recover or adjust the amount of such rebate in such manner as may be prescribed.]

93B[45] **Rules made under section 94 to be applicable to services other than taxable services**. All rules made under section 94 and applicable to the taxable services shall also be applicable to any other service in so far as they are relevant to the determination of any tax liability, refund, credit of service tax or duties paid on inputs and input services or for carrying out the provisions of Chapter V of the Finance Act, 1994 (32 of 1994.).

SECTION 94. Power to make rules. — (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.

[(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) collection and recovery of service tax under sections 66 and 68;

[(aa) the determination of amount and value of taxable service under section 67;]

(b) the time and manner and the form in which application for registration shall be made [under sub-sections (1) and (2) of section 69]

(c) [the form, manner and frequency of the returns to be furnished under sub-sections (1) and (2) and the late fee for delayed furnishing of return under sub-section (1) of section 70]

[(cc) the manner of provisional attachment of property under sub-section (1) of section 73C;]

[(ccc) publication of name of any person and particulars relating to any

[45] Inserted With effect from 28 May 2012 ie date of Presidential assent

proceeding under sub-section (1) of section 73D;]

(d) the form in which appeal under section 85 or under sub-section (6) of section 86 may be filed and the manner in which they may be verified;

(e) the manner in which the memorandum of cross objections under sub-section (4) of section 86 may be verified;

~~[(ee) the credit of service tax paid on the services consumed for providing a taxable service in case where the services consumed and the service provided fall in the same category of taxable service;]~~

[(eee) the credit of service tax paid on the services consumed or duties paid or deemed to have been paid on goods used for providing a taxable service;]

[(eeee) the manner of recovery of any amount due to the Central Government under section 87;]

[(f) provisions for determining export of taxable services;

(g) grant of exemption to, or rebate of service tax paid on, taxable services which are exported out of India;

(h) rebate of service tax paid or payable on the taxable services consumed or duties paid or deemed to have been paid on goods used for providing taxable services which are exported out of India;

[(hh) rebate of service tax paid or payable on the taxable services used as input services in the manufacturing or processing of goods exported out of India under section 93A;]

[(hhh) the date for determination of rate of service tax and the place of provision of taxable service under section 66C;]

(*i*) provide for the amount to be paid for compounding and the manner of compounding of offences[46];

(*j*) provide for the settlement of cases, in accordance with sections 31, 32 and 32A to 32P (both inclusive), in Chapter V of the Central Excise Act, 1944 (1 of 1944.) as made applicable to service tax vide section 83[47];

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(~~i~~k) any other matter which by this Chapter is to be or may be prescribed.]

(3) The power to make rules conferred by this section shall on the first occasion of the exercise thereof include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Chapter come into force.

(4) Every rule made under this [Chapter, Scheme framed under section 71 and every notification] issued under section 93 shall be laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule should not be made or the notification should not be issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

SECTION [95. Power to remove difficulties. — (1) If any difficulty arises in respect of implementing, or assessing the value of, any taxable service incorporated in this Chapter by the Finance Act, 2002, the Central Government may, by order published in the Official Gazette, which is not inconsistent with the provisions of this Chapter, remove the difficulty :

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of the Finance Act, 2002 incorporating such taxable services in this Chapter come into force.

[(1A) If any difficulty arises in respect of implementing, or assessing the value of, any taxable service incorporated in this Chapter by the Finance Act, 2003, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

Provided that no such order shall be made after the expiry of a period of two

years from the date on which the provisions of the Finance Act, 2003 incorporating such taxable services in this Chapter come into force.]

[(1B) If any difficulty arises in respect of implementing, or assessing the value of, any taxable service incorporated in this Chapter by the Finance (No. 2) Act, 2004, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

Provided that no such order shall be made after the expiry of a period of two years from the date on which the Finance (No. 2) Bill, 2004 receives the assent of the President.]

[(1C) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2006 (21 of 2006), the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2006 receives the assent of the President.]

[(1D) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2007, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2007 receives the assent of the President.]

[(1E) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2008, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2008 receives the assent of the President.]

[(1F) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance (No. 2) Act, 2009, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance (No. 2) Bill, 2009 receives the assent of the President.]

[(1G) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2010, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2010 receives the assent of the President.]

[(1H) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2011, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2011 receives the assent of the President.];

(*1-I*)[48]. If any difficulty arises in giving effect to section 143 of the Finance Act, 2012, in so far as it relates to insertion of sections 65B, 66B, 66C, 66D, 66E and section 66F in Chapter V of the Finance Act, 1994 (32 of 1994.), the Central Government may, by order published in the Official Gazette, which is not inconsistent with the provisions of this Chapter, make such provisions, as may be necessary or expedient for the purpose of removing the difficulty from such date,

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which shall include the power to give retrospective effect from a date not earlier than the date of coming into force of the Finance Act, 2012:

Provided that no such order shall be made after the expiry of a period of two years from the date of coming into force of these provisions.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of the Parliament.]

SECTION 96. Consequential amendment. — In the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974), in the Schedule, after entry 7 relating to the [Central Excise Act, 1944] (1 of 1944), the following entry shall be inserted, namely :-

"7A. Chapter V of the Finance Act, 1994."

[CHAPTER VA

ADVANCE RULINGS

SECTION 96A. Definitions. — In this Chapter, unless the context otherwise requires,-

(a) "advance ruling" means the determination, by the Authority, of a question of law or fact specified in the application regarding the liability to pay service tax in relation to a service proposed to be provided, by the applicant;

[(b) "applicant" means —

(i) (a) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or

(b) a resident setting up a joint venture in India in collaboration with a non-resident; or

(c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company,

who or which, as the case may be, proposes to undertake any business activity in India;

(ii) a joint venture in India; or

(iii) a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf,

and which or who, as the case may be, makes application for advance ruling under sub-section (1) of section 96C;]

***[Explanation*.** — For the purposes of this clause, "joint venture in India" means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is a non-resident having substantial interest in such arrangement;]

(c) "application" means an application made to the Authority under sub-section (1) of section 96C;

[(d) "Authority" means the Authority for Advance Rulings, constituted under sub-section (1), or authorised by the Central Government under sub-section (2A), of section 28F of the Customs Act, 1962 (52 of 1962).]

(e) "non-resident", "Indian company" and "foreign company" have the meanings respectively assigned to them in clauses (30), (26) and (23A) of section 2 of the Income-tax Act, 1961 (43 of 1961);

(f) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder shall apply, so far as may be, in relation to service tax as they apply in relation to duty of excise.

SECTION 96B. Vacancies, etc., not to invalidate proceedings. — No proceeding before, or pronouncement of advance ruling by, the Authority under this Chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

SECTION 96C. Application for advance ruling. — (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought shall be in respect of, -

(a) classification of any service as a taxable service under Chapter V;

(b) the valuation of taxable services for charging service tax;

(c) the principles to be adopted for the purposes of determination of value of the taxable service under the provisions of Chapter V;

(d) applicability of notifications issued under Chapter V;

(e) admissibility of credit of duty or tax in terms of the rules made in this regard[49];

~~(e) admissibility of credit of service tax.~~

[(f) determination of the liability to pay service tax on a taxable service under the provisions of Chapter V.]

(3) The application shall be made in quadruplicate and be accompanied by a fee of two thousand five hundred rupees.

(4) An applicant may withdraw an application within thirty days from the date of the application.

SECTION 96D. Procedure on receipt of application. — (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner of Central Excise and, if necessary, call upon him to furnish the relevant records :

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner of Central Excise.

(2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application :

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Provided that the Authority shall not allow the application where the question raised in the application is, -

(a) already pending in the applicant's case before any Central Excise Officer, the Appellate Tribunal or any Court;

(b) the same as in a matter already decided by the Appellate Tribunal or any Court :

Provided further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard :

Provided also that where the application is rejected, reasons for such rejection shall be given in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the Commissioner of Central Excise.

(4) Where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.

(5) On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

Explanation. - For the purposes of this sub-section, "authorised representative" has the meaning assigned to it in sub-section (2) of section 35Q of the Central Excise Act, 1944 (1 of 1944).

(6) The Authority shall pronounce its advance ruling in writing within ninety days of the receipt of application.

(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner of Central Excise, as soon as may be, after such pronouncement.

SECTION 96E. Applicability of advance ruling. — (1) The advance ruling pronounced by the Authority under section 96D shall be binding only -

(a) on the applicant who had sought it;

(b) in respect of any matter referred to in sub-section (2) of section 96C;

(c) on the Commissioner of Central Excise, and the Central Excise authorities subordinate to him, in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

SECTION 96F. Advance ruling to be void in certain circumstances. — (1) Where the Authority finds, on a representation made to it by the Commissioner of Central Excise or otherwise, that an advance ruling pronounced by it under sub-section (4) of section 96D has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of this Chapter shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner of Central Excise.

SECTION 96G. Powers of Authority. — (1) The Authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908).

(2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1860).

SECTION 96H. Procedure of Authority. — The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.

SECTION 96-I. Power of Central Government to make rules. — (1) The

Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) the form and manner for making application under sub-section (1) of section 96C;

(b) the manner of certifying a copy of advance ruling pronounced by the Authority under sub-section (7) of section 96D;

(c) any other matter which, by this Chapter, is to be or may be prescribed.

(3) Every rule made under this Chapter shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.].

SECTION [96J. Special exemption from service tax in certain cases. — (1) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of membership fee collected by a club or association formed for representing industry or commerce, during the period on and from the 16th day of June, 2005 to the 31st day of March, 2008 (both days inclusive).

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected if sub-section (1) had been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within six months from the date on which the Finance Bill, 2011 receives the assent of the President.].

97[50] Special provision for exemption in certain cases relating to management, etc., of roads. (*1*) Notwithstanding anything contained in section 66, no service tax shall be levied or

collected in respect of management, maintenance or repair of roads, during the period on and

from the 16th day of June, 2005 to the 26th day of July, 2009 (both days inclusive).

(*2*) Refund shall be made of all such service tax which has been collected but which would not

have been so collected had sub-section (*1*) been in force at all material times.

(*3*) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President.

98[51] Special provision for exemption in certain cases relating to management, etc., of noncommercial Government buildings. (*1*) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of non-commercial Government buildings, during the period on and from the 16th day of June, 2005 till the date on which section 66B comes into force.

(*2*) Refund shall be made of all such service tax which has been collected but which would not

have been so collected had sub-section (*1*) been in force at all material times.

(*3*) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President.

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[50] With effect from 28 May 2012 ie date of Presidential assent
[51] With effect from 28 May 2012 ie date of Presidential assent

5. APPLICABLE CENTRAL EXCISE PROVISIONS

SECTION 83 of the Finance Act, 1994. Application of certain provisions of Act 1 of 1944. — The provisions of the following sections of the Central Excise Act, 1944 (10 of 1944), as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise :-

9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 31, 32, 32A to 32P, 33A, 35EE, 34A, 35F, 35FF to 35O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, 37C, 37D, 38A and 40.

CENTRAL EXCISE ACT, 1944 – Provisions of Central Excise Act are highlighted in green colour for ease of reference

SECTION [9A. Certain offences to be non-cognizable. — [(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), offences under section 9 shall be deemed to be non-cognizable within the meaning of that Code.

[(2) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of [such compounding amount and in such manner of compounding] as may be prescribed :]

[**Provided** that nothing contained in this sub-section shall apply to —

(a) a person who has been allowed to compound once in respect of any of the offences under the provisions of clause (a), (b), (bb), (bbb), (bbbb) or (c) of sub-section (1) of section 9;

(b) a person who has been accused of committing an offence under this Act which is also an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);

(c) a person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore;

(d) a person who has been convicted by the court under this Act on or after the 30th day of December, 2005.]

SECTION [9AA. Offences by companies. — (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. — For the purposes of this section, -

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

SECTION 9B. Power of Court to publish name, place of business, etc., of persons convicted under the Act. — (1) Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the Court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person, in such newspapers or in such manner as the Court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the Court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the Court.

SECTION 9C. Presumption of culpable mental state. — (1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation. — In this section, "culpable mental state" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

SECTION 9D. Relevancy of statements under certain circumstances. — (1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

SECTION 9E. Application of section 562 of the Code of Criminal Procedure, 1898, and of the Probation of Offenders Act, 1958. — (1) Nothing contained in section 562 of the Code of Criminal Procedure, 1898 (5 of 1898), or in the

Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

(2) The provisions of sub-section (1) shall have effect notwithstanding anything contained in sub-section (3) of section 9.]

SECTION [11B. Claim for refund of [duty and interest, if any, paid on such duty]. — (1) Any person claiming refund of any [duty of excise and interest, if any, paid on such duty] may make an application for refund of such [duty and interest, if any, paid on such duty] to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of [one year] [from the relevant date] [[in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of [duty of excise and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such [duty and interest, if any, paid on such duty] had not been passed on by him to any other person :

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :]

[**Provided** further that] the limitation of [one year] shall not apply where any [duty and interest, if any, paid on such duty] has been paid under protest.

[* * * *]

[(2) If, on receipt of any such application, the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] is satisfied that the whole or any part of the [duty of excise and interest, if any, paid on such duty] paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided that the amount of [duty of excise and interest, if any, paid on such duty] as determined by the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant's account current maintained with the [Commissioner of Central Excise];

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the [duty of excise and interest, if any, paid on such duty] paid by the manufacturer, if he had not passed on the incidence of such [duty and interest, if any, paid on such duty] to any other person;

(e) the [duty of excise and interest, if any, paid on such duty] borne by the buyer, if he had not passed on the incidence of such [duty and interest, if any, paid on such duty] to any other person;

(f) the [duty of excise and interest, if any, paid on such duty] borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of [duty and interest, if any, paid on such duty] has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to sub-section (2), including any such

notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.]

[***Explanation*.** — For the purposes of this section, -

(A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(B) "relevant date" means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

[(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;]

[(ea) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 5A, the date of issue of such order;]

[(eb) in case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;]

[(ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;]

(f) in any other case, the date of payment of duty.]

SECTION [11BB. Interest on delayed refunds. — If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, [not below five per cent] and not exceeding thirty per cent per annum as is for the time being fixed [by the Central Government, by Notification in the Official Gazette], on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty :

Provided that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation. - Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal [, National Tax Tribunal] or any court against an order of the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise], under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal [National Tax Tribunal] or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section.]

SECTION [11C. Power not to recover duty of excise not levied or short-levied as a result of general practice. — [(1)] Notwithstanding anything contained in this Act, if the Central Government is satisfied -

(a) that a practice was, or is, generally prevalent regarding levy of duty of excise (including non-levy thereof) on any excisable goods; and

(b) that such goods were, or are, liable -

(i) to duty of excise, in cases where according to the said practice the duty was not, or is not being, levied, or

(ii) to a higher amount of duty of excise than what was, or is being, levied, according to the said practice,

then, the Central Government may, by notification in the Official Gazette, direct that the whole of the duty of excise payable on such goods, or as the case may be, the duty of excise in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty of excise was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.]

[(2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty of excise paid on such goods or, as the case may be, the duty of excise paid in excess of that payable on such goods, which would not have been paid if the said notification had been in force, shall be dealt with in accordance with the provisions of sub-section (2) of section 11B :

Provided that the person claiming the refund of such duty or, as the case may be, excess duty, makes an application in this behalf to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise], in the form referred to in sub-section (1) of section 11B, before the expiry of six months from the date of issue of the said notification.]

SECTION 12. Application of the provisions of [Act No. 52 of 1962] to Central Excise Duties. — The Central Government may, by notification in the Official Gazette, declare that any of the provisions of the [Customs Act, 1962 (52 of 1962)], relating to the levy of and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by section 3 [and section 3A].

SECTION 12A. Price of goods to indicate the amount of duty paid thereon. — Notwithstanding anything contained in this Act or any other law for the time being in force, every person who is liable to pay duty of excise on any goods shall, at the time of clearance of the goods, prominently indicate in all the documents relating to assessment, sales invoice, and other like documents, the amount of such duty which will form part of the price at which such goods are to be sold.

SECTION 12B. Presumption that the incidence of duty has been passed on to the buyer. — Every person who has paid the duty of excise on any goods under this Act

shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods.

SECTION 12C. Consumer Welfare Fund. — (1) There shall be established by the Central Government a fund, to be called the Consumer Welfare Fund.

(2) There shall be credited to the Fund, in such manner as may be prescribed, -

(a) the amount of duty of excise referred to in sub-section (2) of section 11B or sub-section (2) of section 11C or sub-section (2) of section 11D;

(b) the amount of duty of customs referred to in sub-section (2) of section 27 or sub-section (2) of section 28A, or sub-section (2) of section 28B of the Customs Act, 1962 (52 of 1962);

(c) any income from investment of the amount credited to the Fund and any other monies received by the Central Government for the purposes of this Fund.

[(d) the surplus amount referred to in sub-section (6) of section 73A of the Finance Act, 1994 (32 of 1994).

SECTION 12D. Utilisation of the Fund. — (1) Any money credited to the Fund shall be utilised by the Central Government for the welfare of the consumers in accordance with such rules as that Government may make in this behalf.

(2) The Central Government shall maintain or, if it thinks fit, specify the authority which shall maintain, proper and separate account and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.]

SECTION [[12E. Powers of Central Excise Officers. — (1) A Central Excise Officer may exercise the powers and discharge the duties conferred or imposed under this Act on any other Central Excise Officer who is subordinate to him.

(2) Notwithstanding anything contained in sub-section (1), the [Commissioner of Central Excise (Appeals)] shall not exercise the powers and discharge the duties conferred or imposed on a Central Excise Officer other than those specified in section 14 or Chapter VIA.]

SECTION 14. Power to summon persons to give evidence and produce documents in inquiries under this Act. — (1) Any Central Excise Officer duly empowered by the Central Government in this behalf, shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the

production of all documents or things of a certain description in the possession or under the control of the person summoned.

(2) All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required :

Provided that the exemptions under Sections 132 and 133 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to requisitions for attendance under this section.

(3) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860 (45 of 1860).

SECTION 15. Officers required to assist Central Excise Officers. — All officers of Police and Customs and all officers of Government engaged in the collection of land revenue, and all village officers are hereby empowered and required to assist the Central Excise Officers in the execution of this Act.

SETTLEMENT OF CASES

SECTION 31. Definitions. — In this Chapter, unless the context otherwise requires, —

(a) "assessee" means any person who is liable for payment of excise duty assessed under this Act or any other Act and includes any producer or manufacturer of excisable goods or a registered person under the rules made under this Act, of a private warehouse in which excisable goods are stored;

(b) "Bench" means a Bench of the Settlement Commission;

[(c) "case" means any proceeding under this Act or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application under sub-section (1) of section 32E is made :

Provided that when any proceeding is referred back in any appeal or revision, as the case may be, by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, as the case may be, then such proceeding shall not be deemed to be a proceeding pending within the meaning of this clause;]

(d) "Chairman" means the Chairman of the Settlement Commission;

(e) "Commissioner (Investigation)" means an officer of the Customs or a Central Excise Officer appointed as such Commissioner to conduct inquiry or investigation for the purposes of this Chapter;

(f) "Member" means a Member of the Settlement Commission and includes the Chairman and the Vice-Chairman;

(g) "Settlement Commission" means the Customs and Central Excise Settlement Commission constituted under section 32; and

(h) "Vice-Chairman" means a Vice-Chairman of the Settlement Commission.

SECTION 32. Customs and Central Excise Settlement Commission. — (1) The Central Government shall, by notification in the Official Gazette, constitute a Commission to be called the Customs and Central Excise Settlement Commission for the settlement of cases under this Chapter and Chapter XIVA of the Customs Act, 1962 (52 of 1962).

(2) The Settlement Commission shall consist of a Chairman and as many Vice-Chairmen and other Members as the Central Government thinks fit and shall function within the Department of the Central Government dealing with Customs and Central Excise matters.

(3) The Chairman, Vice-Chairman and other Members of the Settlement Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, administration of customs and central excise laws :

Provided that, where a member of the Board is appointed as the Chairman, Vice-Chairman or as a Member of the Settlement Commission, he shall cease to be a member of the said Board.

SECTION 32A. Jurisdiction and powers of Settlement Commission. — (1) Subject to the other provisions of this Chapter, the jurisdiction, powers and authority of the Settlement Commission may be exercised by Benches thereof.

(2) Subject to the other provisions of this section, a Bench shall be presided over by the Chairman or a Vice-Chairman and shall consist of two other Members.

(3) The Bench for which the Chairman is the presiding officer shall be the principal Bench and other Benches shall be known as additional Benches.

(4) Notwithstanding anything contained in sub-section (1) and sub-section (2), the Chairman may authorise the Vice-Chairman or other Member appointed to one Bench to discharge also the functions of the Vice-Chairman or, as the case may be, other Member of another Bench.

(5) The principal Bench shall sit at Delhi and the Central Government shall, by notification in the Official Gazette, establish additional Benches at such places as it considers necessary.

(6) Notwithstanding anything contained in the foregoing provisions of this section, and subject to any rules that may be made in this behalf, when one of the persons constituting a Bench (whether such person be the presiding officer or other Member of the Bench) is unable to discharge his functions owing to absence, illness or any other cause or in the event of the occurrence of any vacancy either in the office of the presiding officer or in the office of one or the other Members of the Bench, the remaining Members may function as the Bench and if the presiding officer of the Bench is not one of the remaining Members, the senior among the remaining Members shall act as the presiding officer of the Bench :

Provided that if at any stage of the hearing of any such case or matter, it appears to the presiding officer that the case or matter is of such a nature that it ought to be heard of by a Bench consisting of three Members, the case or matter may be referred by the presiding officer of such Bench to the Chairman for transfer to such Bench as the Chairman may deem fit.

[**Provided** further that at any stage of the hearing of any such case or matter, referred to in the first proviso, the Chairman may, if he thinks that the case or matter is of such a nature that it ought to be heard by a Bench consisting of three Members, constitute such Bench and if Vice-Chairman is not one of the Members, the senior among the Members shall act as the presiding officer of such Bench.]

(7) Notwithstanding anything contained in the foregoing provisions of this section, the Chairman may, for the disposal of any particular case, constitute a special Bench consisting of more than three Members.

(8) Subject to the other provisions of this Chapter, the special Bench shall sit at a place to be fixed by the Chairman.

SECTION 32B. Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances. — (1) In the event of the occurrence of any

vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Chapter to fill such vacancy, enters upon his office.

(2) When the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.

SECTION 32C. Power of Chairman to transfer cases from one Bench to another. — On the application of the assessee or the Chief Commissioner or Commissioner of Central Excise and after giving notice to them, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to another Bench.

SECTION 32D. Decision to be by majority. — If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Settlement Commission and such point or points shall be decided according to the opinion of the majority of the Members of the Settlement Commission who have heard the case, including those who first heard it.

SECTION 32E. Application for settlement of cases. — [(1) An assessee may, in respect of a case relating to him, make an application, before adjudication, to the Settlement Commission to have the case settled, in such form and in such manner as may be prescribed and containing a full and true disclosure of his duty liability which has not been disclosed before the Central Excise Officer having jurisdiction, the manner in which such liability has been derived, the additional amount of excise duty accepted to be payable by him and such other particulars as may be prescribed including the particulars of such excisable goods in respect of which he

admits short levy on account of misclassification, under-valuation, inapplicability of exemption notification or Cenvat credit [or otherwise] and any such application shall be disposed of in the manner hereinafter provided :

Provided that no such application shall be made unless, —

(a) the applicant has filed returns showing production, clearance and Central excise duty paid in the prescribed manner;

(b) a show cause notice for recovery of duty issued by the Central Excise Officer has been received by the applicant;

(c) the additional amount of duty accepted by the applicant in his application exceeds three lakh rupees; and

(d) the applicant has paid the additional amount of excise duty accepted by him along with interest due under section 11AB :

Provided further that no application shall be entertained by the Settlement Commission under this sub-section in cases which are pending with the Appellate Tribunal or any court :

Provided also that no application under this sub-section shall be made for the interpretation of the classification of excisable goods under the Central Excise Tariff Act, 1985 (5 of 1986).

(1A) Notwithstanding anything contained in sub-section (1), where an application was made under sub-section (1), before the 1st day of June, 2007 but an order under sub-section (1) of section 32F has not been made before the said date or payment of amount so ordered by the Settlement Commission under sub-section (1) of section 32F has not been made, the applicant shall within a period of thirty days from the 1st day of June, 2007, pay the accepted duty liability failing which his application shall be liable to be rejected.]

(2) Where any excisable goods, books of accounts, other documents have been seized under the provisions of this Act or rules made thereunder, the assessee shall not be entitled to make an application under sub-section (1), before the expiry of one hundred and eighty days from the date of the seizure.

(3) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed.

(4) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

SECTION [32F. Procedure on receipt of an application under section 32E. — (1) On receipt of an application under sub-section (1) of section 32E, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant to explain in writing as to why the application made by him should be allowed to be proceeded with, and after taking into consideration the explanation provided by the applicant, the Settlement Commission, shall, within a period of fourteen days from the date of the notice, by an order, allow the application to be proceeded with, or reject the application as the case may be, and the proceedings before the Settlement Commission shall abate on the date of rejection :

Provided that where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

(2) A copy of every order under sub-section (1), shall be sent to the applicant and to the Commissioner of Central Excise having jurisdiction.

(3) Where an application is allowed or deemed to have been allowed to be proceeded with under sub-section (1), the Settlement Commission shall, within seven days from the date of order under sub-section (1), call for a report along with the relevant records from the Commissioner of Central Excise having jurisdiction and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission :

Provided that where the Commissioner does not furnish the report within the aforesaid period of thirty days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

(4) Where a report of the Commissioner called for under sub-section (3) has been furnished within the period specified in that sub-section, the Settlement Commission may, after examination of such report, if it is of the opinion that any further enquiry or investigation in the matter is necessary, direct, for reasons to be recorded in writing, the Commissioner (Investigation) within fifteen days of the receipt of the report, to make or cause to be made such further enquiry or investigation and furnish a report within a period of ninety days of the receipt of the communication from the Settlement Commission, on the matters covered by the application and any other matter relating to the case :

Provided that where the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order under sub-section (5) without such report.

(5) After examination of the records and the report of the Commissioner of Central Excise received under sub-section (3), and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under sub-section (4), and after giving an opportunity to the applicant and to the Commissioner of Central Excise having jurisdiction to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner of Central Excise and Commissioner (Investigation) under sub-section (3) or sub-section (4).

(6) An order under sub-section (5) shall not be passed in respect of an application filed on or before the 31st day of May, 2007, later than the 29th day of February, 2008 and in respect of an application made on or after the 1st day of June, 2007, after nine months from the last day of the month in which the application was made, failing which the settlement proceedings shall abate, and the adjudicating authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 32E had been made.

[**Provided** that the period specified under this sub-section may, for reasons to be recorded in writing, be extended by the Settlement Commission for a further period not exceeding three months.]

(7) Subject to the provisions of section 32A, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (5) and, in relation to the passing of such order, the provisions of section 32D shall apply.

(8) The order passed under sub-section (5) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective and in case of rejection contain the reasons therefor and it shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts :

Provided that the amount of settlement ordered by the Settlement Commission shall not be less than the duty liability admitted by the applicant under section 32E.

(9) Where any duty, interest, fine and penalty payable in pursuance of an order under sub-section (5) is not paid by the assessee within thirty days of receipt of a copy of the order by him, the amount which remains unpaid, shall be recovered

along with interest due thereon, as the sums due to the Central Government by the Central Excise Officer having jurisdiction over the assessee in accordance with the provisions of section 11.

(10) Where a settlement becomes void as provided under sub-section (8), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the Central Excise Officer having jurisdiction may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the settlement became void.]

SECTION 32G. Power of Settlement Commission to order provisional attachment to protect revenue. — (1) Where, during the pendency of any proceeding before it, the Settlement Commission is of the opinion that for the purpose of protecting the interests of revenue it is necessary so to do, it may, by order, attach provisionally any property belonging to the applicant in the manner as may be prescribed.

(2) Every provisional attachment made by the Settlement Commission under sub-section (1) shall cease to have effect from the date, the sums due to the Central Government for which such attachment is made are discharged by the applicant and evidence to that effect is submitted to the Settlement Commission.

SECTION 32H. Power of Settlement Commission to reopen completed proceedings. — If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act before application for settlement under section 32E was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also :

Provided that no proceeding shall be reopened by the Settlement Commission under this section after the expiry of five years from the date of application.

[**Provided** further that no proceeding shall be reopened by the Settlement Commission under this section in a case where an application under section 32E is made on or after the 1st day of June, 2007.]

SECTION 32-I. Powers and procedure of Settlement Commission. — (1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in a Central Excise Officer under this Act or the rules made thereunder.

(2) Where an application made under section 32E has been allowed to be proceeded with under section 32F, the Settlement Commission shall, until an order is passed under sub-section [(5)] of section 32F, have, subject to the provisions of sub-section [(4)] of that section, exclusive jurisdiction to exercise the powers and perform the functions of any Central Excise Officer, under this Act in relation to the case.

(3) In the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission.

(4) The Settlement Commission shall, subject to the provisions of this Chapter, have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers, or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

SECTION 32J. Inspection, etc., of reports. — No person shall be entitled to inspect, or obtain copies of, any reports made by any Central Excise Officer to the Settlement Commission; but the Settlement Commission may, in its discretion furnish copies thereof to any such person on an application made to it in this behalf and on payment of the prescribed fee :

Provided that, for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on payment of the prescribed fee by such person, furnish him with a certified copy of any such report or part thereof relevant for the purpose.

SECTION 32K. Power of Settlement Commission to grant immunity from prosecution and penalty. — (1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 32E has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his duty liability, grant to such person,

subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act [and also either wholly or in part from the imposition of any penalty and fine] under this Act, with respect to the case covered by the settlement :

Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 32E.

[***Explanation.*** — For the removal of doubts, it is hereby declared that applications filed before the Settlement Commission on or before the 31st day of May, 2007 shall be disposed of as if the amendment in this section had not come into force.]

(2) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of the settlement passed under [sub-section (5) of section 32F within the time specified in such order] or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(3) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particular material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had no such immunity been granted.

SECTION 32L. Power of Settlement Commission to send a case back to the Central Excise Officer. — (1) The Settlement Commission may, if it is of opinion that any person who made an application for settlement under section 32E has not co-operated with the Settlement Commission in the proceedings before it, send the case back to the Central Excise Officer having jurisdiction who shall thereupon dispose of the case in accordance with the provisions of this Act as if no application under section 32E had been made.

(2) For the purpose of sub-section (1), the Central Excise Officer shall be entitled to use all the materials and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence had been produced before such Central

Excise Officer or held or recorded by him in the course of the proceedings before him.

(3) For the purposes of the time limit under section 11A and for the purposes of interest under section 11BB, in a case referred to in sub-section (1), the period commencing on and from the date of the application to the Settlement Commission under section 32E and ending with the date of receipt by the Central Excise Officer of the order of the Settlement Commission sending the case back to the Central Excise Officer shall be excluded.

SECTION 32M. Order of settlement to be conclusive. — Every order of settlement passed under sub-section [(5)] of section 32F shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

SECTION 32N. Recovery of sums due under order of settlement. — Any sum specified in an order of settlement passed under sub-section [(5)] of section 32F may, subject to such conditions if any, as may be specified therein, be recovered, and any penalty for default in making payment of such sum may be imposed and recovered as sums due to the Central Government in accordance with the provisions under section 11 by the Central Excise Officer having jurisdiction over the person who made the application for settlement under section 32E.

SECTION 32-O. Bar on subsequent application for settlement in certain cases. — [(1)] [Where, [* * *]] -

(i) an order of settlement passed under sub-section (7) of section 32F [, as it stood immediately before the commencement of section 122 of the Finance Act, 2007 (22 of 2007) or sub-section (5) of section 32F,] provides for the imposition of a penalty on the person who made the application under section 32E for settlement, on the ground of concealment of particulars of his duty liability; or

(ii) after the passing of an order of settlement under the said sub-section (7) [, as it stood immediately before the commencement of section 122 of the Finance Act, 2007 (22 of 2007) or sub-section (5) of section 32F,] in relation to a case, such person is convicted of any offence under this Act in relation to that case; or

(iii) the case of such person is sent back to the Central Excise Officer having jurisdiction by the Settlement Commission under section 32L,

then, he shall not be entitled to apply for settlement under section 32E in relation to any other matter.

[(2) * * *]

SECTION 32P. Proceedings before Settlement Commission to be judicial proceedings. — Any proceedings under this Chapter before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196 of the Indian Penal Code (45 of 1860).]

[SECTION 33A. Adjudication procedure. — (1) The Adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2) The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing :

Provided that no such adjournment shall be granted more than three times to a party during the proceeding.]

SECTION [35EE. Revision by Central Government. — (1) The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 35B, annul or modify such order :

[**Provided** that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.]

Explanation. — For the purposes of this sub-section, "order passed under section 35A" includes an order passed under that section before the commencement of section 47 of the Finance Act, 1984 against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

[(1A) The Commissioner of Central Excise may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 35A is not legal or proper,

direct the proper officer to make an application on his behalf to the Central Government for revision of such order.]

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made :

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

[(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of, -

(a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise officer in the case to which the application relates is one lakh rupees or less;

(b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise officer in the case to which the application relates is more than one lakh rupees :

Provided that no such fee shall be payable in the case of an application referred to in sub-section (1A).]

(4) The Central Government may, of its own motion, annul or modify any order referred to in sub-section (1).

(5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section, —

(a) in any case in which an order passed under section 35A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value; and

(b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

(6) Where the Central Government is of opinion that any duty of excise has not been levied or has been short-levied, no order levying or enhancing the duty shall

be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time-limit specified in section 11A.]

SECTION [34A. Confiscation or penalty not to interfere with other punishments. — No confiscation made or penalty imposed under the provisions of the Act or of any rule made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.]

SECTION 35F. Deposit, pending appeal, of duty demanded or penalty levied. — Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of Central Excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied :

Provided that where in any particular case, the [Commissioner (Appeals)] or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the [Commissioner (Appeals)] or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.

[**Provided** further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing.]

[***Explanation.*** — For the purposes of this section "duty demanded" shall include, —

(i) amount determined under section 11D;

(ii) amount of erroneous Cenvat credit taken;

(iii) amount payable under rule 57CC of Central Excise Rules, 1944;

(iv) amount payable under rule 6 of Cenvat Credit Rules, 2001 or Cenvat Credit Rules, 2002 or Cenvat Credit Rules, 2004;

(v) interest payable under the provisions of this Act or the rules made thereunder.]

SECTION [35FF. Interest on delayed refund of amount deposited under the proviso to section 35F. — Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount.]

[**SECTION [35G. Appeal to High Court.** - (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

(2) The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be -

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;

(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

[(2A) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.]

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which -

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(7) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(8) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.]

[SECTION [35H. Application to High Court. — (1) The Commissioner of Central Excise or the other party may, within one hundred and eighty days of the date upon which he is served with notice of an order under section 35C passed [before the 1st day of July, 2003] (not being an order relating, among other things,

to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, apply to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal.

(2) The Commissioner of Central Excise or the other party applying to the High Court under sub-section (1) shall clearly state the question of law which he seeks to be referred to the High Court and shall also specify the paragraph in the order of the Appellate Tribunal relevant to the question sought to be referred.

(3) On receipt of notice that an application has been made under sub-section (1), the person against whom such application has been made, may, notwithstanding that he may not have filed such application, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order in relation to which an application for reference has been made and such memorandum shall be disposed of by the High Court as if it were an application presented within the time specified in sub-section (1).

[(3A) The High Court may admit an application or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (1) or sub-section (3), if it is satisfied that there was sufficient cause for not filing the same within that period.]

(4) If, on an application made under sub-section (1), the High Court directs the Appellate Tribunal to refer the question of law raised in the application, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such direction, draw up a statement of the case and refer it to the High Court.]

SECTION 35-I. Power of High Court or Supreme Court to require statement to be amended. — If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

SECTION 35J. Case before High Court to be heard by not less than two judges. — (1) When any case has been referred to the High Court [under section 35G or section 35H], it shall be heard by a Bench of not less than two judges of the High Court and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

(2) Where there is no such majority, the judges shall state the point of law

upon which they differ and the case shall then be heard upon that point only by one or more of the other judges of the High Court, and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

SECTION 35K. Decision of High Court or Supreme Court on the case stated. — (1) The [High Court or the] Supreme Court hearing any such case shall decide the question of law raised therein and shall deliver its judgment thereon containing the grounds on which such decision is founded and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with such judgment.

[(1A) Where the High Court delivers a judgment in an appeal filed before it under section 35G, effect shall be given to the order passed on the appeal by the concerned Central Excise Officer on the basis of a certified copy of the judgment.]

(2) The costs of any [reference to [the High Court or] an appeal to [the High Court or] the Supreme Court, [as the case may be]] which shall not include the fee for making the reference, shall be in the discretion of the Court.

SECTION 35L. Appeal to the Supreme Court — An appeal shall lie to the Supreme Court from —

[(a) any judgment of the High Court delivered -

(i) in an appeal made under section 35G; or

(ii) on a reference made under section 35G by the Appellate Tribunal before the 1st day of July, 2003;

(iii) on a reference made under section 35H,

in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or].

(b) any order passed [before the establishment of the National Tax Tribunal] by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

SECTION 35M. Hearing before Supreme Court. — (1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court

shall, so far as may be, apply in the case of appeals under section 35L as they apply in the case of appeals from decrees of a High Court :

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (1) of section 35K or section 35N.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 35K in the case of a judgment of the High Court.

SECTION 35N. Sums due to be paid notwithstanding reference, etc. — Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, [under this Act before the commencement of the National Tax Tribunal Act, 2005] sums due to the Government as a result of an order passed under sub-section (1) of section 35C shall be payable in accordance with the order so passed.

SECTION 35-O. Exclusion of time taken for copy. — In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

SECTION 35Q. Appearance by authorised representative. — (1) Any person who is entitled or required to appear before a Central Excise Officer or the Appellate Tribunal in connection with any proceedings under this Act, otherwise than when required under this Act to appear personally for examination on oath or affirmation, may, subject to the other provisions of this section, appear by an authorised representative.

(2) For the purposes of this section, "authorised representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being —

(a) his relative or regular employee; or

(b) any legal practitioner who is entitled to practise in any civil court in India; or

(c) any person who has acquired such qualifications as the Central Government may prescribe for this purpose.

(3) Notwithstanding anything contained in this section, no person who was a member of the Indian Customs and Central Excise Service — Group A and has retired or resigned from such Service after having served for not less than three years in any capacity in that Service, shall be entitled to appear as an authorised representative in any proceedings before a Central Excise Officer for a period of two years from the date of his retirement or resignation, as the case may be.

(4) No person, —

(a) who has been dismissed or removed from Government service; or

(b) who is convicted of an offence connected with any proceeding under this Act, the Customs Act, 1962 (52 of 1962) or the Gold (Control) Act, 1968 (45 of 1968); or

(c) who has become an insolvent,

shall be qualified to represent any person under sub-section (1), for all times in the case of a person referred to in clause (a), and for such time as the [Commissioner of Central Excise] or the competent authority under the Customs Act, 1962 or the Gold (Control) Act, 1968, as the case may be, may, by order, determine in the case of a person referred to in clause (b), and for the period during which the insolvency continues in the case of a person referred to in clause (c).

(5) If any person, —

(a) who is a legal practitioner, is found guilty of mis-conduct in his professional capacity by any authority entitled to institute proceedings against him, an order passed by that authority shall have effect in relation to his right to appear before a Central Excise Officer or the Appellate Tribunal as it has in relation to his right to practise as a legal practitioner;

(b) who is not a legal practitioner, is found guilty of mis-conduct in connection with any proceedings under this Act by the prescribed authority, the prescribed authority may direct that he shall thenceforth be disqualified to represent any person under sub-section (1).

(6) Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely :—

(a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;

(b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and

(c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

SECTION [35R. Appeal not to be filed in certain cases. — (1) The Central Board of Excise and Customs may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal, application, revision or reference by the Central Excise Officer under the provisions of this Chapter.
(2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the Central Excise Officer has not filed an appeal, application, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Central Excise Officer from filing appeal, application, revision or reference in any other case involving the same or similar issues or questions of law.
(3) Notwithstanding the fact that no appeal, application, revision or reference has been filed by the Central Excise Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Central Excise Officer has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.
(4) The Appellate Tribunal or court hearing such appeal, application, revision or reference shall have regard to the circumstances under which appeal, application, revision or reference was not filed by the Central Excise Officer in pursuance of the orders or instructions or directions issued under sub-section (1).
(5) Every order or instruction or direction issued by the Central Board of Excise and Customs on or after the 20th day of October, 2010, but before the date on which the Finance Bill, 2011 receives the assent of the President, fixing monetary limits for filing of appeal, application, revision or reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.]

SECTION 36. Definitions. — In this Chapter —

(a) "appointed day" means the date of coming into force of the amendments to this Act specified in Part II of the Fifth Schedule to the Finance (No. 2) Act, 1980;

(b) "High Court" means, —

(i) in relation to any State, the High Court for that State;

(ii) in relation to a Union Territory to which the jurisdiction of the High Court of a State has been extended by law, that High Court;

(iii) in relation to the Union Territories of Dadra and Nagar Haveli and [Daman and Diu,] the High Court at Bombay;

(iv) in relation to any other Union Territory, the highest court of civil appeal for that territory other than the Supreme Court of India;

(c) "President" means the President of the Appellate Tribunal].

CHAPTER VIB - PRESUMPTION AS TO DOCUMENTS

SECTION [36A. Presumption as to documents in certain cases. — Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall, —

(a) unless the contrary is proved by such person, presume —

(i) the truth of the contents of such document;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.]

SECTION [36B. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence. — (1) Notwithstanding anything contained in any other law for the time being in force, —

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer print out"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question,

shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely :—

(a) the computer print out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduced or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether —

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, —

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. — For the purposes of this section, —

(a) "computer" means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]

SECTION [37A. Delegation of powers. - The Central Government may, by notification in the Official Gazette direct that subject to such conditions, if any, as may be specified in the notification —

(a) any power exercisable by the Board under this Act may be exercisable also by [a [Chief Commissioner of Central Excise] or a [Commissioner of Central Excise]] empowered in this behalf by the Central Government;

(b) any power exercisable by a [Commissioner of Central Excise] under this Act may be exercisable also by a [Joint Commissioner of Central Excise] or an [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] empowered in this behalf by the Central Government;

(c) any power exercisable by a [Joint Commissioner of Central Excise] under this Act may be exercisable also by an [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] empowered in this behalf by the Central Government; and

(d) any power exercisable by an [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] under this Act may be exercisable also by a gazetted officer of Central Excise empowered in this behalf by the Board.]

SECTION [37B. Instructions to Central Excise Officers. — The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the

Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board :

Provided that no such orders, instructions or directions shall be issued—

(a) so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the [Commissioner of Central Excise (Appeals)] in the exercise of his appellate functions.]

SECTION [37C. Service of decisions, orders, summons, etc. — (1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served, -

(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due, to the person for whom it is intended or his authorised agent, if any;

(b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;

(c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post or a copy thereof is affixed in the manner provided in sub-section (1).]

SECTION [37D. Rounding off of duty, etc. — The amount of duty, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and,

for this purpose, where such amount contains a part of a rupee consisting of *paise* then, if such part is fifty *paise* or more, it shall be increased to one rupee and if such part is less than fifty *paise* it shall be ignored.]

SECTION 38A. [Effect of amendments, etc., of rules, notifications or orders. — Where any rule, notification or order made or issued under this Act or any notification or order issued under such rule, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not -

(a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or

(b) affect the previous operation of any rule, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, notification or order so amended, repealed, superseded or rescinded; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, notification or order so amended, repealed, superseded or rescinded; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the rule, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded.

SECTION [40. Protection of action taken under the Act. — (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Central Government or a State Government for anything which is done, or intended to be done, in good faith, in pursuance of this Act or any rule made thereunder.

(2) No proceeding, other than a suit, shall be commenced against the Central Government or any officer of the Central Government or a State Government for anything done or purported to have been done in pursuance of this

Act or any rule made thereunder, without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof or after the expiration of three months from the accrual of such cause.]

6. SERVICE TAX RULES, 1994

NOTIFICATION NO. 2/94 - ST, DATED JUNE 28, 1994, AS AMENDED

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 hereby makes the following rules for the purpose of the assessment and collection of service tax, namely: -

1. SHORT TITLE AND COMMENCEMENT

(1) These rules may be called the Service Tax Rules, 1994.

(2) They shall come into force on the 1st day of July, 1994.

2. DEFINITIONS

(1) In these rules, unless the context otherwise requires, -

(a) "Act" means the Finance Act, 1994 (32 of 1994);

(b) "assessment" includes self-assessment of service tax by the assessee, reassessment, provisional assessment, best judgment assessment and any order of assessment in which the tax assessed is nil; determination of the interest on the tax assessed or reassessed;

"(bb) "banking company" has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);

(bc) "body corporate" has the meaning assigned to it in clause (7) of section 2 of the Companies Act, 1956 (1 of 1956);

(bd) "financial institution" has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);"

(c) "Form" means a Form appended to these rules;

(c1a) goods carriage" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(ca) "Half-year" means the period between 1st April to 30th September or 1st October-to 31st March of a financial year;

(cb) "input service distributor" has the meaning assigned to it in clause (m) of Rule 2 of the CENVAT Credit Rules, 2004;

"(cba) "insurance agent" has the meaning assigned to it in clause (10) of section 2 of the Insurance Act, 1938 (4 of 1938);"

(cc) "large taxpayer" has the meaning assigned to it in the Central Excise Rules, 2002.

'(cca)"legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority;

(ccb) "life insurance business" has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);

(ccc) "non banking financial company" has the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(cd) "partnership firm" includes a limited liability partnership;.

"(d) "person liable for paying service tax", -

(i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-

(A) in relation to service provided or agreed to be provided by an insurance agent to any person carrying on the insurance business, the recipient of the service.

(B) in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(III) any co-operative society established by or under any law;

(IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(V) any body corporate established, by or under any law; or

(VI) any partnership firm whether registered or not under any law including association of persons;

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage:

Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

(C) in relation to service provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory, the recipient of such service;

(D) in relation to service provided or agreed to be provided by,-

(I) an arbitral tribunal, or

(II) an individual advocate or a firm of advocates by way of legal services,

to any business entity located in the taxable territory, the recipient of such service;

(E) in relation to support services provided or agreed to be provided by Government or local authority except,-

(a) renting of immovable property, and

(b) services specified sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act,1994,

to any business entity located in the taxable territory, the recipient of such service;

(EE) in relation to service provided or agreed to be provided by a director of a company to the said company, the recipient of such service[52]

(F) in relation to services provided or agreed to be provided by way of :-

(a) renting of a motor vehicle designed to carry passengers, to any person who is not engaged in a similar business; or

(b) supply of manpower for any purpose [or security services][53]; or

(c) service portion in execution of a works contract-

by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as a body corporate, located in the taxable territory, both the service provider and the service recipient to the extent notified under sub-section (2) of section 68 of the Act, for each respectively.

(G) in relation to any taxable service provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory, the recipient of such service;

(ii) in a case other than sub-clause (i), means the provider of service."

[52] Not. No. 46/2012-ST dated 7 August 2012

[53] *Ibid*

(vi) after sub-clause (d), the following sub-clause shall be inserted, namely:—

'(dd) "place of provision" shall be the place as determined by Place of Provision of Services Rules 2012;'

(vii) after sub-clause (e), the following sub-clauses shall be inserted, namely:—

'(f) "renting of immovable property" means any service provided or agreed to be provided by renting of immovable property or any other service in relation to such renting.

[(fa) "security services" means services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity][54]

(g) "supply of manpower" means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control.'

(e) "quarter" means the period between 1st January to 31st March or 1st April to 30th June or 1st July to 30th September or 1st October to 31st December of a financial year.

(2) All words and expressions used but not defined in these rules but defined in the Central Excise Act, 1944 (1 of 1944), and the Rules made there under shall have the meanings assigned to them in that Act and rules.

3. APPOINTMENT OF OFFICERS

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 as also specify the taxable service in relation to which any such Central Excise Officer shall exercise his powers.

4. REGISTRATION

[54] Not. No. 46/2012-ST dated 7 August 2012

(1) Every person liable for paying the service tax shall make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within a period of thirty days from the date on which the service tax under ~~section 66~~section 66B of the Finance Act, 1994 (32 of 1994) is levied:

Provided that where a person commences the business of providing a taxable service after such service has been levied, he shall make an application for registration within a period of thirty days from the date of such commencement:

Provided further that a person liable for paying the service tax in the case of taxable services referred to in sub-section (4) or sub-section (5) of section 66 of the Finance Act, 1994 (32 of 1994) may make an application for registration on or before the 31st day of December, 1998:

Provided also that a person liable for paying the service tax in the case of taxable services referred to in sub-clause (zzp) of clause (105) of section 65 of the Act may make an application for registration on or before the 31st day of March, 2005.

(2) Where a person, liable for paying service tax on a taxable service,

(i) provides such service from more than one premises or offices; or

(ii) receives such service in more than one premises or offices; or

(iii) is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable for paying service tax, and has centralised billing system or centralised accounting system in respect of such service, and such centralised billing or centralised accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralised billing or centralised accounting systems are located.

(3) The registration under sub-rule (2), shall be granted by the Commissioner of Central Excise in whose jurisdiction the premises or offices, from where centralised billing or accounting is done, are located:

Provided that nothing contained in this sub-rule shall have any effect on the registration granted to the premises or offices having such centralised billing or centralised accounting systems, prior to the 2nd day of November, 2006.

(3A)Where an assessee is providing a taxable service from more than one premises or offices, and does not have any centralized billing systems or centralized accounting systems, as the case may be, he shall make separate applications for registration in respect of each of such premises or offices to the jurisdictional Superintendent of Central Excise.

(4) Where an assessee is providing more than one taxable service, he may make a single application, mentioning therein all the taxable services provided by him, to the concerned Superintendent of Central Excise.

(5) The Superintendent of Central Excise shall after due verification of the application form or an intimation under sub-rule (5A), as the case may be, grant a certificate of registration in Form ST-2 within seven days from the date of receipt of the application or the intimation. If the registration certificate is not granted within the said period, the registration applied for shall be deemed to have been granted.

(5A)Where there is a change in any information or details furnished by an assessee in Form ST-1 at the time of obtaining registration or he intends to furnish any additional information or detail, such change or information or details shall be intimated, in writing, by the assessee, to 112 Service Tax in India the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, within a period of thirty days of such change.

(6) Where a registered assessee transfers his business to another person, the transferee shall obtain a fresh certificate of registration.

(7) Every registered assessee, who ceases to provide the taxable service for which he is registered, shall surrender his registration certificate immediately to the Superintendent of Central Excise.

(8) On receipt of the certificate under sub-rule (7), the Superintendent of Central Excise shall ensure that the assessee has paid all monies due to the Central

Government under the provisions of the Act, and the rules and the notifications issued thereunder, and thereupon cancel the registration certificate.

4A. TAXABLE SERVICE TO BE PROVIDED OR CREDIT TO BE DISTRIBUTED ON INVOICE, BILL OR CHALLAN

(1) Every person providing taxable service, not later than thirty days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, shall issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorised by him in respect of such taxable service provided or agreed to be provided~~provided or to be provided~~ and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely: -

(i) the name, address and the registration number of such person;

(ii) the name and address of the person receiving taxable service;

(iii) description and value of taxable service provided or agreed to be provided; and ~~) description, classification and value of taxable service provided or to be provided; and~~

(iv) the service tax payable thereon:

Provided that in case the provider of taxable service is a banking company or a financial institution including a non-banking financial company, ~~or any other body corporate or any other person,~~ providing service to any person, ~~in relation to banking and other financial services,~~ an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered, and whether or not containing address of the person receiving taxable service but containing other information in such documents as required under this sub-rule:

Provided further that in case the provider of taxable service is a goods transport agency, providing service to any person, in relation to transport of goods by road in a goods carriage, an invoice, a bill or, as the case may be, a challan shall include

any document, by whatever name called, which shall contain the details of the consignment note number and date, gross weight of the consignment and also contain other information as required under this sub-rule:

Provided also that in case of continuous supply of service, every person providing such taxable service shall issue an invoice, bill or challan, as the case may be, within thirty days of the date when each event specified in the contract, which requires the service receiver to make any payment to the service provider is completed:

Provided also that in case the provider of taxable service is a banking company or a financial institution including a non-banking financial company, ~~or any other body corporate or any other person,~~ providing service to any person, in relation to banking and other financial services, 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 in case the provider of taxable service is ~~aircraft operator~~ providing the service of ~~air~~ transport of passenger, an invoice, a bill or as the case may be, challan shall include ticket in any form by whatever name called and whether or not containing registration number of the service provider, classification of the service received and address of the service receiver but containing other information in such documents as required under this sub-rule.

Provided also that wherever the provider of taxable service receives an amount upto 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

(2) Every input service distributor distributing credit of taxable services shall, in respect of credit distributed, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorised by him, for each of the recipient of the credit distributed, and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely: -

(i) the name, address and registration number of the person providing input services and the serial number and date of invoice, bill, or as the case may be, challan issued under sub-rule (1);

(ii) the name and address of the said input service distributor;

(iii) the name and address of the recipient of the credit distributed;

(iv) the amount of the credit distributed:

Provided that in case the input service distributor is an office of a banking company or a financial institution including a non-banking financial company, ~~or any other body corporate or any other person~~ providing service to any person, ~~in relation to banking and other financial services~~, an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered but containing other information in such documents as required under this sub-rule.

4B. ISSUE OF CONSIGNMENT NOTE

Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the recipient of service:

Provided that where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted under section 93 of the Act, the goods transport agency shall not be required to issue the consignment note.

Explanation. - For the purposes of this rule and the second proviso to rule 4A, "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.

5. RECORDS

(1) The records including computerised data as maintained by an assessee in accordance with the various laws in force from time to time shall be acceptable.

(2) Every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time or the 31st day of January, 2008, whichever is later, a list in duplicate, of

(i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,

(a) providing of any service, ~~whether taxable or exempted~~;

(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.

(ii) all other financial records maintained by him in the normal course of business.

(3) All such records shall be preserved at least for a period of five years immediately after the financial year to which such records pertain.

5A. ACCESS TO A REGISTERED PREMISES

(1) An officer authorised by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every assessee shall, on demand, make available to the officer authorised under sub-rule (1) 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 such further period as may be allowed by such officer or the audit party, as the case may be,-

(i) the records as mentioned in sub-rule (2) of rule 5;

(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), for the scruitiny of the officer or audit party, as the case may be.

~~**5B. DATE FOR DETERMINATION OF RATE**~~

~~The rate of tax in case of services provided, or to be provided, shall be the rate prevailing at the time when the services are deemed to have been provided under the rules made in this regard.~~

6. PAYMENT OF SERVICE TAX

(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 where the assessee is an individual or proprietary firm or partnership firm, the service tax shall be paid to the credit of the Central Government by the 6th day of the month if the duty is deposited electronically through internet banking, or, in any other case, 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 service tax on the service deemed to be provided in the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year.

~~Provided also that in case of taxable services covered under sub-rule (1) of rule 3 of the Export of Services Rules, 2005, this sub-rule shall not apply subject to the condition that the payment is received within the period specified by the Reserve Bank of India, including such extended period as may be allowed from time to time:~~

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 taxable services provided or agreed to be to be provided by him up to a total of rupees fifty lakhs in the current financial year, by the dates specified in this sub-rule with respect to the month or quarter, as the case may be, in which payment is received

(1A)Without prejudice to the provisions contained in sub-rule (1), every person liable to pay service tax, may, on his own volition, pay an amount as service tax 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:

Provided that the assessee shall,-

(i) intimate the details of the amount of service tax paid in advance, to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such payment; and

(ii) indicate the details of the advance payment made, and its adjustment, if any in the subsequent return to be filed under section 70 of the Act.

(2) The assessee shall deposit the service tax liable to be paid by him with the bank designated by the Central Board of Excise and Customs for this purpose in Form G.A.R.-7 or in any other manner prescribed by the Central Board of Excise and Customs:

Provided that where an assessee has paid a total service tax of rupees ten lakh or more including the amount paid by utilisation of CENVAT credit, in the preceding financial year, he shall deposit the service tax liable to be paid by him electronically, through internet banking.

(2A) For the purpose this rule, if the assessee deposits the service tax by cheque, the date of presentation of cheque to the bank designated by the Central Board of Excise and Customs for this purpose shall be deemed to be the date on which service tax has been paid subject to realization of that cheque.

(3) 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 the contract, the assessee may take 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.;

(4) Where an assessee is, for any reason, unable to correctly estimate, on the date of deposit, the actual amount payable for any particular month or quarter, as the case may be, he may make a request in writing to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, giving reasons for payment of service tax on provisional basis and the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, on receipt of such request, may allow payment of service tax on provisional basis on such value of taxable service as may be specified by him and the provisions of the Central Excise (No. 2) Rules, 2001, relating to provisional assessment except so far as they relate to execution of bond, shall, so far as may be, apply to such assessment.

(4A)Notwithstanding anything contained in sub-rule (4), where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be.

(4B) The adjustment of excess amount paid, under sub-rule (4A), shall be subject to the condition that the excess amount paid is on account of reasons not involving interpretation of law, taxability, ~~classification~~, valuation or applicability of any exemption notification.

(4C) ~~-~~ Notwithstanding anything contained in sub-rules (4), (4A) and (4B), where the person liable to pay service tax in respect of services of renting of immovable property has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, on account of non-availment of deduction of property tax paid in terms of notification No. 29/2012-Service Tax , dated the 20th June, 2012, from the gross amount charged for renting of the immovable property for the said period at the time of payment of service tax, the assessee may adjust such excess amount paid by him against his service tax liability within one year from the date of payment of such property tax and the details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of fifteen days from the date of such adjustment.”; ~~provided or to be provided in relation to renting of immovable property, referred to in sub-clause (zzzz) of clause (105) of section 65 of the Act, has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, on account of non-availment of deduction of property tax paid in terms of Notification No.24/2007-Service Tax, dated the 22nd May, 2007, from the gross amount charged for renting of the immovable property for the said period at the time of payment of service tax, the assessee may adjust such excess amount paid by him against his service tax liability within one year from the date of payment of such property tax. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of fifteen days from the date of such adjustment.~~

(5) Where an assessee under sub-rule (4) requests for a provisional assessment he shall file a statement giving details of the difference between the service tax deposited and the service tax liable to be paid for each month in a memorandum in

Form ST-3A accompanying the quarterly or half - yearly return, as the case may be.

(6) Where the assessee submits a memorandum in Form ST-3A under sub-rule (5), it shall be lawful for the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, to complete the assessment, wherever he deems it necessary, after calling such further documents or records as he may consider necessary and proper in the circumstances of the case.

Explanation. - For the purposes of this rule and rule 7, "Form G.A.R.-7" means a memorandum or challan referred to in rule 26 of the Central Government Account (Receipts and Payments) Rules, 1983.

(6A)Where an amount of service tax payable has been self-assessed under sub-section (1) of section 70 of the Act, but not paid, either in full or part, the same, shall be recoverable alongwith interest in the manner prescribed under section 87 of the Act.

(7) The person liable for paying the service tax in relation of booking of tickets for travel by air~~to the services provided~~ by an air travel agent, shall have the option, to pay an amount calculated at the rate of 0.6% of the basic fare in the case of domestic bookings, and at the rate of 1.2% of the basic fare in the case of international bookings, of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66B ~~section 66~~ of Chapter V of the Act and the option, once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances.

Explanation. - For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

(7A) An insurer carrying on life insurance business shall have the option to pay tax:

(i) on the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service;

(ii) in all other cases, 3 per cent. of the premium charged from policy holder in the first year and 1.5 per cent. of the premium charged from policy holder in the subsequent years:

towards the discharge of his service tax liability instead of paying service tax at the rate specified in section ~~66~~ 66B of Chapter V of the said Act.

Provided that such option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance.

(7B) The person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, ~~provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorised money changer, referred to in sub-clauses (zm) and (zzk) of clause (105) of section 65 of the Act,~~ shall have the option to pay an amount calculated at the following rate towards discharge of his service tax liability instead of paying service tax at the rate specified in section 66B~~66~~ of Chapter V of the Act, namely:

(a) 0.12 percent. of the gross amount of currency exchanged for an amount upto rupees 100,000, subject to the minimum amount of rupees 30; and

(b) rupees 120 and 0.06 percent. of the gross amount of currency exchanged for an amount of rupees exceeding 100,000 and upto rupees 10,00,000; and

(c) rupees 660 and 0.12 percent. of the gross amount of currency exchanged for an amount of rupees exceeding 10,00,000, subject to maximum amount of rupees 6000:

Provided that the person providing the service shall exercise such option for the financial year and such option shall not be withdrawn during the remaining part of that financial year.

(7C)The distributor or selling agent, liable to pay service tax for the taxable service of promotion, marketing, organising or in any other manner assisting in organising lottery, ~~referred to in sub-clause (zzzzn) of clause (105) of section 65 of the said Act (hereinafter referred to as the said sub-clause)~~, shall have the option to pay an amount at the rate specified in column (2) of the Table given below, subject to the conditions specified in the corresponding entry in column (3) of the said Table, instead of paying service tax at the rate specified in section 66B~~66~~ of Chapter V of the said Act:

Sl.No.	Rate	Condition
1	2	3
1	Rs 7000 on every Rs 10 lakh (or part of Rs 10 lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is more than 80%
2	Rs 11000 on every Rs 10 lakh (or part of Rs 10 lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is less than 80%

Provided that in case of online lottery, the aggregate face value of lottery tickets for the purpose of this sub-rule shall be taken as the aggregate value of tickets sold, and service tax shall be calculated in the manner specified in the said Table.

Provided further that the distributor or selling agent shall exercise such option within a period of one month of the beginning of each financial year and such option shall not be withdrawn during the remaining part of the financial year.

Provided also that the distributor or selling agent shall exercise such option for financial year 2010-11, within a period of one month of the publication of this sub-rule in the Official Gazette or, in the case of new service provider, within one month of providing of such service~~service under the said sub-clause~~ and such option shall not be withdrawn during the remaining part of that financial year.

Explanation.- For the purpose of this sub-rule-

(i) "distributor or selling agent" shall have the meaning assigned to them in clause (c) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs published in the Gazette of India, Part-II, Section 3, Sub-section (i) vide number G.S.R. 278(E) dated 1st April, 2010 and shall include distributor or selling agent authorised by the lottery organising State.

(ii) "draw" shall have the meaning assigned to it in clause (d) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs published in the Gazette of India, Part-II, Section 3, Sub-section (i) vide number G.S.R. 278(E) dated 1st April, 2010.

(iii) "online lottery" shall have the meaning assigned to it in clause (e) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs published in the Gazette of India, Part-II, Section 3, Sub-section (i) vide number G.S.R. 278(E) dated 1st April, 2010.

(iv) "organising state" shall have the meaning assigned to it in clause (f) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs published in the Gazette of India, Part-II, Section 3, Sub-section (i) vide number G.S.R. 278(E) dated 1st April, 2010.

"RULE 6A. Export of services.-

(1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-

(a) the provider of service is located in the taxable territory ,

(b) the recipient of service is located outside India,

(c) the service is not a service specified in the section 66D of the Act,

(d) the place of provision of the service is outside India,

(e) the payment for such service has been received by the provider of service in convertible foreign exchange, and

(f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of section 65B of the Act

(2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification."

7. RETURNS

(1) Every assessee shall submit a half-yearly return in Form 'ST-3' or 'ST-3A', as the case may be, along with a copy of the Form G.A.R.-7, in triplicate for the months covered in the half-yearly return.

(2) Every assessee shall submit the half - yearly return by the 25th of the month following the particular half-year.

Provided that where an assessee has paid a total service tax of rupees ten lakh or more including the amount paid by utilisation of CENVAT credit, in the preceding financial year, he shall file the return electronically.

Provided that the Form 'ST-3' required to be submitted by the 25th day of October, 2012 shall cover the period between 1st April to 30th June, 2012 only.[55]

7A. RETURNS IN CASE OF TAXABLE SERVICE PROVIDED BY GOODS TRANSPORT OPERATORS AND CLEARING AND FORWARDING AGENTS

Notwithstanding anything contained in rule 7, an assessee, in case of service provided by -

(a) goods transport operator for the period commencing on and from the 16th day of November, 1997 to 2nd day of June, 1998; and

[55] Not. No. 47/2012-ST dated 28 September 2012

(b) clearing and forwarding agents for the period commencing on and from the 16th day of July, 1997 to 16th day of October, 1998,

shall furnish a return within a period of six months from the 13th day of May, 2003, in Form ST-3B alongwith copy of Form G.A.R.-7 in triplicate, failing which the interest and penal consequences as provided in the Act shall follow.

7B. REVISION OF 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.

Explanation - Where an assessee submits a revised return, the 'relevant date' for the purpose of recovery of service tax, if any, under section 73 of the Act shall be the date of submission of such revised return.

7C. AMOUNT TO BE PAID FOR DELAY IN FURNISHING THE PRESCRIBED RETURN

Where the return prescribed under rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Central Government, for the period of delay of-

(i) fifteen days from the date prescribed for submission of such return, an amount of five hundred rupees;

(ii) beyond fifteen days but not later than thirty days from the date prescribed for submission of such return, an amount of one thousand rupees; and

(iii) beyond thirty days from the date prescribed for submission of such return an amount of one thousand rupees plus one hundred rupees for every day from the thirty first day till the date of furnishing the said return:

Provided that the total amount payable in terms of this rule, for delayed submission of return, shall not exceed the amount specified in section 70 of the Act:

Provided further that where the assessee has paid the amount as prescribed under this rule for delayed submission of return, the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded:

Provided also that where 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.

Explanation - It is hereby declared that any pending proceedings under section 77 for delayed submission or non-submission of return that has been initiated before the date on which the Finance Bill, 2007 receives the assent of the President, shall also be deemed to be concluded if the amount specified for delay in furnishing the return is paid by the assessee within sixty days from the date of assent to the said Finance Bill.

8. FORM OF APPEALS TO COMMISSIONER OF CENTRAL EXCISE (APPEALS)

(1) An appeal under section 85 of the Act to the Commissioner of Central Excise (Appeals) shall be in Form ST-4.

(2) The appeal shall be filed in duplicate and shall be accompanied by a copy of order appealed against.

9. FORM OF APPEALS TO APPELLATE TRIBUNAL

(1) An appeal under sub-section (1) of section 86 of the Act to the Appellate Tribunal shall be made in Form ST-5 in quadruplicate and shall be accompanied by a copy of the Order appealed against (one of which shall be a certified copy).

(2) An appeal under sub-section (2) of section 86 of the Act to the Appellate Tribunal shall be made in Form ST-7 in quadruplicate and shall be accompanied by a copy of the order of the Commissioner of Central Excise (one of which shall be a certified copy) and a copy of the order passed by the Central Board of Excise and Customs directing the Commissioner of Central Excise to apply to the Appellate Tribunal.

7. SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006

[Notification No. 12/2006-S.T., dated 19-4-2006]

In exercise of the powers conferred by clause (aa) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely :-

RULE 1. Short title and commencement. — (1) These rules may be called the Service Tax (Determination of Value) Rules, 2006.

(2) They shall come into force on the date of their publication in the Official Gazette.

RULE 2. Definitions. — In these rules, unless the context otherwise requires, -

(a) "Act" means the Finance Act, 1994 (32 of 1994);

(b) "section" means the section of the Act;

(c) "value" shall have the meaning assigned to it in section 67;

(d) words and expressions used in these rules and not defined but defined in the Act shall have the meaning respectively assigned to them in the Act.

2A. **Determination of value of service portion in the execution of a works contract.-** Subject to the provisions of section 67, the value of service portion in the execution of a works contract , referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the

value of property in goods transferred in the execution of the said works contract.

Explanation.- For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relatable to supply of labour and services;

(vii) other similar expenses relatable to supply of labour and services; and

(viii) profit earned by the service provider relatable to supply of labour and services;

(c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent. of the total amount charged for the works contract;

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent. of the total amount charged for the works contract;

(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property , service tax shall be payable on sixty per cent. of the total amount charged for the works contract;

Explanation 1.- For the purposes of this rule,-

(a) "original works" means-

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

(d) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or

not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2.--For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.".

[**2B. Determination of value of service in relation to money changing.**- Subject to the provisions of section 67, the value of taxable service provided for the services ~~referred to in sub-clause (zm) and (zzk) of clause (105) of section 65 of the Act~~, so far as it pertains to purchase or sale of foreign currency, including money changing, shall be determined by the service provider in the following manner :-

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) [reference rate for that currency at that time], multiplied by the total units of currency.

Example I : [US $ 1000] are sold by a customer at the rate of Rupees 45 per US $. RBI reference rate for US $ is Rupees 45.50 for that day. The taxable value shall be Rupees 500.

Example II : INR 70000 is changed into Great Britain Pound (GBP) and the exchange rate offered is Rupees 70, thereby giving GBP 1000. RBI reference rate for that day for GBP is Rupees 69. The taxable value shall be Rupees 1000.

Provided that in case where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.]

2C. **Determination of value of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering.-** Subject to the provisions of section 67, the value of service portion, in an activity wherein goods being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity at a restaurant or as outdoor catering, shall be the specified percentage of the total amount charged for such supply, in terms of the following Table, namely:-

Table

Sl. No.	Description	Percentage of the total amount
(1)	(2)	(3)
1.	Service portion in an activity wherein goods, being food or any other article of human consumption or any drink(whether or not intoxicating) is supplied in any manner as a part of the activity, at a restaurant	40
2.	Service portion in outdoor catering wherein goods, being food or any other article of human consumption or any drink(whether or not intoxicating) is supplied in any manner as a part of such outdoor catering	60

Explanation 1.- For the purposes of this rule, "total amount" means the sum total of the gross amount charged and the fair market value of all goods and services supplied in or in relation to the supply of food or any other article of human consumption or any drink(whether or not intoxicating), whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2.- For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986).

RULE 3. Manner of determination of value. — Subject to the provisions of section 67, the value of taxable service, where such value is not ascertainable~~where the consideration received is not wholly or partly consisting of money~~, shall be determined by the service provider in the following manner :-

(a) the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration;

(b) where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service.

RULE 4. Rejection of value. — (1) Nothing contained in rule 3 shall be construed as restricting or calling into question the power of the Central Excise Officer to satisfy himself as to the accuracy of any information furnished or document presented for valuation.

(2) Where the Central Excise Officer is satisfied that the value so determined by the service provider is not in accordance with the provisions of the Act or these

rules, he shall issue a notice to such service provider to show cause why the value of such taxable service for the purpose of charging service tax should not be fixed at the amount specified in the notice.

(3) The Central Excise 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 costs. — (1) Where any expenditure or costs 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 or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

[*Explanation.*- For the removal of doubts, it is hereby clarified that for the value of the telecommunication service shall be the gross amount paid by the person to whom telecommunication service is actually provided~~services specified in subclause (zzzx) of clause (105) of section 65 of the Finance Act, 1994, the value of the taxable service shall be the gross amount paid by the person to whom telecom service is provided by the telegraph authority~~.]

(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely :-

(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;

(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;

(iii) the recipient of service is liable to make payment to the third party;

(iv) the recipient of service authorises the service provider to make payment on his behalf;

(v) the recipient of service knows that the goods and services for which

payment has been made by the service provider shall be provided by the third party;

(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

(viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation 1. - For the purposes of sub-rule (2), "pure agent" means a person who -

(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;

(c) does not use such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services.

Explanation 2. - For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.

Illustration 1. - X contracts with Y, a real estate agent to sell his house and thereupon Y gives an advertisement in television. Y billed X including charges for Television advertisement and paid service tax on the total consideration billed. In such a case, consideration for the service provided is what X pays to Y. Y does not act as an agent behalf of X when obtaining the television advertisement even if the cost of television advertisement is mentioned separately in the invoice issued by X. Advertising service is an input service for the estate agent in order to enable or

facilitate him to perform his services as an estate agent.

Illustration 2. - In the course of providing a taxable service, a service provider incurs costs such as travelling expenses, postage, telephone, etc., and may indicate these items separately on the invoice issued to the recipient of service. In such a case, the service provider is not acting as an agent of the recipient of service but procures such inputs or input service on his own account for providing the taxable service. Such expenses do not become reimbursable expenditure merely because they are indicated separately in the invoice issued by the service provider to the recipient of service.

Illustration 3. - A contracts with B, an architect for building a house. During the course of providing the taxable service, B incurs expenses such as telephone charges, air travel tickets, hotel accommodation, etc., to enable him to effectively perform the provision of services to A. In such a case, in whatever form B recovers such expenditure from A, whether as a separately itemised expense or as part of an inclusive overall fee, service tax is payable on the total amount charged by B. Value of the taxable service for charging service tax is what A pays to B.

Illustration 4. - Company X provides a taxable service of rent-a-cab by providing chauffeur-driven cars for overseas visitors. The chauffeur is given a lump sum amount to cover his food and overnight accommodation and any other incidental expenses such as parking fees by the Company X during the tour. At the end of the tour, the chauffeur returns the balance of the amount with a statement of his expenses and the relevant bills. Company X charges these amounts from the recipients of service. The cost incurred by the chauffeur and billed to the recipient of service constitutes part of gross amount charged for the provision of services by the Company X.

RULE 6. Cases in which the commission, costs, etc., will be included or excluded. — (1) Subject to the provisions of section 67, the value of the taxable services shall include, -

(i) the commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker;

(ii) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;

(iii) the amount of premium charged by the insurer from the policy holder;

(iv) the commission received by the air travel agent from the airline;

(v) the commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;

(vi) the reimbursement received by the authorised service station, from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer;

(vii) the commission or any amount received by the rail travel agent from the Railways or the customer;

(viii) the remuneration or commission, by whatever name called, paid to such agent by the client engaging such agent for the services provided by a clearing and forwarding agent to a client rendering services of clearing and forwarding operations in any manner; ~~and~~

(ix) 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: and.

(x) the amount realised as demurrage or by any other name whatever called for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service.

(2) Subject to the provisions contained in sub-rule (1), the value of any taxable service, as the case may be, does not include -

(i) initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;

(ii) the airfare collected by air travel agent in respect of service provided by him;

(iii) the rail fare collected by [rail travel agent] in respect of service provided by him; and

~~(iv)interest on loans.~~

~~(iv) interest on,~~

~~(a) deposits; and~~

~~(b) delayed payment of any consideration for the provision of services or sale of goods~~

(iv) interest on delayed payment of any consideration for the provision of services or sale of property, whether moveable or immoveable

[(v) the taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger~~.~~]: and]

vi) accidental damages due to unforeseen actions not relatable to the provision of service; and

(vii) subsidies and grants disbursed by the Government, not directly affecting the value of service

~~**RULE 7. Actual consideration to be the value of taxable service provided from outside India. —** (1) The value of taxable service received under the provisions of section 66A, shall be such amount as is equal to the actual consideration charged for the services provided or to be provided.~~

~~(2) Notwithstanding anything contained in sub-rule (1), the value of taxable services specified in clause (ii) of rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, as are partly performed in India, shall be the total consideration paid by the recipient for such services including the value of service partly performed outside India.~~

8. POINT OF TAXATION RULES, 2011

[Notification No. 18/2011-S.T., dated 1-3-2011 as amended]

In exercise of the powers conferred under clause (a) and clause (hhh) of subsection (2) of section 94 of the Finance Act, 1994. The Central Government has notified the following rules for the purpose of collection of service tax and determination of rate of service tax, namely,-

RULE 1. Short title and commencement.— (1) These rules shall be called the Point of Taxation Rules, 2011.

(2) They shall come into force on the 1st day of April, 2011.

RULE 2. Definitions. — In these rules, unless the context otherwise requires,-

(a) "Act" means the Finance Act, 1994 (32 of 1994);

~~(b) "associated enterprises" shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961 (43 of 1961)[56];~~

(ba) "change in effective rate of tax" shall include a change in the portion of value on which tax is payable in terms of a notification issued in the Official Gazette under the provisions of the Act, or rules made thereunder;

(c) "continuous supply of service" means any service which is provided, ~~or to be provided continuously, under a contract, for a period exceeding three months,~~ or to be provided continuously or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time, or where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not

[56] Omitted vide Not. No. 37/2012-ST dated 20 June 2012

subject to any condition;

(d) "invoice" means the invoice referred to in rule 4A of the Service Tax Rules, 1994 and shall include any document as referred to in the said rule;

(e) "point of taxation" means the point in time when a service shall be deemed to have been provided;

~~(f) "taxable service" means a service which is subjected to service tax, whether or not the same is fully exempt by the Central Government under Section 93 of the Act~~[57];

"2A. Date of payment.— For the purposes of these rules, "date of payment" shall be the earlier of the dates on which the payment is entered in the books of accounts or is credited to the bank account of the person liable to pay tax:

Provided that —

(A) the date of payment shall be the date of credit in the bank account when —

(i) there is a change in effective rate of tax or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account; and

(ii) the credit in the bank account is after four working days from the date when there is change in effective rate of tax or a service is taxed for the first time; and

(iii) the payment is made by way of an instrument which is credited to a bank account,

(B) if any rule requires determination of the time or date of payment received, the expression "date of payment" shall be construed to mean such date on which the payment is received;".

RULE [**3. Determination of point of taxation. -** For the purposes of these

[57] Omitted vide Not. No. 37/2012-ST dated 20 June 2012

rules, unless otherwise provided, 'point of taxation' shall be,-

(a) the time when the invoice for the service ~~provided or to be provided~~provided or agreed to be provided is issued :

"Provided that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules,1994, the point of taxation shall be the date of completion of provision of the service";~~Provided that where the invoice is not issued within fourteen days of the completion of the provision of the service, the point of taxation shall be date of such completion.~~

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

"Provided that for the purposes of clauses (a) and (b), —

(i) in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service;

(ii) wherever the provider of taxable service receives a payment up to rupees one thousand in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined in accordance with the provisions of clause (a)."

Explanation — For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of

taxable service, the point of taxation shall be the date of receipt of each such advance.]

RULE 4. Determination of point of taxation in case of [change in effective rate of tax]. — Notwithstanding anything contained in rule 3, the point of taxation in cases where there is a [change in effective rate of tax] in respect of a service, shall be determined in the following manner, namely :-

(a) in case a taxable service has been provided before the [change in effective rate of tax],-

(i) where the invoice for the same has been issued and the payment received after the [change in effective rate of tax], the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or

(ii) where the invoice has also been issued prior to [change in effective rate of tax] but the payment is received after the [change in effective rate of tax], the point of taxation shall be the date of issuing of invoice; or

(iii) where the payment is also received before the [change in effective rate of tax], but the invoice for the same has been issued after the [change in effective rate of tax], the point of taxation shall be the date of payment;

(b) in case a taxable service has been provided after the [change in effective rate of tax],-

(i) where the payment for the invoice is also made after the [change in effective rate of tax] but the invoice has been issued prior to the [change in effective rate of tax], the point of taxation shall be the date of payment; or

(ii) where the invoice has been issued and the payment for the invoice received before the [change in effective rate of tax], the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier; or

(iii) where the invoice has also been raised after the [change in

effective rate of tax] but the payment has been received before the [change in effective rate of tax], the point of taxation shall be date of issuing of invoice.

[***Explanation*** — For the purposes of this rule, "change in effective rate of tax" shall include a change in the portion of value on which tax is payable in terms of a notification issued under the provisions of Finance Act, 1994 or rules made thereunder.]

RULE 5. Payment of tax in cases of new services. — Where a service, not being a service covered by rule 6, is taxed for the first time, then, –

(a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;

(b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within the period referred to in rule 4A of the Service Tax Rules, 1994.

5. Payment of tax in case of new services.— Where a service is taxed for the first time, then,—

(*a*) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;

(*b*) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within fourteen days of the date when the service is taxed for the first time.

RULE [6. Determination of point of taxation in case of continuous supply of service. — Notwithstanding anything contained in rules 3, 4 or 8, in case of continuous supply of service, the 'point of taxation' shall be,-

(a) the time when the invoice for the service provided or to be provided is issued :

Provided that where the invoice is not issued within fourteen days of the completion of the provision of the service, the point of taxation shall be date of such completion.

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

Explanation 1. — For the purpose of this rule, where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the service receiver to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

Explanation 2. — For the purpose of this rule, wherever any advance, by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.]

RULE [7. Determination of point of taxation in case of specified services or persons. — Notwithstanding anything contained in these rules, the point of taxation in respect of,-

(a) the services covered by sub-rule (1) of rule 3 of Export of Services Rules, 2005;

(b) the persons required to pay tax as recipients under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Finance Act, 1994;

(c) individuals or proprietary firms or partnership firms providing taxable services referred to in sub-clauses [(g)], (p), (q), (s), (t), (u), (za), (zzzzm) of clause (105) of section 65 of the Finance Act, 1994,

shall be the date on which payment is received or made, as the case may be :

Provided that in case of services referred to in clause (a), where payment is not received within the period specified by the Reserve Bank of India, the point of taxation shall be determined, as if this rule does not exist.

~~**Provided** further that in case of services referred to in clause (b) where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist.~~

~~**Provided** also that in case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be the date of credit in the books of account of the person receiving the service or date of making the payment whichever is earlier.]~~

7. Determination of point of taxation in case of specified services or persons.— Notwithstanding anything contained in these rules, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made:

Provided that, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist:

Provided further that in case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

RULE 8. Determination of point of taxation in case of copyrights, etc. - In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, the service shall be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect thereof, or an invoice is issued by the provider, whichever is earlier.

8A. Determination of point of taxation in other cases.- Where the point of taxation cannot be determined as per these rules as the date of invoice or the date of payment or both are not available, the Central Excise officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.

RULE [9. Transitional Provisions. — Nothing contained in [these rules] shall be applicable, -

(i) where the provision of service is completed; or

(ii) where invoices are issued

prior to the date on which these rules come into force.

Provided that services for which provision is completed on or before 30th day of June, 2011 or where the invoices are issued upto the 30th day of June, 2011, the point of taxation shall, at the option of the taxpayer, be the date on which the payment is received or made as the case may be.]

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9. PLACE OF PROVISION OF SERVICES RULES, 2012

1. Short title, extent and commencement. - (1) These rules may be called the Place of Provision of Services Rules, 2012.

(2) They shall come into force on 1st day of July, 2012.

2. Definitions.- In these rules, unless the context otherwise requires,-

(a) "Act" means the Finance Act, 1994 (32 of 1994);

(b) "account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;

(c) "banking company" has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);

(d) "continuous journey" means a journey for which a single or more than one ticket or invoice is issued at the same time, either by one service provider or through one agent acting on behalf of more than one service provider, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued;

(e) "financial institution" has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act,1934 (2 of 1934);

(f) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) between two or more persons, but does not include a person who provides the main service on his account.;

(g) "leg of journey" means a part of the journey that begins where passengers embark or disembark the conveyance, or where it is stopped to allow for its servicing or refueling, and ends where it is next stopped for any of those purposes;

(h)"location of the service provider" means-

(a). where the service provider has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;

(b). where the service provider is not covered under sub-clause (a):

(i) the location of his business establishment; or

(ii) where the services are provided from a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or

(iii) where services are provided from more than one establishment, whether business or fixed, the establishment most directly concerned with the provision of the service; and

(iv) in the absence of such places, the usual place of residence of the service provider.

(i) "location of the service receiver" means:-

(a). where the recipient of service has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;

(b). where the recipient of service is not covered under sub-clause (a):

(i) the location of his business establishment; or

(ii) where services are used at a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or

(iii) where services are used at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service; and

(iv) in the absence of such places, the usual place of residence of the recipient of service.

Explanation:-. For the purposes of clauses (h) and (i), "usual place of residence" in case of a body corporate means the place where it is incorporated or otherwise legally constituted.

Explanation 2:-. For the purpose of clause (i), in the case of telecommunication service, the usual place of residence shall be the billing address.

(j) "means of transport" means any conveyance designed to transport goods or persons from one place to another;

(k) "non-banking financial company" means-

(i) a financial institution which is a company; or

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or

(iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette specify;

(l) "online information and database access or retrieval services" means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;

(m) "person liable to pay tax" shall mean the person liable to pay service tax under section 68 of the Act or under sub-clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994;

(n) "provided" includes the expression "to be provided";

(o) "received" includes the expression "to be received";

(p) "registration" means the registration under rule 4 of the Service Tax Rules, 1994;

(q) "telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means but shall not include broadcasting services.

(r) words and expressions used in these rules and not defined, but defined in the Act, shall have the meanings respectively assigned to them in the Act.

3. Place of provision generally.- The place of provision of a service shall be the location of the recipient of service:

Provided that in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

4. Place of provision of performance based services.- The place of provision of following services shall be the location where the services are actually performed, namely:-

(a) services provided in respect of **goods** that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service:

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:

Provided further that this sub-rule shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or reengineering for re-export, subject to conditions as may be specified in this regard.

(b) services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.

5. Place of provision of services relating to immovable property.- The place of provision of services provided directly in relation to an immovable property, including services provided in this regard by experts and estate agents, provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever, name called, grant of rights to use immovable property, services for carrying out or

co-ordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

6. Place of provision of services relating to events.- The place of provision of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held.

7. Place of provision of services provided at more than one location.- Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided.

8. Place of provision of services where provider and recipient are located in taxable territory.- Place of provision of a service, where the location of the provider of service as well as that of the recipient of service is in the taxable territory, shall be the location of the recipient of service.

9. Place of provision of specified services.- The place of provision of following services shall be the location of the service provider:-

(a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;
(b) Online information and database access or retrieval services;
(c) Intermediary services;
(d) Service consisting of hiring of means of transport, upto a period of one month.

10. Place of provision of goods transportation services.- The place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods:

Provided that the place of provision of services of goods transportation agency shall be the location of the person liable to pay tax.

11. Place of provision of passenger transportation service.- The place of provision in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

12. Place of provision of services provided on board a conveyance.- Place of provision of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

13. Powers to notify description of services or circumstances for certain purposes.- In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.

14. Order of application of rules.- Notwithstanding anything stated in any rule, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.

[F.No. 334 /1/ 2012-TRU]

10. CENVAT CREDIT RULES, 2004

[Notification No. 23/2004-C.E. (N.T.), dated 10-9-2004 as amended]

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994) and in supersession of the CENVAT Credit Rules, 2002 and the Service Tax Credit Rules, 2002, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely :-

RULE 1. Short title, extent and commencement. — (1) These rules may be called the CENVAT Credit Rules, 2004.

(2) They extend to the whole of India :

Provided that nothing contained in these rules relating to availment and utilization of credit of service tax shall apply to the State of Jammu and Kashmir.

(3) They shall come into force from the date of their publication in the Official Gazette.

RULE 2. Definitions. — In these rules, unless the context otherwise requires, -

(a) "capital goods" means :-

(A) the following goods, namely :-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804] of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; [* * *]

(vii) storage tank, [and]

[(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis [but including dumpers and tippers],]

used -

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

[(1A) outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory; or]

(2) for providing output service;

[(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for -

(i) providing an output service of renting of such motor vehicle; or

(ii) transportation of inputs and capital goods used for providing an output service; or

(iii) providing an output service of courier agency;]

[(C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of -

(i) transportation of passengers; or

(ii) renting of such motor vehicle; or

(iii) imparting motor driving skills;]

[(D)components, spares and accessories of motor vehicles which are capital goods for the assessee;]

(b) "Customs Tariff Act" means the Customs Tariff Act, 1975 (51 of 1975);

(c) "Excise Act" means the Central Excise Act, 1944 (1 of 1944);

(d) "exempted goods" means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty [[and] goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 or under entries at serial numbers 67 and 128 of Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed];

[(e) "exempted service" means a -

(1) taxable service which is exempt from the whole of the service tax leviable thereon; or

(2) service, on which no service tax is leviable under section 66B of the Finance Act; or

(3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;

but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.]

(f) "Excise Tariff Act" means the Central Excise Tariff Act, 1985 (5 of 1986);

(g) "Finance Act" means the Finance Act, 1994 (32 of 1994);

(h) "final products" means excisable goods manufactured or produced from input, or using input service;

(ij) "first stage dealer" means a dealer, who purchases the goods directly from, -

(i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or

(ii) an importer or from the depot of an importer or from the premises of

the consignment agent of the importer, under cover of an invoice;

[(k) "input" means -

(i) all goods used in the factory by the manufacturer of the final product; or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam for captive use; or

(iv) all goods used for providing any output service;

but excludes -

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

[(B) any goods used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods,

except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;]

(C) capital goods except when used as parts or components in the manufacture of a final product;

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

Explanation. - For the purpose of this clause, "free warranty" means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer;]

[(l) "input service" means any service, -

(i) used by a provider of [output service] for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

[but excludes], -

[(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods,

except for the provision of one or more of the specified services; or]

[(B) [services provided by way of renting of a motor vehicle], in so far as they relate to a motor vehicle which is not a capital goods; or

[(BA) service of general insurance business, servicing, repair and

maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or]

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;]

(m) "input service distributor" means an office of the manufacturer or producer of final products or pro-vider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards pur-chases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be;

(n) "job work" means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly;

[(na) "large tax payer" shall have the meaning assigned to it in the Central Excise Rules, 2002;]

[(naa) "manufacturer" or "producer", -

(i) in relation to articles of [jewellery or other articles of precious metals falling under Heading 7113 or 7114 as the case may be] of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1) of rule 12AA of

the Central Excise Rules, 2002;

(ii) in relation to goods falling under Chapters 61, 62 or 63 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1A) of rule 4 of the Central Excise Rules, 2002;]

(o) "notification" means the notification published in the Official Gazette;

[(p) "output service" means any service provided by a provider of service located in the taxable territory but shall not include a service, -

(1) specified in section 66D of the Finance Act; or

(2) where the whole of service tax is liable to be paid by the recipient of service.]

(q) "person liable for paying service tax" has the meaning as assigned to it in clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994;

(r) "provider of taxable service" include a person liable for paying service tax;

(s) "second stage dealer" means a dealer who purchases the goods from a first stage dealer;

(t) words and expressions used in these rules and not defined but defined in the Excise Act or the Finance Act shall have the meanings respectively assigned to them in those Acts.

RULE 3. CENVAT credit. — (1) A manufacturer or producer of final products or a [provider of output service] shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -

(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;

[**Provided** that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods -

(a) in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 is availed; or

(b) specified in serial numbers 67 and 128 in respect of which the

benefit of an exemption under Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed;]

(ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);

(vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 (23 of 2004);

[(via) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);]

(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) [, (vi) and (via)];

[**Provided** that CENVAT credit shall not be allowed in excess of eighty-five per cent. of the additional duty of customs paid under sub-section (1) of section 3 of the Customs Tariff Act, on ships, boats and other floating structures for breaking up falling under tariff item 8908 00 00 of the First Schedule to the Customs Tariff Act;]

[(viia) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act [* * *] :

Provided that a provider of [output] service shall not be eligible to take credit of such additional duty;]

(viii) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);

(ix) the service tax leviable under section 66 of the Finance Act; [* * *]

[(ixa) the service tax leviable under section 66A of the Finance Act;]

[(ixb) the service tax leviable under section 66B of the Finance Act;]

(x) the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No. 2) Act, 2004 (23 of 2004);

[(xa) the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and]

[(xi) the additional duty of excise leviable under [section 85 of Finance Act, 2005 (18 of 2005),]] :

paid on -

(i) any input or capital goods received in the factory of manufacture of final product or [by] the provider of output service on or after the 10th day of September, 2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004,

including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86-Central Excise, dated the 25th March, 1986, published in the Gazette of India *vide* number G.S.R. 547(E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004.

[**Provided** that the CENVAT credit shall be allowed to be taken of the amount equal to central excise duty paid on the capital goods at the time of debonding of the unit in terms of the para 8 of Notification No. 22/2003-Central Excise, published in the Gazette of India, part II, Section 3, sub-section (i), vide number G.S.R. 265(E), dated, the 31st March, 2003.]

Explanation. - For the removal of doubts it is clarified that the manufacturer of the final products and the provider of output service shall be allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act on goods falling under heading 9801 of the First Schedule to the Customs Tariff Act.

(2) Notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods manufactured by the said manufacturer or producer cease to be exempted goods or any goods become excisable.

(3) Notwithstanding anything contained in sub-rule (1), in relation to a service which ceases to be an exempted service, the provider of the output service shall be allowed to take CENVAT credit of the duty paid on the inputs received on and after the 10th day of September, 2004 and lying in stock on the date on which any service ceases to be an exempted service and used for providing such service.

(4) The CENVAT credit may be utilized for payment of -

(a) any duty of excise on any final product; or

(b) an amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or

(c) an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or

(d) an amount under sub-rule (2) of rule 16 of Central Excise Rules, 2002; or

(e) service tax on any output service :

Provided that while paying duty of excise or service tax, as the case may be, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be :

[Provided further that CENVAT credit shall not be utilised for payment of any duty of excise on goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 is availed :]

Provided [also] that the CENVAT credit of the duty, or service tax, paid on the inputs, or input services, used in the manufacture of final products cleared after availing of the exemption under the following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

(i) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated 8th July, 1999];

(ii) No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated 8th July, 1999];

(iii) No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565 (E), dated the 31st July, 2001];

(iv) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];

(v) No. 57/2002-Central Excise, dated 14th November, 2002 [G.S.R. 765(E), dated the 14th November, 2002];

(vi) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003]; and

(vii) No. 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003],

shall, respectively, be utilized only for payment of duty on final products, in respect of which exemption under the said respective notifications is availed of :

[**Provided** also that no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, [* * *] shall be utilised for payment of service tax on any output service :

[**Provided** also that the CENVAT credit of any duty specified in sub-rule (1), except the National Calamity Contingent duty in item (v) thereof, shall not be utilized for payment of the said National Calamity Contingent duty on goods falling under tariff items 8517 12 10 and 8517 12 90 respectively of the First Schedule of the Central Excise Tariff :]

[**Provided** also that the CENVAT credit of any duty specified in sub-rule (1) shall not be utilized for payment of the Clean Energy Cess leviable under section 83 of the Finance Act, 2010 (14 of 2010) :]

Provided also that the CENVAT credit of any duty mentioned in sub-rule (1), other than credit of additional duty of excise leviable under [section 85 of Finance Act, 2005 (18 of 2005)], shall not be utilised for payment of said additional duty of excise on final products.]

[Explanation. - CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient.]

(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9 :

Provided that such payment shall not be required to be made where any inputs [or capital goods] are removed outside the premises of the provider of output service for providing the output service :

[* * *]

[Provided further that such payment shall not be required to be made where any inputs are removed outside the factory for providing free warranty for final products :]

[* * * * * *]

[(5A) If the capital goods, on which CENVAT credit has been taken, are removed after being used, whether as capital goods or as scrap or waste, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely : -

(a) for computers and computer peripherals :

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @ 5%
for each quarter in the fourth and fifth year @ 1%

(b) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter :

Provided that if the amount so calculated is less than the amount equal to

the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.]

[(5B) If the value of any,

(i) input, or

(ii) capital goods before being put to use,

[on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of account then] the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods :

Provided that if the said input or capital goods is subsequently used in the manufacture of final products or the provision of [output] services, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.]

[(5C) Where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed.]

(6) The amount paid under [sub-rule (5) and sub-rule (5A)] shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under [sub-rule (5) and sub-rule (5A)].

(7) Notwithstanding anything contained in sub-rule (1) and sub-rule (4), -

(a) CENVAT credit in respect of inputs or capital goods produced or manufactured, by a hundred per cent. export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or in a Software Technology Park other than a unit which pays excise duty levied under section 3 of the Excise Act read with serial numbers 3, 5, 6 and 7 of Notification No. 23/2003-Central Excise, dated the 31st March, 2003 [G.S.R. 266(E), dated the 31st March, 2003] and used in the manufacture of the final products or in providing an output service, in any

other place in India, in case the unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the Notification No. 23/2003-Central Excise, dated the 31st March, 2003 [G.S.R. 266(E), dated the 31st March, 2003], shall be admissible equivalent to the amount calculated in the following manner, namely :-

Fifty per cent. of [X multiplied by {(l+BCD/100) multiplied by (CVD/100)}], where BCD and CVD denote *ad valorem* rates, in per cent. of basic customs duty and additional duty of customs leviable on the inputs or the capital goods respectively and X denotes the assessable value :

[**Provided** that the CENVAT credit in respect of inputs and capital goods cleared on or after 1st March, 2006 from an export oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the Notification No. 23/2003-Central Excise, dated 31st March, 2003 [G.S.R. 266(E), dated the 31st March, 2003] shall be equal to [X multiplied by [(1+BCD/200) multiplied by (CVD/100)]] :

[**Provided** further that the CENVAT credit in respect of inputs and capital goods cleared on or after the 7th September, 2009 from an export-oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such undertaking or unit has paid -

(A) excise duty leviable under section 3 of the Excise Act read with serial number 2 of the Notification No. 23/2003-Central Excise, dated 31st March, 2003 [G.S.R. 266(E), dated the 31st March, 2003]; and

(B) the Education Cess leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 and the Secondary and Higher Education Cess leviable under section 136 read with section 138 of the Finance Act, 2007, on the excise duty referred to in (A),

shall be the aggregate of -

(I) that portion of excise duty referred to in (A), as is equivalent to -

(i) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, which is equal to the duty of excise under clause (a) of sub-section (1) of section 3 of the Excise Act;

(ii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act; and

(II) the Education Cess and the Secondary and Higher Education Cess referred to in (B).]

[(b) CENVAT credit in respect of -

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

(ii) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);

(iii) the education cess on excisable goods leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 (23 of 2004);

[(iiia) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);]

(iv) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under items (i), (ii) and (iii) above;

(v) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);

(vi) the education cess on taxable services leviable under section 91 read with section 95 of the Finance (No. 2) Act, 2004 (23 of 2004);

[(via) the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and]

(vii) the additional duty of excise leviable under [section 85 of the Finance Act, 2005 (18 of 2005)],

[shall be utilised towards payment of duty of excise or as the case may be, of service tax leviable under the said Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 or the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), or the education cess on excisable goods leviable under section 91 read with section 93 of the said Finance (No. 2) Act, 2004 (23 of 2004), or the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007) or the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003), or the education cess on taxable services leviable under section 91 read with section 95 of the said Finance (No. 2) Act, 2004 (23 of 2004), or the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007), or the additional duty of excise leviable under section 85 of the Finance Act, 2005 (18 of 2005) respectively, on any final products manufactured by the manufacturer or for payment of such duty on inputs themselves, if such inputs are removed as such or after being partially processed or on any output service :]

[**Provided** that the credit of the education cess on excisable goods and the education cess on taxable services can be utilized, either for payment of the education cess on excisable goods or for the payment of the education cess on taxable services :

Provided further that the credit of the Secondary and Higher Education Cess on excisable goods and the Secondary and Higher Education Cess on taxable services can be utilized, either for payment of the Secondary and Higher Education Cess on excisable goods or for the payment of the Secondary and Higher Education Cess on taxable services.]

Explanation. - For the removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) paid on or after the 1st day of April, 2000, may be utilised towards payment of duty of

excise leviable under the First Schedule or the Second Schedule to the Excise Tariff Act.]

(c) the CENVAT credit, in respect of additional duty leviable under section 3 of the Customs Tariff Act, paid on marble slabs or tiles falling under [tariff items 2515 12 20 and 2515 12 90 respectively] of the First Schedule to the Excise Tariff Act shall be allowed to the extent of thirty rupees per square metre;

Explanation. - Where the provisions of any other rule or notification provide for grant of whole or part exemption on condition of non-availability of credit of duty paid on any input or capital goods, or of service tax paid on input service, the provisions of such other rule or notification shall prevail over the provisions of these rules.

RULE 4. Conditions for allowing CENVAT credit. — (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service :

[**Provided** that in respect of final products, namely, articles of [jewellery or other articles of precious metals falling under Heading 7113 or 7114, as the case may be] of the First Schedule to the Excise Tariff Act, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the person who get such final products manufactured on his behalf, on job work basis, subject to the condition that the inputs are used in the manufacture of such final product by the job worker.]

[**Provided** further that the CENVAT credit in respect of inputs may be taken by the provider of output service when the inputs are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the inputs.]

(2)(a) The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service [or outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory,] at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent. of the duty paid on such capital goods in the

same financial year :

Provided that the CENVAT credit in respect of capital goods shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year if such capital goods are cleared as such in the same financial year :

[**Provided** further that the CENVAT credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, [* * * *] in respect of capital goods shall be allowed of the capital goods in the factory of a manufacturer :]

[**Provided** also that where an assessee is eligible to avail of the exemption under a notification based on the value of clearances in a financial year, the CENVAT credit in respect of capital goods received by such assessee shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year :

[**Provided** also that the CENVAT credit in respect of capital goods may be taken by the provider of output service when the capital goods are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the capital goods.]

Explanation. - For the removal of doubts, it is hereby clarified that an assessee shall be "eligible" if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year computed in the manner specified in the said notification did not exceed rupees four hundred lakhs.]

(b) The balance of CENVAT credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer, or in the premises of the provider of output service, if the capital goods, other than components, spares and accessories, refractories and refractory materials, moulds and dies and goods falling under [heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804] of the First Schedule to the Excise Tariff Act, are in the possession of the manufacturer of final products, or provider of output service in such subsequent years.

Illustration. - A manufacturer received machinery on the 16th day of April, 2002 in his factory. CENVAT of two lakh rupees is paid on this machinery. The

manufacturer can take credit up to a maximum of one lakh rupees in the financial year 2002-2003, and the balance in subsequent years.

(3) The CENVAT credit in respect of the capital goods shall be allowed to a manufacturer, provider of output service even if the capital goods are acquired by him on lease, hire purchase or loan agreement, from a financing company.

(4) The CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer or provider of output service claims as depreciation under section 32 of the Income-tax Act, 1961 (43 of 1961).

(5)(a) The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning [, or for the manufacture of intermediate goods necessary for the manufacture of final products] or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or provider of output service taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer or provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service.

[(b) The CENVAT credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to, -

(i) another manufacturer for the production of goods; or

(ii) a job worker for the production of goods on his behalf,

according to his specifications.]

(6) The [Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be,] having jurisdiction over the factory of the manufacturer of the final products who has sent the input or partially

processed inputs outside his factory to a job-worker may, by an order, which shall be valid for a financial year, in respect of removal of such input or partially processed input, and subject to such conditions as he may impose in the interest of revenue including the manner in which duty, if leviable, is to be paid, allow final products to be cleared from the premises of the job-worker.

[(7) The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received :

Provided that in case of an input service where the service tax is paid on reverse charge by the recipient of the service, the CENVAT credit in respect of such input service shall be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9 :

Provided further that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9, is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules :

Provided also that if any payment or part thereof, made towards an input service is refunded or a credit note is received by the manufacturer or the service provider who has taken credit on such input service, he shall pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited :

Provided also that CENVAT credit in respect of an invoice, bill or, as the case may be, challan referred to in rule 9, issued before the 1st day of April, 2011 shall be allowed, on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9.

Explanation I. - The amount mentioned in this sub-rule, unless specified

otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation II. - If the manufacturer of goods or the provider of output service fails to pay the amount payable under this sub-rule, it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation III - In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, "following month" and "month of March" occurring in sub-rule (7) shall be read respectively as "following quarter" and "quarter ending with the month of March".]

RULE [**5. Refund of CENVAT Credit. —** (1) A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette :

$$\text{Refund amount} = \frac{(\text{Export turnover of goods} + \text{Export turnover of services})}{\text{Total turnover}} \times \text{Net CENVAT credit}$$

Where, -

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net CENVAT credit" means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;

(C) "Export turnover of goods" means the value of final products and intermediate products cleared during the relevant period and exported

without payment of Central Excise duty under bond or letter of undertaking;

(D) "Export turnover of services" means the value of the export service calculated in the following manner, namely :-

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period - advances received for export services for which the provision of service has not been completed during the relevant period;

(E) "Total turnover" means sum total of the value of -

(a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;

(b) export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and

(c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.

(2) This rule shall apply to exports made on or after the 1st April, 2012 :

Provided that the refund may be claimed under this rule, as existing, prior to the commencement of the CENVAT Credit (Third Amendment) Rules, 2012, within a period of one year from such commencement :

Provided further that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the [Service Tax Rules, 1994] in respect of such tax.

Explanation 1. - For the purposes of this rule, -

(1) "export service" means a service which is provided as per [rule 6A of the Service Tax Rules, 1994];

(2) "relevant period" means the period for which the claim is filed.

Explanation 2. - For the purposes of this rule, the value of services shall be determined in the same manner as the value for the purposes of sub-rules (3) and (3A) of rule 6 is determined.]

RULE [5A. Refund of CENVAT credit to units in specified areas. — Notwithstanding anything contrary contained in these rules, where a manufacturer has cleared final products in terms of notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 20/2007-Central Excise, dated the 25th April, 2007 and is unable to utilize the CENVAT credit of duty taken on inputs required for manufacture of final products specified in the said notification, other than final products which are exempt or subject to nil rate of duty, for payment of duties of excise on said final products, then the Central Government may allow the refund of such credit subject to such procedure, conditions and limitations, as may be specified by notification.

Explanation : For the purposes of this rule, "duty" means the duties specified in sub-rule (1) of rule 3 of these rules.]

RULE [5B. Refund of CENVAT credit to service providers providing services taxed on reverse charge basis. — A provider of service providing services notified under sub-section (2) of section 68 of the Finance Act and being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilised CENVAT credit subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette.]

RULE 6. [**Obligation of a manufacturer or producer of final products and a [provider of output service**]]. — (1) The CENVAT credit shall not be allowed on such quantity of [input used in or in relation to the manufacture of exempted goods or for provision of exempted services, or input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services], except in the circumstances mentioned in sub-rule (2).

[**Provided** that the CENVAT credit on inputs shall not be denied to job worker

referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.]

[(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for -

(a) the receipt, consumption and inventory of inputs used –

(i) in or in relation to the manufacture of exempted goods;

(ii) in or in relation to the manufacture of dutiable final products excluding exempted goods;

(iii) for the provision of exempted services;

(iv) for the provision of output services excluding exempted services; and

(b) the receipt and use of input services —

(i) in or in relation to the manufacture of exempted goods and their clearance upto the place of removal;

(ii) in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;

(iii) for the provision of exempted services; and

(iv) for the provision of output services excluding exempted services,

and shall take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) and (iv) of clause (b).]

[(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow [any one] of the following options, as applicable to him, namely :-

[(i) pay an amount equal to [six per cent.] of value of the exempted goods and exempted services; or

(ii) pay an amount as determined under sub-rule (3A); or

(iii) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment :

Provided that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause (i) :

Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be [six per cent.] of the value so exempted.]

[Provided also that in case of transportation of goods or passengers by rail the amount required to be paid under clause (i) shall be an amount equal to 2 per cent. of value of the exempted services.]

Explanation I. - If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

*[**Explanation II.***- For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services.

Explanation III. - No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.]

(3A) For determination and payment of amount payable under clause (ii) of

sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely :-

(a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-

(i) name, address and registration No. of the manufacturer of goods or provider of output service;

(ii) date from which the option under this clause is exercised or proposed to be exercised;

(iii) description of dutiable goods or [output] services;

(iv) description of exempted goods or exempted services;

(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(b) the manufacturer of goods or the provider of output service shall, determine and pay, provisionally, for every month, -

(i) the amount equivalent to CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, denoted as A;

(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional)= (B/C) multiplied by D, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of [output] services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods [and their clearance upto the place of removal] or provision of exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of

[output] and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month;

(c) the manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely :-

(i) the amount of CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods, denoted as H;

(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services = (J/K) multiplied by L, where J denotes the total value of exempted services provided during the financial year, K denotes the total value of dutiable goods manufactured and removed plus the total value of [output] services provided plus the total value of exempted services provided, during the financial year and L denotes total CENVAT credit taken on inputs during the financial year minus H;

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods [and their clearance upto the place of removal] or provision of exempted services = (M/N) multiplied by P, where [M] denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, [1][N] denotes total value of [output] and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and [1][P] denotes total CENVAT credit taken on input services during the financial year;

(d) the manufacturer of goods or the provider of output service, shall pay an

amount equal to the difference between the aggregate amount determined as per condition (c) and the aggregate amount determined and paid as per condition (b), on or before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the amount paid;

(e) the manufacturer of goods or the provider of output service, shall, in addition to the amount short-paid, be liable to pay interest at the rate of twenty-four per cent. per annum from the due date, i.e., 30th June till the date of payment, where the amount short-paid is not paid within the said due date;

(f) where the amount determined as per condition (c) is less than the amount determined and paid as per condition (b), the said manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount;

(g) the manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per condition (d) and (f) respectively, the following particulars, namely :-

(i) details of CENVAT credit attributable to exempted goods and exempted services, monthwise, for the whole financial year, determined provisionally as per condition (b),

(ii) CENVAT credit attributable to exempted goods and exempted services for the whole financial year, determined as per condition (c),

(iii) amount short paid determined as per condition (d), alongwith the date of payment of the amount short-paid,

(iv) interest payable and paid, if any, on the amount short-paid, determined as per condition (e), and

(v) credit taken on account of excess payment, if any, determined as per condition (f);

(h) where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as

prescribed in condition (b), due to reasons that no dutiable goods were manufactured and no [output] service was provided in the preceding financial year, then the manufacturer of goods or the provider of output service is not required to determine and pay such amount provisionally for each month, but shall determine the CENVAT credit attributable to exempted goods or exempted services for the whole year as prescribed in condition (c) and pay the amount so calculated on or before 30th June of the succeeding financial year.

(i) where the amount determined under condition (h) is not paid within the said due date, i.e., the 30th June, the manufacturer of goods or the provider of output service shall, in addition to the said amount, be liable to pay interest at the rate of twenty four per cent. per annum from the due date till the date of payment.

*[**Explanation I to III** * * *]*

[(3B) Notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial institution including a non-banking financial company, [engaged in providing services by way of extending deposits, loans or advances] shall pay for every month an amount equal to fifty per cent. of the CENVAT credit availed on inputs and input services in that month.

[(3C) * * * *]

(3D) Payment of an amount under sub-rule (3) shall be deemed to be CENVAT credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT credit of inputs and input services shall be taken.

*[**Explanation I.** - "Value" for the purpose of sub-rules (3) and (3A), —*

(a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made thereunder or, as the case may be, the value determined under section 3, 4 or 4A of the Excise Act, read with rules made thereunder;

(b) in the case of a taxable service, when the option available under sub-rules (7), (7A), (7B) or (7C) of rule 6 of the Service Tax Rules, 1994, has been availed, shall be the value on which the rate of service tax under section 66B of the Finance Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed;

(c) in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten per cent. of the cost of goods sold, whichever is more;

(d) in case of trading of securities, shall be the difference between the sale price and the purchase price of the securities traded or one per cent. of the purchase price of the securities traded, whichever is more;

(e) shall not include the value of services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.]

***Explanation II*.** - The amount mentioned in sub-rules (3), (3A) [and (3B)], unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation III. - If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (3), (3A) [and (3B)], it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation IV. - In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service

provider who is an individual or proprietary firm or partnership firm, the expressions, "following month" and "month of March" occurring in sub-rules (3) and (3A) shall be read respectively as "following quarter" and "quarter ending with the month of March".]

(4) No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods or in providing exempted services, other than the final products which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made in a financial year.

[(5) * * *]

(6) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either -

[(i) cleared to a unit in a special economic zone or to a developer of a special economic zone for their authorised operations; or]

(ii) cleared to a hundred per cent. export-oriented undertaking; or

(iii) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or

(iv) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95-Central Excise, dated the 28th August, 1995, number G.S.R. 602 (E), dated the 28th August, 1995; or

[(iva) supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of Notification No. [12/2012-Central Excise, dated the 17th March, 2012, number G.S.R. 163(E), dated the 17th March, 2012]; or]

(v) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or

(vi) gold or silver falling within Chapter 71 of the said First Schedule, arising

in the course of manufacture of copper or [zinc by smelting; or]

[(vii) all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied, —

(a) against International Competitive Bidding; or

(b) to a power project from which power supply has been tied up through tariff based competitive bidding; or

(c) to a power project awarded to a developer through tariff based competitive bidding,

in terms of Notification No. [12/2012-Central Excise, dated the 17th March, 2012];

[(viii) supplies made for setting up of solar power generation projects or facilities.]

[(7) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a unit in a Special Economic Zone or to a developer of a Special Economic Zone for their authorised operations or when a service is exported.

(8) For the purpose of this rule, a service provided or agreed to be provided shall not be an exempted service when :-

(a) the service satisfies the conditions specified under rule 6A of the Service Tax Rules, 1994 and the payment for the service is to be received in convertible foreign currency; and

(b) such payment has not been received for a period of six months or such extended period as maybe allowed from time-to-time by the Reserve Bank of India, from the date of provision.]

RULE [7. Manner of distribution of credit by input service distributor. — The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely :—

(a) the credit distributed against a document referred to in rule 9 does not

exceed the amount of service tax paid thereon;

(b) credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;

(c) credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit; and

[(d) credit of service tax attributable to service used in more than one unit shall be distributed *pro rata* on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period.]

Explanation 1. - For the purposes of this rule, "unit" includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise.

Explanation 2. - For the purposes of this rule, the total turnover shall be determined in the same manner as determined under rule 5.]

[Explanation 3. - (a) The relevant period shall be the month previous to the month during which the CENVAT credit is distributed.

(b) In case if any of its unit pays tax or duty on quarterly basis as provided in rule 6 of Service Tax Rules, 1994 or rule 8 of Central Excise Rules, 2002 then the relevant period shall be the quarter previous to the quarter during which the CENVAT credit is distributed.

(c) In case of an assessee who does not have any total turnover in the said period, the input service distributor shall distribute any credit only after the end of such relevant period wherein the total turnover of its units is available.]

RULE [7A. Distribution of credit on inputs by the office or any other premises of output service provider. — (1) A provider of output service shall be allowed to take credit on inputs and capital goods received, on the basis of an invoice or a bill or a challan issued by an office or premises of the said provider of output service, which receives invoices, issued in terms of the provisions of the Central Excise Rules, 2002, towards the purchase of inputs and capital goods.

(2) The provisions of these rules or any other rules made under the Central Excise Act, 1944, as made applicable to a first stage dealer or a second stage dealer, shall *mutatis mutandis* apply to such office or premises of the provider of output service.]

RULE 8. Storage of input outside the factory of the manufacturer. — The Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of a manufacturer of the final products may, in exceptional circumstances having regard to the nature of the goods and shortage of storage space at the premises of such manufacturer, by an order, permit such manufacturer to store the input in respect of which CENVAT credit has been taken, outside such factory, subject to such limitations and conditions as he may specify :

Provided that where such input is not used in the manner specified in these rules for any reason whatsoever, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such input.

RULE 9. Documents and accounts. — (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a) an invoice issued by -

(i) a manufacturer for clearance of -

(I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(II) inputs or capital goods as such;

(ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made thereunder with intent to evade payment of duty.

Explanation. - For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

[(bb) a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax; or]

(c) a bill of entry; or

(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or

[(e) a challan evidencing payment of service tax, by the service recipient as

the person liable to pay service tax; or]

(f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of September, 2004; or

(g) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994 :

[**Provided** that the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible.]

[(2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document :

Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, [assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be,] name and address of the factory or warehouse or premises of first or second stage dealers or [provider of output service], and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.]

[(3) * * * *]

(4) The CENVAT credit in respect of input or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if such first stage dealer or second stage dealer, as the case may be, has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such input or capital goods and only an amount of such duty on *pro rata* basis has been indicated in the invoice issued by him.

(5) The manufacturer of final products or the provider of output service shall

maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(6) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(7) The manufacturer of final products shall submit within ten days from the close of each month to the Superintendent of Central Excise, a monthly return in the form specified, by notification, by the Board :

Provided that where a manufacturer is availing exemption under a notification based on the value or quantity of clearances in a financial year, he shall file a quarterly return in the form specified, by notification, by the Board within [ten days] after the close of the quarter to which the return relates.

(8) A first stage dealer or a second stage dealer, as the case may be, shall submit within fifteen days from the close of each quarter of a year to the Superintendent of Central Excise, a return in the form specified, by notification, by the Board :

[**Provided** that the first stage dealer or second stage dealer, as the case may be, shall submit the said return electronically.]

(9) The provider of output service availing CENVAT credit, shall submit a half yearly return in form specified, by notification, by the Board to the Superintendent of Central Excise, by the end of the month following the particular quarter or half year.

[(10) The input service distributor, shall furnish a half yearly return in such form as may be specified, by notification, by the Board, giving the details of credit

received and distributed during the said half year to the jurisdictional Superintendent of Central Excise, not later than the last day of the month following the half year period.]

[(11) The provider of output service, availing CENVAT credit referred to in sub-rule (9) or the input service distributor referred to in sub-rule (10), as the case may be, may submit a revised return to correct a mistake or omission within a period of sixty days from the date of submission of the return under sub-rule (9) or sub-rule (10), as the case may be.]

RULE [9A. Information relating to principal inputs. — (1) A manufacturer of final products shall furnish to the Superintendent of Central Excise, annually by 30th April of each Financial Year, a declaration in the Form specified, by a notification, by the Board, in respect of each of the excisable goods manufactured or to be manufactured by him, the principal inputs and the quantity of such principal inputs required for use in the manufacture of unit quantity of such final products :

Provided that for the year 2004-05, such information shall be furnished latest by 31st December, 2004 :

[* * * * *]

(2) If a manufacturer of final products intends to make any alteration in the information so furnished under sub-rule (1), he shall furnish information to the Superintendent of Central Excise together with the reasons for such alteration before the proposed change or within 15 days of such change in the Form specified by the Board under sub-rule (1).

(3) A manufacturer of final products shall submit, within ten days from the close of each month, to the Superintendent of Central Excise, a monthly return in the Form specified, by a notification, by the Board, in respect of information regarding the receipt and consumption of each principal inputs with reference to the quantity of final products manufactured by him :

[* * * * *]

(4) The Central Government may, by notification and subject to such

conditions or limitations, as may be specified in such notification, specify manufacturers or class of manufacturers who may not be required to furnish declaration mentioned in sub-rule (1) or monthly return mentioned in sub-rule (3).

[(5) Every assessee shall file electronically, the declaration or the return, as the case may be, specified in this rule.]

Explanation. - For the purposes of this rule, "principal inputs", means any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of raw materials for the manufacture of unit quantity of a given final products.]

RULE 10. Transfer of CENVAT credit. — (1) If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory.

(2) If a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the provider of output service shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated business.

(3) The transfer of the CENVAT credit under sub-rules (1) and (2) shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise.

RULE [10A. Transfer of CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act. — (1) A manufacturer or producer of final products, having more than one registered

premises, for each of which registration under the Central Excise Rules, 2002 has been obtained on the basis of a common Permanent Account Number under the Income-tax Act, 1961 (43 of 1961), may transfer unutilised CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises at the end of a quarter, to his other registered premises by—

(i) making an entry for such transfer in the documents maintained under rule 9;

(ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i),

and such recipient premises may take CENVAT credit on the basis of the transfer challan :

Provided that nothing contained in this sub-rule shall apply if the transferring and recipient registered premises are availing the benefit of the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), namely :-

(i) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999];

(ii) No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999];

(iii) No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];

(iv) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];

(v) No. 57/2002-Central Excise, dated the 14th November, 2002 [G.S.R.. 765(E), dated the 14th November, 2002];

(vi) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003];

(vii) No. 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R.

717(E), dated the 9th September, 2003];

(viii) No. 20/2007-Central Excise, dated the 25th April, 2007 [G.S.R. 307(E), dated the 25th April, 2007]; and

(ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62(E), dated the 6th February, 2010].

(2) The manufacturer or producer shall submit the monthly return, as specified under these rules, separately in respect of transferring and recipient registered premises.]

RULE 11. Transitional provision. — (1) Any amount of credit earned by a manufacturer under the CENVAT Credit Rules, 2002, as they existed prior to the 10th day of September, 2004 or by a provider of output service under the Service Tax Credit Rules, 2002, as they existed prior to the 10th day of September, 2004, and remaining unutilized on that day shall be allowed as CENVAT credit to such manufacturer or provider of output service under these rules, and be allowed to be utilized in accordance with these rules.

(2) A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been taking CENVAT credit on inputs or input services before such option is exercised, shall be required to pay an amount equivalent to the CENVAT credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export.

[(3) A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, if, -

(i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification

issued under section 5A of the Act; or

(ii) the said final product has been exempted absolutely under section 5A of the Act, and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported.

(4) A provider of output service shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for providing the said service and is lying in stock or is contained in the taxable service pending to be provided, when he opts for exemption from payment of whole of the service tax leviable on such taxable service under a notification issued under section 93 of the Finance Act, 1994 (32 of 1994) and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export or for payment of service tax on any other output service, whether provided in India or exported.]

RULE 12. Special dispensation in respect of inputs manufactured in factories located in specified areas of North East region, Kutch district of Gujarat, State of Jammu and Kashmir and State of Sikkim. —Notwithstanding anything contained in these rules, [but subject to the proviso to clause (i) of sub-rule (1) of Rule 3], where a manufacturer has cleared any inputs or capital goods, in terms of notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999] or No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999] or No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001] or notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated 14th November, 2002] or No.

57/2002-Central Excise, dated the 14th November, 2002 [GSR 765(E), dated the 14th November, 2002] or notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003] or 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003, [or No. 20/2007-Central Excise, dated the 25th April, 2007 [GSR 307(E), dated the 25th April, 2007]] the CENVAT credit on such inputs or capital goods shall be admissible as if no portion of the duty paid on such inputs or capital goods was exempted under any of the said notifications.

RULE [12A. Procedure and facilities for large tax payer. — Notwithstanding anything contained in these rules, the following procedure shall apply to a large tax payer, -

(1) A large tax payer may remove inputs, except motor spirit, commonly known as petrol, high speed diesel and light diesel oil or capital goods, as such, on which CENVAT credit has been taken, without payment of an amount specified in sub-rule (5) of rule 3 of these rules, under the cover of a transfer challan or invoice, from any of his registered premises (hereinafter referred to as the sender premises) to his other registered premises, other than a premises of a first or second stage dealer (hereinafter referred to as the recipient premises), for further use in the manufacture or production of final products in recipient premises subject to condition that -

(a) the final products are manufactured or produced using the said inputs and cleared on payment of appropriate duties of excise leviable thereon within a period of six months, from the date of receipt of the inputs in the recipient premises; or

(b) the final products are manufactured or produced using the said inputs and exported out of India, under bond or letter of undertaking within a period of six months, from the date of receipt of the input goods in the recipient premises,

and that any other conditions prescribed by the Commissioner of Central Excise, Large Tax payer Unit in this regard are satisfied.

***Explanation 1*.** — The transfer challan or invoice shall be serially numbered and shall contain the registration number, name, address of the large tax payer, description, classification, time and date of removal, mode of transport and vehicle registration number, quantity of the goods and registration number and name of the consignee :

Provided that if the final products manufactured or produced using the said inputs are not cleared on payment of appropriate duties of excise leviable thereon or are not exported out of India within the said period of six months from the date of receipt of the input goods in the recipient premises, or such inputs are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such inputs by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under rule 14 of these rules.

Provided further that if such capital goods are used exclusively in the manufacture of exempted goods, or such capital goods are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such capital goods by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under rule 14 of these rules.

Explanation 2. — If a large tax payer fails to pay any amount due in terms of the first and second provisos, it shall be recovered along with interest in the manner as provided under rule 14 of these rules :

Provided also that nothing contained in this sub-rule shall be applicable if the recipient premises is availing following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

(i) No. 32/99-C.E., dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999];

(ii) No. 33/99-C.E., dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999];

(iii) No. 39/2001-C.E., dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];

(iv) No. 56/2002-C.E., dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];

(v) No. 57/2002-C.E., dated 14th November, 2002 [G.S.R.. 765(E), dated the 14th November, 2002];

(vi) No. 56/2003-C.E., dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003];

(vii) No. 71/2003-C.E., dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003]; [* * *]

[(viii) No. 20/2007-C.E., dated the 25th April, 2007 [GSR 307(E), dated the 25th April, 2007, and]]

[(ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62(E), dated the 6th February, 2010 :]

Provided also that nothing contained in this sub-rule shall be applicable to an export-oriented unit or a unit located in a Electronic Hardware Technology Park or Software Technology Park.

(2) The first recipient premises may take CENVAT credit of the amount paid under first proviso to sub-rule (1) as if it was a duty paid by the sender premises who removed such goods on the basis of a document showing payment of such duties.

(3) CENVAT credit of the specified duties taken by a sender premises shall not be denied or varied in respect of any inputs or capital goods, -

(a) removed as such under sub-rule (1) on the ground that the said inputs or the capital goods have been removed without payment of an amount specified in sub-rule (5) of rule 3 of these rules; or

(b) on the ground that the said inputs or capital goods have been used in the manufacture of any intermediate goods removed without payment of duty under sub-rule (1) of rule 12BB of Central Excise Rules, 2002.

Explanation. - For the purpose of this sub-rule "intermediate goods" shall have the same meaning assigned to it in sub-rule (1) of rule 12BB of the Central Excise Rules, 2002.

(4) A large tax payer may transfer, CENVAT credit available with one of his registered manufacturing premises or premises providing taxable service to his other such registered premises by, -

(i) making an entry for such transfer in the record maintained under rule 9;

(ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit as well as receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i),

and such recipient premises can take CENVAT credit on the basis of such transfer challan as mentioned in clause (ii) :

Provided that such transfer or utilisation of CENVAT credit shall be subject to the limitations prescribed under clause (b) of sub-rule (7) of rule 3 :

Provided further that nothing contained in this sub-rule shall be applicable if the registered manufacturing premises is availing following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

(i) No. 32/99-C.E., dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999];

(ii) No. 33/99-C.E., dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999];

(iii) No. 39/2001-C.E., dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];

(iv) No. 56/2002-C.E., dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];

(v) No. 57/2002-C.E., dated 14th November, 2002 [G.S.R.. 765(E), dated the 14th November, 2002];

(vi) No. 56/2003-C.E., dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003];

(vii) No. 71/2003-C.E., dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003]; [* * *]

[(viii) No. 20/2007-C.E., dated the 25th April, 2007 [GSR 307(E), dated the 25th April, 2007] and]]

[(ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62(E), dated the 6th February, 2010.]

(5) A large tax payer shall submit a monthly return, as prescribed under

these rules, for each of the registered premises.

(6) 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 Tax payer Unit, shall be deemed to have been issued by Central Excise officers of the said Unit.

(7) Provisions of these rules, insofar as they are not inconsistent with the provisions of this rule shall *mutatis mutandis* apply in case of a large tax payer.]

RULE [12AAA. Power to impose restrictions in certain types of cases. — Notwithstanding anything contained in these rules, where the Central Government, having regard to the extent of misuse of CENVAT credit, nature and type of such misuse and such other factors as may be relevant, is of the opinion that in order to prevent the misuse of the provisions of CENVAT credit as specified in these rules, it is necessary in the public interest to provide for certain measures including restrictions on a manufacturer, first stage and second stage dealer or an exporter, may by a notification in the Official Gazette, specify nature of restrictions including restrictions on utilization of CENVAT credit and suspension of registration in case of a dealer and type of facilities to be withdrawn and procedure for issue of such order by an officer authorized by the Board.]

RULE 13. Power of Central Government to notify goods for deemed CENVAT credit. — Notwithstanding anything contained in rule 3, the Central Government may, by notification, declare the input or input service on which the duties of excise, or additional duty of customs or service tax paid, shall be deemed to have been paid at such rate or equivalent to such amount as may be specified in that notification and allow CENVAT credit of such duty or tax deemed to have been paid in such manner and subject to such conditions as may be specified in that notification even if, in the case of input, the declared input, or in the case of input service, the declared input service, as the case may be, is not used directly by the manufacturer of final products, or as the case may be, by the provider of [output] service, declared in that notification, but contained in the said final products, or as the case may be, used in providing the [output] service.

RULE 14. Recovery of CENVAT credit wrongly taken or erroneously refunded. — Where the CENVAT credit has been [taken and utilised wrongly] or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A [and 11AA] of the Excise Act or sections 73 and 75 of the Finance Act, shall apply *mutatis mutandis* for effecting such recoveries.

[RULE 15. Confiscation and penalty. — (1) If any person, takes or utilises CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty or service tax on such goods or services, as the case may be, or two thousand rupees, whichever is greater.

(2) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder with intent to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of section 11AC of the Excise Act.

(3) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made thereunder with intent to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in terms of the provisions of section 78 of the Finance Act.

(4) Any order under sub-rule (1), sub-rule (2) or sub-rule (3) shall be issued by the Central Excise Officer following the principles of natural justice.]

RULE [15A. General penalty. — Whoever contravenes the provisions of these rules for which no penalty has been provided in the rules, he shall be liable to a penalty which may extend to five thousand rupees.]

RULE 16. Supplementary provision. — [(1)] Any notification, circular,

instruction, standing order, trade notice or other order issued under the CENVAT Credit Rules, 2002 or the Service Tax Credit Rules, 2002, by the Central Government, the Central Board of Excise and Customs, the Chief Commissioner of Central Excise or the Commissioner of Central Excise, and in force at the commencement of these rules, shall, to the extent it is relevant and consistent with these rules, be deemed to be valid and issued under the corresponding provisions of these rules.

[(2) References in any rule, notification, circular, instruction, standing order, trade notice or other order to the CENVAT Credit Rules, 2002 and any provision thereof or, as the case may be, the Service Tax Credit Rules, 2002 and any provision thereof shall, on the commencement of these rules, be construed as references to the CENVAT Credit Rules, 2004 and any corresponding provision thereof.]

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MEGA EXEMPTION NOTIFICATION

Notification No. 25/2012-Service Tax

New Delhi, the 20th June, 2012

G.S.R……(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1. Services provided to the United Nations or a specified international organization;
2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;
3. Services by a veterinary clinic in relation to health care of animals or birds;
4. Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities;
5. Services by a person by way of-
   (a) renting of precincts of a religious place meant for general public; or
   (b) conduct of any religious ceremony;

6, Services provided by-

(a) an arbitral tribunal to -

(i) any person other than a business entity; or

(ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;

(b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-

(i) an advocate or partnership firm of advocates providing legal services;

(ii) any person other than a business entity; or

(iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or

(c) a person represented on an arbitral tribunal to an arbitral tribunal;

7. Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India;

8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;

9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-

(a) auxiliary educational services; or

(b) renting of immovable property;

10. Services provided to a recognised sports body by-

(a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;

(b) another recognised sports body;

11. Services by way of sponsorship of sporting events organised,-

(a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;

(b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;

(c) by Central Civil Services Cultural and Sports Board;

(d) as part of national games, by Indian Olympic Association; or

(e) under Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme;

12. Services provided to the Government, a local authority or a governmental authority by way of construction**,** erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation* 1 to clause 44 of section 65 B of the said Act;

13.Services provided by way of construction**,** erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

(c) a building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;

(d) a pollution control or effluent treatment plant, except located as a part of a factory; or

a structure meant for funeral, burial or cremation of deceased;

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(a) an airport, port or railways, including monorail or metro;

(b) a single residential unit otherwise than as a part of a residential complex;

(c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

(d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

(e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

15. Temporary transfer or permitting the use or enjoyment of a copyright covered under clauses (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films;

16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;

17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;

18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;

19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and (ii) a licence to serve alcoholic beverages;

20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods -

(a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
(b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
(c) defence or military equipments;
(d) postal mail or mail bags;
(e) household effects;
(f) newspaper or magazines registered with the Registrar of Newspapers;
(g) railway equipments or materials;
(h) agricultural produce;
(i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or
(j) chemical fertilizer and oilcakes;

21. Services provided by a goods transport agency by way of transportation of -

(a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;

(b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or

(c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;

22. Services by way of giving on hire -

(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or

(b) to a goods transport agency, a means of transportation of goods;

23. Transport of passengers, with or without accompanied belongings, by -

(a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;

(b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or

(c) ropeway, cable car or aerial tramway;

24. Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;

25. Services provided to Government, a local authority or a governmental authority by way of -

(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or

(b) repair or maintenance of a vessel or an aircraft;

26. Services of general insurance business provided under following schemes -

(a) Hut Insurance Scheme;

(b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
(c) Scheme for Insurance of Tribals;
(d) Janata Personal Accident Policy and Gramin Accident Policy;
(e) Group Personal Accident Policy for Self-Employed Women;
(f) Agricultural Pumpset and Failed Well Insurance;
(g) premia collected on export credit insurance;
(h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;
(i) Jan Arogya Bima Policy;
(j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);
(k) Pilot Scheme on Seed Crop Insurance;
(l) Central Sector Scheme on Cattle Insurance;
(m) Universal Health Insurance Scheme;
(n) Rashtriya Swasthya Bima Yojana; or
(o) Coconut Palm Insurance Scheme;

27. Services provided by an incubatee up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-
(a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and
(b) a period of three years has not been elapsed from the date of entering into an agreement as an incubatee;

28. Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -
(a) as a trade union;
(b) for the provision of carrying out any activity which is exempt from the levy of service tax; or
(c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

29. Services by the following persons in respective capacities -

(a) sub-broker or an authorised person to a stock broker;
(b) authorised person to a member of a commodity exchange;
(c) mutual fund agent to a mutual fund or asset management company;
(d) distributor to a mutual fund or asset management company;
(e) selling or marketing agent of lottery tickets to a distributer or a selling agent;
(f) selling agent or a distributer of SIM cards or recharge coupon vouchers;
(g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or
(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

30. Carrying out an intermediate production process as job work in relation to -

(a) agriculture, printing or textile processing;
(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act ,1985 (5 of 1986);
(c) any goods on which appropriate duty is payable by the principal manufacturer; or
(d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;

31. Services by an organiser to any person in respect of a business exhibition held outside India;

32. Services by way of making telephone calls from -

(a) departmentally run public telephone;
(b) guaranteed public telephone operating only for local calls; or

(c) free telephone at airport and hospital where no bills are being issued;

33. Services by way of slaughtering of ~~bovine~~[58] animals;

34. Services received from a provider of service located in a non- taxable territory by -

(a) Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;

(b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or

(c) a person located in a non-taxable territory;

35. Services of public libraries by way of lending of books, publications or any other knowledge- enhancing content or material;

36. Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 (34 of 1948);

37. Services by way of transfer of a going concern, as a whole or an independent part thereof;

38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;

39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

2. Definitions. - For the purpose of this notification, unless the context otherwise requires, –

(a) "Advocate" has the meaning assigned to it in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961);

[58] Not No. 44/2012-ST dated 7 August 2012

(b) "appropriate duty" means duty payable on manufacture or production under a Central Act or a State Act, but shall not include 'Nil' rate of duty or duty wholly exempt;

(c) "arbitral tribunal" has the meaning assigned to it in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 (26 of 1996);

(d) "authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;

(e) "authorised person" means any person who is appointed as such either by a stock broker (including trading member) or by a member of a commodity exchange and who provides access to trading platform of a stock exchange or a commodity exchange as an agent of such stock broker or member of a commodity exchange;

(f) "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;

(g) "banking company" has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act,1934(2 of 1934);

(h) "brand ambassador" means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person;

(i) "business facilitator or business correspondent" means an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by Reserve Bank of India;

(j) "clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

(k) "charitable activities" means activities relating to -

(i) public health by way of -

(a) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(b) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion or spirituality;

(iii) advancement of educational programmes or skill development relating to,-

(a) abandoned, orphaned or homeless children;

(b) physically or mentally abused and traumatized persons;

(c) prisoners; or

(d) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife; or

(v) advancement of any other object of general public utility up to a value of,-

(a) eighteen lakh and seventy five thousand rupees for the year 2012-13 subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during 2011-12;

(b) twenty five lakh rupees in any other financial year subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during the preceding financial year;

(l) "commodity exchange" means an association as defined in section 2 (j) and recognized under section 6 of the Forward Contracts (Regulation) Act,1952 (74 of 1952);

(m) "contract carriage" has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(n)"declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit;

(o) "distributor or selling agent" has the meaning assigned to them in clause (c) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), *vide* number G.S.R. 278(E), dated the 1st April, 2010 and shall include distributor or selling agent authorised by the lottery- organising State;

(p) "general insurance business" has the meaning assigned to it in clause (g) of section 3 of General Insurance Business (Nationalisation) Act, 1972 (57 of 1972);

(q)"general public" means the body of people at large sufficiently defined by some common quality of public or impersonal nature;

(r)"goods carriage" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(s) "governmental authority'' means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry

out any function entrusted to a municipality under article 243W of the Constitution;

(t) "health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;

(u) "incubatee" means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to develop and produce hi-tech and innovative products;

(v)"insurance company" means a company carrying on life insurance business or general insurance business;

(w)"legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority;

(x)"life insurance business" has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);

(y) "original works" means has the meaning assigned to it in Rule 2A of the Service Tax (Determination of Value) Rules, 2006;

(z) "principal manufacturer" means any person who gets goods manufactured or processed on his account from another person;

(za) "recognized sports body" means - (i) the Indian Olympic Association, (ii) Sports Authority of India, (iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations, (iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government, (v) the International Olympic Association or a federation recognised by the International Olympic Association or (vi) a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India;

(zb) "religious place" means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality;

(zc) "residential complex" means any complex comprising of a building or buildings, having more than one single residential unit;

(zd)"rural area" means the area comprised in a village as defined in land revenue records, excluding-

the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or

any area that may be notified as an urban area by the Central Government or a State Government;

(ze)"single residential unit" means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;

(zf) "specified international organization" means an international organization declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply;

(zg)"state transport undertaking" has the meaning assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(zh)"sub-broker" has the meaning assigned to it in sub-clause (gc) of clause 2 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992;

ABATEMENT NOTIFICATION

(zi) "trade union" has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act,1926(16 of 1926).

3. This notification shall come into force on the 1st day of July, 2012.

Notification No. 26/2012- Service Tax

New Delhi, the 20th June, 2012

G.S.R….. (E). - In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act), and in supersession of notification number 13/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 211 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of the description specified in column (2) of the Table below, from so much of the service tax leviable thereon under section 66B of the said Act, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (3) of the said Table, of the amount charged by such service provider for providing the said taxable service, unless specified otherwise, subject to the relevant conditions specified in the corresponding entry in column (4) of the said Table, namely;-

Table

Sl. No.	Description of taxable service	Percent-age	Conditions
(1)	(2)	(3)	(4)

1	Services in relation to financial leasing including hire purchase	10	Nil.
2	Transport of goods by rail	30	Nil.
3	Transport of passengers, with or without accompanied belongings by rail	30	Nil.
4	Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises	70	(i) CENVAT credit on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
5	Transport of passengers by air, with or without accompanied belongings	40	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	60	Same as above.

7	Services of goods transport agency in relation to transportation of goods.	25	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
8	Services provided in relation to chit	70	Same as above.
9	Renting of any motor vehicle designed to carry passengers	40	Same as above.
10	Transport of goods in a vessel	50	Same as above.
11	Services by a tour operator in relation to,- (i) a package tour	25	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour.
	(ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour	10	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The invoice, bill or challan issued indicates that it is towards the charges for such

			accommodation. (iii) This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.
	(iii) any services other than specified at (i) and (ii) above.	40	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii)The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.
12.	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority	25	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii)The value of land is included in the amount charged from the service receiver.

Explanation. –

A. For the purposes of exemption at Serial number 1 -

(i) The amount charged shall be an amount, forming or representing as interest, i.e. the difference between the installments paid towards repayment of the lease amount and the principal amount contained in such installments;

(ii) the exemption shall not apply to an amount, other than an amount forming or representing as interest, charged by the service provider such as lease management fee, processing fee, documentation charges and administrative fee, which shall be added to the amount calculated in terms of (i) above.

B. For the purposes of exemption at Serial number 4 -

The amount charged shall be the sum total of the gross amount charged and the fair market value of all goods and services supplied in or in relation to the supply of food or any other article of human consumption or any drink (whether or not intoxicating) and whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services supplied to the service provider, if any; and

(ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

C. For the purposes of exemption at Serial number 12 –

The amount charged shall be the sum total of the amount charged for the service including the fair market value of all goods and services supplied by the recipient(s) in or in relation to the service, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services supplied to the service provider, if any; and

(ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

2. For the purposes of this notification, unless the context otherwise requires,-

a. "chit" means a transaction whether called chit, chit fund, chitty, kuri, or by whatever name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical installments over a definite period and that each subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to a prize amount,

b. "package tour" means a tour wherein transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour,

c. "tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours,

EXEMPTION FOR FOREIGN DIPLOMATIC MISSION

3. This notification shall come into force on the 1st day of July, 2012.

Notification No. 27/2012 - Service Tax

New Delhi, the 20th June, 2012

G.S.R. (E).- In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services provided by any person, for the official use of a foreign diplomatic mission or consular post in India, or for personal use or for the use of the family members of diplomatic agents or career consular officers posted therein from whole of the service tax leviable under section 66B of the said Act, subject to the following conditions, namely:-

(i) that the foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein, are entitled to exemption from service tax, as stipulated in the certificate issued by the Protocol Division of the Ministry of External Affairs, based on the principle of reciprocity;

(ii) that in case of diplomatic agents or career consular officers posted in the foreign diplomatic mission or consular post in India, the Protocol Division of the Ministry of External Affairs or the Protocol Department of the State concerned issues to each of such diplomatic agent or career consular officer an identification card bearing unique identification number and containing a photograph and name of such diplomatic agent or career consular officer and the name of the foreign diplomatic mission or consular post in India, where he is posted;

(iii) that the head of the foreign diplomatic mission or consular post, or any person of such mission or post authorised by him, shall furnish to the provider of taxable service, a copy of such certificate duly authenticated by him or the authorised person, alongwith an undertaking in original, signed by him or the authorised person, bearing running serial number commencing from a financial year and stating that the services received are for official purpose of the said foreign diplomatic mission or consular post; or for personal use of the said diplomatic agent or career consular officer or members of his/her family mentioning the unique identification number as appearing in the identification card issued to them and stating that the services received are for personal use of the said diplomatic agent or career consular officer or members of his/her family;

(iv) that the head of the foreign diplomatic mission or consular post or the authorized person shall maintain an account of the undertakings issued during a financial year and the account shall contain;-

(a) the serial number and date of issue of the undertakings;

(b) in case of personal use of diplomatic agents or career consular officers posted in the foreign diplomatic mission or consular post in India, the name, designation and unique identification number of the diplomatic agent or career consular officer in favour of whom the undertaking has been issued;

(c) the name and the registration number of the provider of taxable service; and

(d) the description of taxable service and invoice number.

(v) The invoice or bill, or as the case may be, the challan issued under the provisions contained in rule 4A of the Service Tax Rules, 1994, shall, in addition to the information required to be furnished under the said rule, contain the serial number and the date of the undertaking furnished by the said head of foreign diplomatic mission or consular post or in case of diplomatic agents or career consular officers posted in such foreign diplomatic mission or consular post in

India, the unique identification number of the diplomatic agent or career consular officer, as the case may be; and

(vi) that the provider of taxable service shall retain the documents referred to in the conditions (i), (ii) and (iii) alongwith a duplicate copy of the invoice issued, for the purposes of verification.

2. In case the Protocol Division of the Ministry of External Affairs, after having issued a certificate to any foreign diplomatic mission or consular post in India or as the case may be, the identification card issued to a diplomatic agent or career consular officer, decides to withdraw any one or both of them subsequently, it shall communicate the withdrawal of such certificate or identification card, as the case may be, to the foreign diplomatic mission or consular post.

3. The exemption from the whole of the service tax granted to the foreign diplomatic mission or consular post in India for official purpose or for the personal use or use of their family members shall not be available from the date of withdrawal of such certificate or identification card, as the case may be.

4. This notification shall come into force on the 1st day of July, 2012.

[F.No. 334 /1/ 2012-TRU]

(Rajkumar Digvijay)
Under Secretary to the Government of India

EXEMPTION ON PROPERTY TAX PAID ON IMMOVABLE PROPERTY

Notification No. 29/2012- Service Tax

New Delhi, the 20th June, 2012

G.S.R……(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 24/2007-Service Tax, dated the 22nd May, 2007, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 370 (E), dated the 22nd May, 2007, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of renting of an immovable property, from so much of the service tax leviable thereon under section 66B of the said Finance Act, as is in excess of the service tax calculated on a value which is equivalent to the gross amount charged for renting of such immovable property less taxes on such property, namely property tax levied and collected by local bodies:

Provided that any amount such as interest, penalty paid to the local authority by the service provider on account of delayed payment of property tax or any other reasons shall not be treated as property tax for the purposes of deduction from the gross amount charged:

Provided further that wherever the period for which property tax paid is different from the period for which service tax is paid or payable, property tax proportionate to the period for which service tax is paid or payable shall be calculated and the amount so calculated shall be excluded from the gross amount charged for renting of the immovable property for the said period, for the purposes of levy of service tax.

Example:

Property tax paid for April to September = Rs. 12,000/-

Rent received for April = Rs. 1, 00,000/-

Service tax payable for April = Rs. 98,000/- (1, 00,000 -12,000/6) * applicable rate of service tax

2. This notification shall come into force on the 1st day of July, 2012.

[F.No. 334 /01/2012- TRU]

(Raj Kumar Digvijay)

Under Secretary to the Government of India

REVERSE CHARGE MECHANISM

Notification No. 30/2012-Service Tax

New Delhi, the 20th June, 2012

GSR……(E).—In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),*vide* number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:—

I. The taxable services,—

(A) (i) provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;

(ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(e) any body corporate established, by or under any law; or

(f) any partnership firm whether registered or not under any law including association of persons;

(iii) provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory;

(iv) provided or agreed to be provided by,-

(A) an arbitral tribunal, or

(B) an individual advocate or a firm of advocates by way of support services, or

(C) Government or local authority by way of support services excluding,-

(1) renting of immovable property, and

(2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act,1994,

to any business entity located in the taxable territory;

(iva) provided or agreed to be provided by a director of a company to the said company[59]

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or security services[60] or service

[59] Not. No. 45/2012-ST dated 7 August 2012

[60] *Ibid*

portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;

(B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

Table

Sl.No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
1	in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	Nil	100%
2	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%
3	in respect of services provided or agreed to be provided by way of sponsorship	Nil	100%
4	in respect of services provided or agreed to be provided by an arbitral tribunal	Nil	100%

5	in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services	Nil	100%
5A	in respect of services provided or agreed to be provided by a director of a company to the said company[61]	Nil	100%
6	in respect of services provided or agreed to be provided by Government or local authority by way of support services excluding,- (1) renting of immovable property, and (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act,1994	Nil	100%
7	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business (b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business	Nil 60%	100 % 40%
8.	in respect of services provided or agreed to be provided by way of supply of	25%	75 %

[61] Not. No. 45/2012-ST dated 7 August 2012

	manpower for any purpose or security services[62]		
9.	in respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%
10	in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Nil	100%

Explanation-I. - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

Explanation-II. - In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

2. This notification shall come into force on the 1st day of July, 2012.

[F.No. 334/1/2012- TRU]

(Raj Kumar Digvijay)
Under Secretary to the Government of India

[62] Not. No. 45/2012-ST dated 7 August 2012

EXEMPTION TO GTA SERVICES RECEIVED BY EXPORTER OF GOODS

Notification No. 31/2012 - Service Tax

New Delhi, the 20th June, 2012

G.S.R…. (E). -In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 18/2009-Service Tax, dated the 7th July, 2009, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R.490 (E), dated the 7th July, 2009, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods (hereinafter referred to as the said goods), of the description specified in column (2) of the Table below (hereinafter referred to as the specified service), from the whole of the service tax leviable thereon under section 66B of the said Act, subject to the conditions specified in column (3) of the said Table, namely:-

Table

Sr. No.	Description of the taxable service	Conditions
(1)	(2)	(3)
1.	Service provided to an exporter for transport of the said goods by goods transport agency in a	The exporter shall have to produce the consignment note, by

	goods carriage from any container freight station or inland container depot to the port or airport, as the case may be, from where the goods are exported; or Service provided to an exporter in relation to transport of the said goods by goods transport agency in a goods carriage directly from their place of removal, to an inland container depot, a container freight station, a port or airport, as the case may be, from where the goods are exported.	whatever name called, issued in his name.

Provided that-

(a) the exemption shall be available to an exporter who,-

(i) informs the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory or the regional office or the head office, as the case may be, in Form EXP1 appended to this notification, before availing the said exemption;

(ii) is registered with an export promotion council sponsored by the Ministry of Commerce or the Ministry of Textiles, as the case may be;

(iii) is a holder of Import-Export Code Number;

(iv) is registered under section 69 of the said Act;

(v) is liable to pay service tax under sub-section (2) of section 68 of said Act, read with item (B) of sub-clause (i) of clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules,1994, for the specified service;

(b) the invoice, bill or challan, or any other document by whatever name called issued by the service provider to the exporter, on which the exporter intends to

avail exemption, shall be issued in the name of the exporter, showing that the exporter is liable to pay the service tax in terms of item (v) of clause (a);

(c) the exporter availing the exemption shall file the return in Form EXP2, every six months of the financial year, within fifteen days of the completion of the said six months;

(d) the exporter shall submit with the half yearly return, after certification, the documents in original specified in clause (b) and the certified copies of the documents specified in column (4) of the said Table;

(e) the documents enclosed with the return shall contain a certification from the exporter or the authorised person, to the effect that taxable service to which the document pertains, has been received and used for export of goods by mentioning the specific shipping bill number on the said document.

(f) where the exporter is a proprietorship concern or partnership firm, the documents enclosed with the return shall be certified by the exporter himself and where the exporter is a limited company, the documents enclosed with the return shall be certified by the person authorised by the Board of Directors;

2. This notification shall come into force on the 1st day of July, 2012.

Form EXP1

[See item (i) of clause (a) of proviso]

S.No----------

(to be filled in by the office of jurisdictional Assistant / Deputy Commissioner)

To,

The Deputy Commissioner /Assistant Commissioner of Central Excise

Sir,

I/We intend to avail of the exemption from service tax under Notification No. 31/2012-ST, dated 20th June, 2012 in respect of service for transport of the said goods by road, which has been used for export of goods and the relevant particulars are as follows.

1. Name of the exporter……

2. Service Tax Registration No…….

3. Division …… Commissionerate ……

4 Membership No. the Export Council…….

5 Name of the Export Council……

6. Address of the registered / head office of exporter:……..

7. Tel. No. and e-mail ID of the exporter……..:

8. Import -Export Code No……..

9. Details of Bank Account (Name of Bank, branch address and account number)……..

I/we undertake that I/we shall comply with the conditions laid down in the said notification and in case of any change in aforementioned particulars; I/We shall intimate the same.

Date:…..

Place:……..

Signature and full address of Exporter

(Affix stamp)

Receipt (to be given by office of Assistant Commissioner/ Deputy Commissioner having jurisdiction) Received Form EXP1 dated --/--/-- submitted by _____(name of the exporter). The said intimation is accepted and given acknowledgment No. _____(S. No. Above)

For Assistant, / Deputy Commissioner
(Stamp)

Form EXP2

[See clause (c) of proviso]

To,
The Deputy Commissioner /Assistant Commissioner of Central Excise

Sir,

I/We have availed of exemption of service tax under Notification No. 31/2012-ST, dated 20th June, 2012 in respect of services, namely, the services provided for transport of said goods in a goods carriage by goods transport agency, and has used the same for export of goods during the period from …… to….. .. and the relevant particulars are as follows:-

1. Name of the exporter……..
2. Address of the registered / head office of exporter……
3. Tel. No. and e-mail ID of the exporter……..:
4. Service Tax Registration No…….
5. Division …… Commissionerate ……
6. Membership No. Of the Export Council……
7. Import Export Code No……..
8. Name of the Export Council……..
9. Details of Bank Account (Name of Bank, branch address and account number)……..

Table-A

Sr. No.	Details of goods exported (on which exemption of service tax availed) during the six months ending on……..							
	Details of Shipping Bill/ Bill of export (Please enclose self attested copy of Shipping Bill or Bill of Export) and Details of goods exported (in case of exports of more than one commodity, please fill in the proforma, commodity-wise)							
	No.	Date	Date of Let export order	Export invoice no	Date	Description of goods exported	Quantity (please mention the unit)	FOB value (in rupees in lakh)

Table- B

Details of specified service used for export of goods, covered under the Shipping Bill or Bill of Export mentioned in Table A in respect of which the exemption has been availed during the six months ending on……..				Details of documents attached showing the use of such service for export, the details of which are mentioned in Table A (self attested)	Total amount of service tax claimed as exemption (rupees in lakhs)
Name of service provider	Address of service provider	Invoice No.	Date		

9. Declaration:-

I / We hereby declare that-

(i) I have complied with all the conditions mentioned in Notification No. 31/2012-ST, dated 20th June, 2012;

(ii) the information given in this application form is true, correct and complete in every respect and that I am authorised to sign on behalf of the exporter;

(iii) no CENVAT credit of service tax paid on the specified service used for export of said goods taken under the CENVAT Credit Rules, 2004;

(iv) I / we, am/ are enclosing all the required documents. Further, I understand that failure to file the return within stipulated time or non-enclosure of the required document, duly certified, would debar me/us for the refund claimed aforesaid.

Date:……..

Place:……

Signature and full address of Exporter
(Affix stamp)

Enclosures: as above

[F.No. 334 /1/ 2012-TRU]

(Rajkumar Digvijay)
Under Secretary to the Government of India

EXEMPTION OF SERVICES PROVIDED BY TBI AND STEP

Notification No. 32/2012- Service Tax

New Delhi, the 20th June, 2012

G.S.R….. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification number 9/2007-ST, dated the 1st March,2007, published in the Gazette of India, Extraordinary, *vide* number G.S.R. 163 (E), dated the 1st March,2007, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services, provided or to be provided, by a Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India, from the whole of the service tax leviable thereon under section 66B of the said Finance Act, subject to following conditions, namely:-

1. that the STEP or the TBI, who intends to avail the exemption, shall furnish the requisite information in Format I below containing the details of the incubator along with the information in Format II below received from each incubatee to the concerned Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, before availing the exemption; and
2. that the STEP or the TBI shall furnish the information in the said Format I and Format II in the same manner before the 30th day of June of each financial year.

Format - I - Information to be furnished by TBI or the STEP

Filed in the financial year _____

(a) Name of the Technology Business Incubator / Science and Technology Entrepreneurship Park _____

(b) Address _____

(c) Whether availing benefit of exemption for first time _____

(d) If the answer to 3 is not in affirmative, the date from which benefit is being availed _____

(e) Details of taxable services provided during the previous financial year :-

Sl. No.	Description of Taxable Service	Value of taxable Service Provided	
		To incubatee	To others

(f) Details of Taxable services provided by incubatees as per enclosure _____

Place _____

Date _____

Signature of the authorised person

Acknowledgement

I hereby acknowledge the receipt of Format I for the period_____

Place _____

Date _____

Signature of the Officer of
Central Excise and Service Tax
(with Name and Official seal)

Format II – Information to be obtained by TBI / STEP from each incubatee and to be filed along with Format I

1. Name of the Incubatee _____
2. Address _____
3. Details of the project _____
4. Date of signing agreement with the TBI / STEP (incubator) _____
5. Total business turnover during the previous financial year _____
6. Details of taxable services provided during the previous financial year _____

Sl. No.	Description of Taxable Service	Value of Service Provided

Place _____

Date _____

Signature of the authorized person

2. This notification shall come into force on the 1st day of July, 2012.

[F.No. 334 /1/ 2012-TRU]

(Rajkumar Digvijay)

Under Secretary to the Government of India

Exemption to Small Service Providers

Notification No. 33/2012 - Service Tax

New Delhi, the 20th June, 2012

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* G.S.R. number 140(E), dated the 1st March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:

Provided that nothing contained in this notification shall apply to,-

(i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or

(ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules,1994.

2. The exemption contained in this notification shall apply subject to the following conditions, namely:-

(i) the provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;

(ii) the provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services, under rule 3 or rule 13 of the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), used for providing the said taxable service, for which exemption from payment of service tax under this notification is availed of;

(iii)the provider of taxable service shall not avail the CENVAT credit under rule 3 of the said rules, on capital goods received, during the period in which the service provider avails exemption from payment of service tax under this notification;

(iv) the provider of taxable service shall avail the CENVAT credit only on such inputs or input services received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable;

(v) the provider of taxable service who starts availing exemption under this notification shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing exemption under this notification;

(vi) the balance of CENVAT credit lying unutilised in the account of the taxable service provider after deducting the amount referred to in sub-paragraph (v), if any, shall not be utilised in terms of provision under sub-rule (4) of rule 3 of the

said rules and shall lapse on the day such service provider starts availing the exemption under this notification;

(vii) where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services; and

(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year.

3. For the purposes of determining aggregate value not exceeding ten lakh rupees, to avail exemption under this notification, in relation to taxable service provided by a goods transport agency, the payment received towards the gross amount charged by such goods transport agency under section 67 of the said Finance Act for which the person liable for paying service tax is as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994, shall not be taken into account.

Explanation.- For the purposes of this notification,-

(A) "brand name" or "trade name" means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, logo, label, signature, or invented word or writing which is used in relation to such specified services for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified services and some person using such name or mark with or without any indication of the identity of that person;

(B) "aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification."

4. This notification shall come into force on the 1st day of July, 2012.

[F.No. 334 /01/2012- TRU] (Raj Kumar Digvijay)

Under Secretary to the Government of India

RESCINDING OF EARLIER 81 NOTIFICATIONS

Notification No. 34/2012- Service Tax

New Delhi, the 20th June, 2012

G.S.R…..(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby rescinds the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), as specified in column (2) of the Table below, except as respects things done or omitted to be done before such recession namely:-Table

SL. NO. (1)	NOTIFICATION NO. AND DATE (2)
1.	06/2012- Service Tax, dated 17-03-2012.[G.S.R. 204(E), dated 17-03-2012]
2.	45/2011 - Service Tax, dated 12-09-2011.[G.S.R. 672(E), dated 12-09-2011]
3.	42/2011 - Service Tax, dated 25-07-2011.[G.S.R. 566(E), dated 25-07-2011]
4.	33/2011 - Service Tax, dated 25-04-2011.[G.S.R 341(E) dated 25-04-2011]
5.	31/2011 - Service Tax, dated 25-04-2011.[G.S.R 339(E) dated 25-04-2011]
6.	30/2011 - Service Tax, dated 25-04-2011.[G.S.R 338(E) dated 25-04-2011]
7.	11/2011 - Service Tax, dated 01-03-2011 .[G.S.R 168(E) dated 01-03-2011]
8.	10/2011 - Service Tax, dated 01-03-2011 .[G.S.R.167(E) dated 01-03-2011]
9.	09/2011 - Service Tax, dated 01-03-2011. [G.S.R.166(E) dated 01-03-2011]
10.	08/2011 - Service Tax, dated 01-03-2011. [G.S.R.165(E) dated 01-03-2011]
11.	07/2011 - Service Tax, dated 01-03-2011. [G.S.R.164(E) dated 01-03-2011]

12.	06/2011 - Service Tax, dated 01-03-2011. [G.S.R. 163(E) dated 01-03-2011]
13.	05/2011 - Service Tax, dated 01-03-2011. [G.S.R. 162(E) dated 01-03-2011]
14.	58/2010 - Service Tax, dated 21-12-2010. [G.S.R.996(E) dated 21-12-2010]
15.	53/2010 - Service Tax, dated 21-12-2010. [G.S.R.991(E) dated 21-12-2010]
16.	50/2010 - Service Tax, dated 08-10-2010. [G.S.R.823(E) dated 08-10-2010]
17.	47/2010 - Service Tax, dated 03-09-2010. [G.S.R 727(E) dated 03-09-2010]
18.	42/2010 - Service Tax, dated 28-06-2010. [G.S.R.563(E) dated 28-06-2010]
19.	41/2010 - Service Tax, dated 28-06-2010. [G.S.R.562(E) dated 28-06-2010]
20.	38/2010 - Service Tax, dated 28-06-2010. [G.S.R.559(E) dated 28-06-2010]
21.	32/2010 - Service Tax, dated 22-06-2010. [G.S.R.538(E) dated 22-06-2010]
22.	31/2010 - Service Tax, dated 22-06-2010. [G.S.R.537(E) dated 22-06-2010]
23.	30/2010 - Service Tax, dated 22-06-2010. [G.S.R.536(E) dated 22-06-2010]
24.	28/2010 - Service Tax, dated 22-06-2010. [G.S.R.534(E) dated 22-06-2010]
25.	27/2010 - Service Tax, dated 22-06-2010. [G.S.R.533(E) dated 22-06-2010]
26.	25/2010 - Service Tax, dated 22-06-2010. [G.S.R. 531(E)dated 22-06-2010]
27.	23/2010 - Service Tax, dated 29-04-2010. [G.S.R.345(E) dated 29-04-2010]
28.	13/2010 - Service Tax, dated 27-02-2010. [G.S.R.157(E) dated 27-02-2010]
29.	12/2010 - Service Tax, dated 27-02-2010. [G.S.R.156(E) dated 27-02-2010]
30.	11/2010 - Service Tax, dated 27-02-2010. [G.S.R.155(E) dated 27-02-2010]
31.	10/2010 - Service Tax, dated 27-02-2010. [G.S.R.154(E) dated 27-02-2010]
32.	08/2010 - Service Tax, dated 27-02-2010. [G.S.R.152(E) dated 27-02-2010]
33.	42/2009 - Service Tax, dated 12-11-2009. [G.S.R.821(E) dated 12-11-2009]
34.	41/2009 - Service Tax, dated 23-10-2009. [G.S.R.776(E) dated 23-10-2009]
35.	39/2009 - Service Tax, dated 23-09-2009. [G.S.R.696(E) dated 23-09-2009]
36.	33/2009- Service Tax, dated 1-9-2009. [G.S.R.627(E) dated 1-9-2009]
37.	32/2009 - Service Tax, dated 1-09-2009. [G.S.R.626(E) dated 1-9-2009]
38.	31/2009 - Service Tax, dated 1-09-2009. [G.S.R.625(E) dated 1-9-2009]
39.	30/2009 - Service Tax, dated 31-08-2009. [G.S.R.619(E) dated 31-08-2009]
40.	24/2009- Service Tax, dated 27-7-2009. [G.S.R.551(E) dated 27-7-2009]

41.	20/2009 - Service Tax, dated 07-07-2009. [G.S.R.492(E) dated 07-07-2009]
42.	19/2009 - Service Tax, dated 07-07-2009. [G.S.R.491(E) dated 07-07-2009]
43.	01/2009 - Service Tax, dated 05-01-2009. [G.S.R.10(E) dated 05-01-2009]
44.	14/2008 - Service Tax, dated 01-03-2008. [G.S.R.158(E) dated 01-03-2008]
45.	13/2008- Service Tax, dated 01-03-2008. [G.S.R.157(E) dated 01-03-2008]
46.	34/2007 - Service Tax, dated 23-05-2007. [G.S.R.387(E) dated 23-05-2007]
47.	33/2007_- Service Tax, dated 23-05-2007. [G.S.R.386(E) dated 23-05-2007]
48.	25/2007- Service Tax, dated 22-05-2007. [G.S.R.371(E) dated 22-05-2007]
49.	12/2007- Service Tax dated 01-03-2007. [G.S.R.166(E) dated 01-03-2007]
50.	11/2007- Service Tax dated 01-03-2007. [G.S.R.165(E) dated 01-03-2007]
51.	10/2007- Service Tax dated 01-03-2007. [G.S.R.164(E) dated 01-03-2007]
52.	08/2007- Service Tax dated 01-03-2007. [G.S.R.162(E) dated 01-03-2007]
53.	22/2006- Service Tax, dated 31-05-2006. [G.S.R.328(E) dated 31-05-2006]
54.	06/2006- Service Tax, dated 01-03-2006. [G.S.R.120(E) dated 01-03-2006]
55.	04/2006- Service Tax, dated 01-03-2006. [G.S.R.118(E) dated 01-03-2006]
56.	01/2006- Service Tax, dated 01-03-2006. [G.S.R.115(E) dated 01-03-2006]
57.	29/2005- Service Tax, dated 15-07-2005. [G.S.R.477(E) dated 15-07-2005]
58.	21/2005- Service Tax, dated 07-06-2005. [G.S.R.363(E) dated 07-06-2005]
59.	17/2005- Service Tax, dated 07-06-2005. [G.S.R.359(E) dated 07-06-2005]
60.	08/2005- Service Tax, dated 01-03-2005. [G.S.R.142(E) dated 01-03-2005]
61.	34/2004- Service Tax, dated 03-12-2004. [G.S.R.789(E) dated 03-12-2004]
62.	33/2004- Service Tax, dated 3-12-2004. [G.S.R.788(E) dated 3-12-2004]
63.	29/2004- Service Tax, dated 22-09-2004. [G.S.R.632(E) dated 22-09-2004]
64.	24/2004- Service Tax, dated 10-09-2004. [G.S.R.598(E) dated 10-09-2004]
65.	17/2004- Service Tax, dated 10-09-2004. [G.S.R.591(E) dated 10-09-2004]
66.	14/2004- Service Tax, dated 10-09-2004. [G.S.R.588(E) dated 10-09-2004]
67.	13/2004- Service Tax, dated 10-09-2004. [G.S.R.587(E) dated 10-09-2004]
68.	16/2003- Service Tax, dated 11-07-2003. [G.S.R.542(E) dated 11-07-2003]
69.	14/2003- Service Tax, dated 20-06-2003. [G.S.R.505(E) dated 20-06-2003]
70.	13/2003- Service Tax, dated 20-06-2003. [G.S.R.504(E) dated 20-06-2003]
71.	12/2003- Service Tax, dated 20-06-2003. [G.S.R.503(E) dated 20-06-2003]

72.	10/2003- Service Tax, dated 20-06-2003. [G.S.R.502(E) dated 20-06-2003]
73.	18/2002- Service Tax, dated 16-12-2002. [G.S.R.823(E) dated 16-12-2002]
74.	16/2002- Service Tax, dated 02-08-2002. [G.S.R.546(E) dated 02-08-2002]
75.	10/2002- Service Tax, dated 01-08-2002. [G.S.R.538(E)dated 01-08-2002]
76.	4/2000- Service Tax, dated 31-07-2000. [G.S.R.643(E) dated 31-07-2000]
77.	3/2000- Service Tax, dated 06-07-2000. [G.S.R.588(E) dated 06-07-2000]
78.	2/2000- Service Tax, dated 01-03-2000. [G.S.R.210(E) dated 01-03-2000]
79.	22/1997- Service Tax, dated 26-06-1997. [G.S.R. 348(E) dated 26-06-1997]
80.	12/1997- Service Tax, dated 14-02-1997. [G.S.R.74(E) dated 14-02-1997]
81.	03/1994- Service Tax, dated 30-06-1994. [G.S.R.555(E) dated 30-06-1994]

2. This notification shall come into force on the 1st day of July, 2012.

[F.No. 334 /1/ 2012-TRU]

(Rajkumar Digvijay)

Under Secretary to the Government of India

Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 — Notification No. 32/2007-S.T. rescinded

Notification No. 35/2012 - Service Tax

New Delhi, the 20th June, 2012

G.S.R. (E).- In exercise of the powers conferred by sections 93 and 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby rescinds the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 32/ 2007 – Service Tax, dated the 22nd May, 2007, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section(i), vide number G.S.R. 378(E), dated the 22nd May 2007, except as respects things done or omitted to be done before such rescission.

2. This notification shall come into force on the 1st day of July, 2012.

[F. No.334/1/2012 -TRU]

(Rajkumar Digvijay)
Under Secretary to the Government of India

NOTIFIED CONTINUOUS SUPPLY OF SERVICES

Notification No.28/2011 – Service Tax[63]

G.S.R. (E).- In exercise of the powers conferred under clause (a) and clause (hhh) of sub-section (2) of section 94 the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), read with clause (c) of rule (2) of the Point of Taxation Rules, 2011(hereinafter referred to as the said rules), the Central Government hereby notifies that the provision of taxable services referred ~~to in clauses (zzq), (zzzh), (zzzx), (zzzu) and (zzzza) of section 65(105) of the Finance Act~~ of telecommunication service and service portion in execution of a works contract, shall be treated as continuous supply of service, for the purpose of the said rules.

(SAMAR NANDA)
Under Secretary to the Government of India
[F. No. 334/3/ 2011 – TRU]

[63] As amended vide Not. No. 38/2012-ST dated 20 June 2012

EXPORT - REBATE ON INPUTS AND INPUT SERVICES

Notification No.39/2012 - Service Tax

New Delhi, the 20th June, 2012

GSR …. (E). In exercise of the powers conferred by rule 6A of the Service Tax Rules, 1994 (hereinafter referred to as the said rules), the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on excisable inputs or the whole of the service tax and cess paid on all input services (herein after referred to as 'input services'), used in providing service exported in terms of rule 6A of the said rules, to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter,-

2. **Conditions and limitations**:-

(a) that the service has been exported in terms of rule 6A of the said rules;

(b) that the duty on the inputs, rebate of which has been claimed, has been paid to the supplier;

(c) that the service tax and cess, rebate of which has been claimed, have been paid on the input services to the provider of service;

Provided if the person is himself is liable to pay for any input services; he should have paid the service tax and cess to the Central Government.

(d) the total amount of rebate of duty, service tax and cess admissible is not less than one thousand rupees;

(e) no CENVAT credit has been availed of on inputs and input services on which rebate has been claimed; and

(f) that in case,-

(i) the duty or, as the case may be, service tax and cess, rebate of which has been claimed, has not been paid; or

(ii) the service, rebate for which has been claimed, has not been exported; or

(iii) CENVAT credit has been availed on inputs and input services on which rebate has been claimed,

the rebate paid, if any, shall be recoverable with interest in accordance with the provisions of section 73 and section 75 of the Finance Act, 1994 (32 of 1994)

3. **Procedure.**

3.1 Filing of Declaration.- The provider of service to be exported shall, prior to date of export of service, file a declaration with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, specifying the service intended to be exported with,-

(a) description, quantity, value, rate of duty and the amount of duty payable on inputs actually required to be used in providing service to be exported;

(b) description, value and the amount of service tax and cess payable on input services actually required to be used in providing service to be exported.

3.2 Verification of declaration.- The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall verify the correctness of the declaration filed prior to such export of service, if necessary, by calling for any relevant information or samples of inputs and if after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is satisfied that there

is no likelihood of evasion of duty, or as the case may be, service tax and cess, he may accept the declaration.

3.3 Procurement of input materials and receipt of input services.- The provider of service to be exported shall,-

(i) obtain the inputs required for use in providing service to be exported, directly from a registered factory or from a dealer registered for the purposes of the CENVAT Credit Rules, 2004 accompanied by invoices issued under the Central Excise Rules, 2002;

(ii) receive the input services required for use in providing service to be exported and an invoice, a bill or, as the case may be, a challan issued under the provisions of Service Tax Rules, 1994.

3.4 Presentation of claim for rebate.-

(a) (i) claim of rebate of the duty paid on the inputs or the service tax and cess paid on input services shall be filed with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, after the service has been exported;

(ii) such application shall be accompanied by, –

(a) invoices for inputs issued under the Central Excise Rules, 2002 and invoice, a bill, or as the case may be, a challan for input services issued under the Service Tax Rules, 1994, in respect of which rebate is claimed;

(b) documentary evidence of receipt of payment against service exported, payment of duty on inputs and service tax and cess on input services used for providing service exported, rebate of which is claimed;

(c) a declaration that such service, has been exported in terms of rule 6A of the said rules, along with documents evidencing such export.

(b) The jurisdictional Assistant Commissioner of Central Excise or Deputy

Commissioner of Central Excise, as the case may be, having regard to the declaration, if satisfied that the claim is in order, shall sanction the rebate either in whole or in part.

Explanation 1.- For the purposes of this notification "service tax and cess" means,-

(a) service tax leviable under section 66 or section 66B of the Finance Act, 1994 (32 of 1994);

(b) education cess on taxable service levied under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004); and

(c) Secondary and Higher Education Cess on taxable services levied under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007).

Explanation 2.- For the purposes of this notification "duty" means, duties of excise leviable under the following enactments, namely:-

(a) the Central Excise Act, 1944 (1 of 1944);

(b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

(d) National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by section 169 of the Finance Act, 2003 (32 of 2003), section 3 of the Finance Act, 2004 (13 of 2004) and further amended by section 123 of the Finance Act, 2005 (18 of 2005);

(e) special duty of excise collected under a Finance Act;

(f) additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);

(g) Education Cess on excisable goods as levied under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004); and

(h) the additional duty of excise leviable under section 85 of the Finance Act, 2005 (18 of 2005).

(i) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007).

Annexure

FORM ASTR-2

(Application for filing a claim of rebate of duty paid on inputs, service tax and cess paid on input services)

(PART A: To be filled by the applicant)

Date…….

Place……

To,

Assistant Commissioner of Central Excise/Deputy Commissioner of Central Excise …….. (full postal address).

Madam/Sir,

I/We……..,(name of the person claiming rebate) holding service tax registration No. ……, located in……. (address of the registered premises) hereby declare that I/We have exported ……service (name of the service) under rule 6A of the Service Tax Rules, 1994 to ……(name of the country to which service has been exported), and service tax amounting to ……. (amount in rupees of service tax) and education cess amounting to ……. (amount in rupees of cess) has

been paid on input services and duty amounting to …… (amount in rupees of duty) has been paid on inputs.

2. I/We also declare that the payment against such service exported has already been received in India in full……. (details of receipt of payment).

3. I/We request that the rebate of the duty, service tax and cess on inputs and input services used in providing service exported by me/us in terms of rule 6A of the Service Tax Rules, 1994 may be granted at the earliest. The following documents are enclosed in support of this claim for rebate.

1.

2.

3.

Declaration:

(a) We hereby certify that we have not availed CENVAT credit on inputs and input services on which rebate has been claimed.

(b) We have been granted permission by Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, vide C. No. _____, dated _____ for working under notification No. _____ , dated _____ .

(Signature and name of the service provider or his authorised agent with date)

(PART B: To be filled by the sanctioning authority)

Date of receipt of the rebate claim: _____

Date of sanction of the rebate claim: _____

Amount of rebate claimed: Rs. _____

Amount of rebate sanctioned: Rs. _____

If the claim is not processed within 15 days of the receipt of the claim, indicated briefly reasons for delay.

Place:

Date:

Signature of the Assistant Commissioner/
Deputy Commissioner of Central Excise.

4. This notification shall come into force on the 1st day of July, 2012.

F. No. 334/1/2012-TRU

(Raj Kumar Digvijay)
Under Secretary to the Government of India

EXEMPTION ON SERVICES PROVIDED TO SEZ AUTHORISED OPERATIONS

Notification No. 40 / 2012-Service Tax

New Delhi, the 20th June, 2012

G.S.R. (E). – In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) read with sub-section 3 of section 95 of Finance (No.2), Act, 2004 (23 of 2004) and sub-section 3 of section 140 of the Finance Act, 2007(22 of 2007) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 17/2011-Service Tax, dated the 1st March, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R.174(E), dated the 1st March, 2011, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ) or Developer of SEZ and used for the authorised operations, from the whole of the service tax, education cess and secondary and higher education cess leviable thereon.

2. The exemption contained in this notification shall be subject to the following conditions, namely:-

(a) the exemption shall be provided by way of refund of service tax paid on the specified services received by a unit located in a SEZ or the developer of SEZ and used for the authorised operations:

Provided that where the specified services received in SEZ and used for the authorised operations are wholly consumed within the SEZ, the person liable to pay service tax has the option not to pay the service tax ab initio instead of the SEZ unit or the developer claiming exemption by way of refund in terms of this notification.

Explanation.- For the purposes of this notification, the expression "wholly consumed" refers to such specified services received by the unit of a SEZ or the developer and used for the authorised operations, where the place of provision determinable in accordance with the Place of Provision of Services Rules, 2012(hereinafter referred as the POP Rules) is as under:-

1. in respect of services specified in rule 4 of the POP Rules, the place where the services are actually performed is within the SEZ ; or
2. in respect of services specified in rule 5 of the POP Rules, the place where the property is located or intended to be located is within the SEZ; or
3. in respect of services other than those falling under clauses (i) and (ii), the recipient does not own or carry on any business other than the operations in SEZ;

(b) where the specified services received by the unit of a SEZ or developer are not wholly consumed within SEZ, maximum refund shall be restricted to the extent of the ratio of export turnover of goods and services multiplied by the service tax paid on services other than wholly consumed services to the total turnover for the given period to which the claim relates, i.e.,

Refund amount = (Export turnover of goods Services of SEZ Unit/Developer) + X Service tax paid on services other than wholly consumed Services (both for SEZ and DTA) / Total turnover for the period

Explanation.- For the purposes of condition (b),-

1. "refund amount" means the maximum refund that is admissible for the period;

2. "export turnover of goods" means the value of final products and intermediate products cleared during the relevant period and exported;
3. "export turnover of services" means the value of the export service calculated in the following manner, namely:-

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period;

4. "total turnover" means sum total of the value of-

1. (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;
2. export turnover of services determined in terms of clause (C) and the value of all other services, during the relevant period; and
3. for the purpose of claiming exemption, the Unit of a SEZ or developer shall obtain a list of services that are liable to service tax as are required for the authorised operations approved by the Approval Committee (hereinafter referred to as the specified services) of the concerned SEZ;
4. for the purpose of claiming ab initio exemption, the unit of a SEZ or developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, in addition to the list specified under condition (c); the unit of a SEZ or developer who does not own or carry on any business other than the operations in SEZ, shall declare to that effect in Form A-1;
5. the unit of a SEZ or developer claiming the exemption shall declare that the specified services on which exemption and/ or refund is claimed, have been used for the authorised operations;
6. the unit of a SEZ or developer claiming the exemption by way of refund, should have paid the amount indicated in the invoice, bill or as the case may be, challan, including the service tax payable, to the person liable to pay the

said tax or the amount of service tax payable under reverse charge, as the case may be, under the provisions of the said Act;

7. no CENVAT credit of service tax paid on the specified services used for the authorised operations in a SEZ has been taken under the CENVAT Credit Rules, 2004;
8. no refund shall be available on services wholly consumed for operations in the Domestic Tariff Area (DTA) worked out in the same manner as clauses (i) and (ii) of the explanation to condition (a);
9. exemption or refund of service tax paid on the specified services other than wholly consumed services used for the authorised operations in a SEZ shall not be claimed except under this notification;
10. the unit of a SEZ or developer, who intends to avail exemption and or refund under this notification, shall maintain proper account of receipt and use of the specified services on which exemption is claimed, for authorised operations in the SEZ.

3. The following procedure should be adopted for claiming the benefit of the exemption contained in this notification, namely:-

1. the unit of a SEZ or developer, who has paid the service tax leviable under section 66B of the said Act shall avail the exemption by filling a claim for refund of service tax paid on specified services used for the authorised operations;
2. the unit of a SEZ or developer who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Act or the rules made thereunder, shall file the claim for refund to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the SEZ unit or developer, as the case may be, in Form A-2;
3. the unit of a SEZ or developer who is not so registered under the provisions referred to in clause (b), shall, before filing a claim for refund under this notification, file a declaration with the Assistant Commissioner of Central

Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the SEZ unit or developer, as the case may be, in Form A-3;

4. the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the unit of a SEZ or developer, referred to in clause (c), within seven days from the date of receipt of the said declaration, in Form A-3;
5. claim for refund shall be filed, within one year from the end of the month in which actual payment of service tax was made by such developer or unit, to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;
6. the refund claim shall be accompanied by the following documents, namely:-

1. a copy of the list of specified services as are required for the authorized operations in the SEZ, as approved by the Approval Committee; wherever applicable, a copy of the declaration made in Form A-1;
2. invoice or a bill or as the case may be, a challan, issued in accordance with the provisions of the said Act or rules made thereunder, in the name of the unit of a SEZ or developer, by the registered service provider, along with proof of payment for such specified services used for the authorised operations and service tax paid, in original;
3. a declaration by the unit of a SEZ or developer, claiming such exemption, to the effect that—

1. the specified services on which refund of service tax claimed, has been used for the authorized operations in the SEZ ;
2. proper account of the specified services received and used for the authorised operations are maintained by the developer or unit of the SEZ and the same shall be produced to the officer sanctioning refund, on demand;
3. accounts or documents furnished by the unit of a SEZ or developer as proof of payment of service tax claimed as refund, based on the invoice, or bill , or

as the case may be challan issued by the registered service provider indicating the service tax paid on such specified services, are true and correct in all respects;

7. the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after verifying that,-

1. the refund claim is complete in all respects;
2. the information furnished in Form A-2 and in supporting documents correctly indicate the service tax involved in the specified services used for the authorised operations in the SEZ, which is claimed as refund, and has been actually paid to the service provider, shall refund the service tax paid on the specified services;

8. a service provider shall provide the specified services falling under wholly consumed category, under ab initio exemption granted by this notification, to a unit of a SEZ or developer, for authorised operations, subject to the submission of list specified in condition (c) under paragraph 2 and a declaration in Form A-1;
9. where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service tax refunded shall be recoverable under the provisions of the said Act and the rules made there under, as if it is recovery of service tax erroneously refunded;

4. Words and expressions used in this notification and defined in the Special Economic Zones Act, 2005 (28 of 2005) or the rules made thereunder, shall apply, so far as may be, in relation to refund of service tax under this notification as they apply in relation to a SEZ.

Explanation.- For the purposes of this notification, "statutory auditor" refers to a Chartered Accountant who audits the annual accounts of the unit of a SEZ or developer for the purposes of the Companies Act, 1956 (1 of 1956) or the Income tax Act, 1961(43 of 1961).

5. This notification shall come into force on the 1st day of July, 2012.

(Rajkumar Digvijay)
Under Secretary to the Government of India
[F. No. 334/1/2012-TRU]

FORM A-1
DECLARATION BY THE UNIT OF A SEZ OR DEVELOPER FOR AVAILING AB INITIO EXEMPTION UNDER NOTIFICATION No._____ DATED _____
[Refer condition (d) under paragraph 2]

1. Name of the SEZ Unit/Developer:
2. Address of the SEZ Unit/Developer with Telephone and Email:
3. Permanent Account Number(PAN) of the SEZ Unit/Developer:
4. Import and Export Code Number:
5. Jurisdictional Central Excise/Service Tax Division:
6. Service Tax Registration Number/Service Tax Code:
7. Declaration: I/We hereby declare that-

1. The information given in this application form is true, correct and complete in every respect and I am authorised to sign on behalf of the SEZ Unit/Developer;
2. I/We maintain proper account of specified services, as approved by the Approval Committee of SEZ, received and used for authorised operations in SEZ; I/we shall make available such accounts and related records, at all reasonable times, to the jurisdictional Central Excise Officers for inspection or scrutiny.
3. I/We shall use/have used specified services for authorised operations in the SEZ.
4. I/We declare that we do not own or carry on any business other than the operations in SEZ [where this item is not applicable, declaration may be submitted after striking out the inapplicable portion];

5. I/We are aware that the Declaration is valid only for the purpose specified in Notification _____ dated _____ and is subject to fulfillment of conditions.
6. I/We intend to claim ab initio exemption from the following service provider(s) in the Domestic Tariff Area(DTA):

Sl.No.	specified service(s) to be received from the DTA service provider(s)	DTA Service provider(s) who provide(s) the specified service(s), for SEZ authorised operations	
		Name and address	Service Tax Registration No.
(1)	(2)	(3)	(4)

Signature and Name of Authorised Person with stamp

Date:

Place:

I have verified the above Declaration; it is correct

Signature, date and stamp of the Specified Officer of the SEZ (Specified Officer shall retain a copy of the verified Declaration, for the purpose of record)

FORM A-2

APPLICATION FOR CLAIMING REFUND OF SERVICE TAX PAID ON SPECIFIED SERVICES USED FOR AUTHORISED OPERATIONS IN SEZ

To

The Assistant/Deputy Commissioner of Central Excise/Service Tax
_____ Division, _____ Commissionerate

Sir,

I /We claim refund of Rs..... (Rupees in words)

(a) in respect of service tax paid on 'wholly consumed' specified services used for the authorized operations in SEZ, as approved by the Approval Committee of the _____ SEZ [Rupees _____]

(b) in respect of service tax paid on specified services, other than those that are wholly consumed, used for the authorized operations of SEZ Unit/Developer, as approved by the Approval Committee of the _____ SEZ [Rupees _____].

1. Name of the SEZ Unit/Developer:
2. Address of the SEZ Unit/Developer with Telephone and Email:
3. Address of the Registered/Head Office with Telephone and Email:
4. Permanent Account Number(PAN) of the SEZ Unit/Developer:
5. Import and Export Code Number:
6. Jurisdictional Central Excise/Service Tax Division:
7. Service Tax Registration Number/Service Tax Code:
8. Information regarding Bank Account (Bank, Address of Branch, Account Number) in which refund amount should be credited/to be deposited:
9. Details regarding Service Tax refund claimed:

   9.1 Refund arising out of 'wholly consumed' specified services:

Table-A

Sl. No.	Details regarding specified services used in the authorized operations of SEZ, as approved by the Approval Committee							Amount of service tax claimed as Refund(includi	Document enclosed as proof of payment of service tax by the SEZ
	Description of taxable service	Name and address of	Service Tax Registration Number of	Invoice/ Bill/ Challan (original enclosed)			Amount of Service tax paid (inclu		
				Number	Date	Value of taxable service (Rupees)			

	(as per the invoice) used in the authorized operations of SEZ	Service Provider	Service Provider				ding education cess) (Rupees)	ng education cess) (Rupees)	Unit/Developer, (sl.no and date of invoice/ bill / challan)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.									
2.									
TOTAL									--

9.2. Refunds arising out of specified services, other than those are 'wholly consumed':

I/We request refund of service tax paid on specified services, other than those that are 'wholly consumed',-

1. used in the manufacture of final products exported from SEZ
2. used in providing output services exported from SEZ

I/We furnish following true and correct particulars, in Tables 'B' and 'C', for the purpose of above refund:

Table – B

No.	Specified services other than those that are 'wholly consumed', used for authorised operations by SEZ Unit/Developer, during the period for which refund is claimed							Document enclosed as proof of payment of service tax (sl.no and date of invoice/ bill / challan)
	Description of taxable service(as per the invoice) used in the authorized operations of SEZ	Name and address of Service Provider	Service Tax Registration Number of Service Provider	Invoice/ Bill/ Challan (original enclosed)			Amount of Service tax paid (including education cess)(Rupees)	
				Number	Date	Value of taxable service (Rupees)		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.								
2.								
TOTAL								--

Table - C

Details		Details for the period to which the invoices pertain and refund is claimed		
		Export turnover of SEZ Unit(s)/Developer	Service tax paid on input services other than wholly consumed services	Total turnover
		(1)	(2)	(3)
-Goods	(a)		---	

Output services	(b)		----	
Others(Bought out goods sold)	(c)	----	----	
Total (a)+(b)+(c)=(d)				

Instructions for compilation of the above statistical table:

1. To calculate the export turnover of SEZ, in the case of export of goods, FOB value provided in Shipping Bills or Bills of Export, should be taken into account, which have been duly certified by the officer of customs to the effect that the goods have been exported;
2. To calculate the export turnover of SEZ, in the case of export of services, value of output services exported shall be on the basis of certificates issued by the bank certifying the realization of export proceeds.
3. Amount of service tax claimed as refund, under Table B read with Table C: Rupees_____
4. Particulars filled in the Table C should be verified and certified as true by the statutory auditor of the SEZ Unit/Developer

---

---I/We Declare that-

1. information given in this application for refund is true, correct and complete in every respect and that I am authorised to sign this application for refund of service tax;
2. the specified services, as approved by the Approval Committee of SEZ, on which exemption/refund is claimed are actually used for the authorised operations in a SEZ;
3. refund is being claimed only on the service tax actually paid on the specified services used for the authorised operations in a SEZ; refund of service tax has not been claimed or received earlier, on the basis of above documents/information;

4. We have not taken any CENVAT credit of service tax paid on the specified services under the CENVAT Credit Rules, 2004;
5. accounts or documents furnished as proof of payment of service tax being claimed as refund, as per the invoice, bill or challan of the service provider indicating the service tax paid on such specified services, are true and correct in all respects;
6. proper account of receipt and use of the specified services on which exemption/refund is claimed, for the authorised operations in the SEZ, is maintained and the same shall be produced to the Officer sanctioning refund, on demand.

Signature and name
(of proprietor/managing partner/
person authorised by managing director of SEZ Unit/Developer)
with complete address, telephone and e-mail

Date:

Place:

FORM A-3
DECLARATION FOR OBTAINING SERVICE TAX CODE
[Refer clause (c) under paragraph 3]

1. Name of the SEZ Unit/Developer:
2. Address of the SEZ Unit/Developer with Telephone and Email:
3. Address of the Registered/Head Office:
4. Permanent Account Number(PAN) of the SEZ Unit/Developer:
5. Import and Export Code Number:
6. Jurisdictional Central Excise/Service Tax Division:
7. Service Tax Registration Number/Service tax Code:
8. Details of Bank Account (Bank, Address of Branch, Account Number)
9. (a) Constitution of SEZ Unit/Developer [proprietorship/partnership/Registered Private Limited Company/Registered

Public Limited Company/Others(specify)]

(b) Name, Address, Telephone number of Proprietor/partner/director(s)

10. Name, designation and address of the authorised signatory/signatories
11. I/We hereby declare that-

1. The information given in this application form is true, correct and complete in every respect and that I am authorised to sign on behalf of the SEZ Unit/Developer;
2. I/We shall maintain proper account of specified services as approved by the Approval Committee of SEZ, received and used for authorised operations in SEZ; and shall make available such accounts and related records, at all reasonable times, to the Department for inspection or scrutiny.
3. I/We shall use/have used specified services for authorised operations in the SEZ.

Signature and Name of Authorised Person with stamp

Date:

Place:

REBATE FOR SERVICE TAX PAID ON SERVICES USED FOR EXPORT OF GOODS — NEW SIMPLIFIED SCHEME — NOTIFICATION NO. 52/2011-S.T., SUPERSEDED

Not. No. 41/2012-ST dated 29 June 2012

In exercise of the powers conferred by section 93A of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) number 52/2011-Service Tax, dated the 30th December, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 945(E), dated the 30th December, 2011, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby grants rebate of service tax paid (hereinafter referred to as rebate) on the taxable services which are received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods, subject to the extent and manner specified herein below, namely :-

Provided that –

(a) the rebate shall be granted by way of refund of service tax paid on the specified services.

Explanation. - For the purposes of this notification,-

(A) "specified services" means -

(i) in the case of excisable goods, taxable services that have been used beyond the place of removal, for the export of said goods;

(ii) in the case of goods other than (i) above, taxable services used for the export of said goods;

but shall not include any service mentioned in sub-clauses (A), (B), (BA) and (C) of clause (l) of rule (2) of the CENVAT Credit Rules, 2004;

(B) "place of removal" shall have the meaning assigned to it in section 4 of the Central Excise Act, 1944 (1 of 1944);

(b) the rebate shall be claimed either on the basis of rates specified in the Schedule of rates annexed to this notification (hereinafter referred to as the Schedule), as per the procedure specified in paragraph 2 or on the basis of documents, as per the procedure specified in paragraph 3;

(c) the rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2;

(d) no CENVAT credit of service tax paid on the specified services used for export of goods has been taken under the CENVAT Credit Rules, 2004;

(e) the rebate shall not be claimed by a unit or developer of a Special Economic Zone;

(2) the rebate shall be claimed in the following manner, namely :-

(a) manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder shall register his central excise registration number and bank account number with the customs;

(b) exporter who is not so registered under the provisions referred to in clause (a), shall register his service tax code number and bank account number with the customs;

(c) service tax code number referred to in clause (b), shall be obtained by filing a declaration in Form A-2 to the Assistant Commissioner of Central Excise or the

Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;

(d) the exporter shall make a declaration in the electronic shipping bill or bill of export, as the case may be, while presenting the same to the proper officer of customs, to the effect that --

(i) the rebate of service tax paid on the specified services is claimed as a percentage of the declared Free On Board (FOB) value of the said goods, on the basis of rate specified in the Schedule;

(ii) no further rebate shall be claimed in respect of the specified services, under procedure specified in paragraph 3 or in any other manner, including on the ground that the rebate obtained is less than the service tax paid on the specified services;

(iii) conditions of the notification have been fulfilled;

(e) service tax paid on the specified services eligible for rebate under this notification, shall be calculated by applying the rate prescribed for goods of a class or description, in the Schedule, as a percentage of the FOB value of the said goods;

(f) amount so calculated as rebate shall be deposited in the bank account of the exporter;

(g) shipping bill or bill of export on which rebate has been claimed on the basis of rate specified in the Schedule, by way of procedure specified in this paragraph, shall not be used for rebate claim on the basis of documents, specified in paragraph 3;

(h) where the rebate involved in a shipping bill or bill of export is less than rupees fifty, the same shall not be allowed;

(3) the rebate shall be claimed in the following manner, namely :-

(a) rebate may be claimed on the service tax actually paid on any specified service on the basis of duly certified documents;

(b) the person liable to pay service tax under section 68 of the said Act on the taxable service provided to the exporter for export of goods shall not be eligible to claim rebate under this notification;

(c) the manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall file a claim for rebate of service tax paid on the taxable service used for export of goods to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture in Form A-1;

(d) the exporter who is not so registered under the provisions referred to in clause (c), shall before filing a claim for rebate of service tax, file a declaration in Form A-2, seeking allotment of service tax code, to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;

(e) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the exporter referred to in clause (d), within seven days from the date of receipt of the said Form A-2;

(f) on obtaining the service tax code, exporter referred to in clause (d), shall file the claim for rebate of service tax to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, in Form A-1;

(g) the claim for rebate of service tax paid on the specified services used for export of goods shall be filed within one year from the date of export of the said goods.

Explanation. - For the purposes of this clause the date of export shall be the date on which the proper officer of Customs makes an order permitting clearance

and loading of the said goods for exportation under section 51 of the Customs Act, 1962 (52 of 1962);

(h) where the total amount of rebate sought under a claim is upto 0.50% of the total FOB value of export goods and the exporter is registered with the Export Promotion Council sponsored by Ministry of Commerce or Ministry of Textiles, Form A-1 shall be submitted along with relevant invoice, bill or challan, or any other document for each specified service, in original, issued in the name of the exporter, evidencing payment for the specified service used for export of the said goods and the service tax paid thereon, certified in the manner specified in sub-clauses (A) and (B) :

(A) if the exporter is a proprietorship concern or partnership firm, the documents enclosed with the claim shall be self-certified by the exporter and if the exporter is a limited company, the documents enclosed with the claim shall be certified by the person authorised by the Board of Directors;

(B) the documents enclosed with the claim shall also contain a certificate from the exporter or the person authorised by the Board of Directors, to the effect that specified service to which the document pertains has been received, the service tax payable thereon has been paid and the specified service has been used for export of the said goods under the shipping bill number;

(i) where the total amount of rebate sought under a claim is more than 0.50% of the total FOB value of the goods exported, the procedure specified in clause (h) above shall stand modified to the extent that the certification prescribed thereon, in sub-clauses (A) and (B) shall be made by the Chartered Accountant who audits the annual accounts of the exporter for the purposes of the Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961 (43 of 1961), as the case may be;

(j) where the rebate involved in a claim is less than rupees five hundred, the same shall not be allowed;

(k) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself,-

(i) that the service tax rebate claim filed in Form A-1 is complete in every respect;

(ii) that duly certified documents have been submitted evidencing the payment of service tax on the specified services ;

(iii) that rebate has not been already received on the shipping bills or bills of export on the basis of procedure prescribed in paragraph 2; and

(iv) that the rebate claimed is arithmetically accurate,

refund the service tax paid on the specified service within a period of one month from the receipt of said claim :

Provided that where the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, has reason to believe that the claim, or the enclosed documents are not in order or that there is a reason to deny such rebate, he may, after recording the reasons in writing, take action, in accordance with the provisions of the said Act and the rules made thereunder;

(4) Where any rebate of service tax paid on the specified services has been allowed to an exporter on export of goods but the sale proceeds in respect of said goods are not received by or on behalf of the exporter, in India, within the period allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such rebate shall be deemed never to have been allowed and may be recovered under the provisions of the said Act and the rules made thereunder;

(5) This notification shall come into effect on the 1st day of July, 2012.

Form A-1

Application for claiming rebate of service tax paid on specified services used for export of goods, under Notification No.___ / 20__-ST

To,

The Deputy/Assistant Commissioner of Central Excise

Sir,

I/We claim rebate of Rs..... (Rupees in words), under Notification No._____ dated_____ , in respect of service tax paid on the specified services used for export of goods.

1. Name of the exporter:

2. Membership number of the Export Council:

3. Name of the Export Council:

4. Address of the registered / head office of exporter:

5. Telephone Number and e-mail ID of the exporter:

6. Division …… Commissionerate ……

7. Central Excise Registration Number (for manufacturer exporter) / Service Tax Code Number (for exporters other than manufacturer exporter)

8. Import Export Code Number……..

9. Details of Bank Account (Name of Bank, branch address and account number)

10. Details of the rebate claim (separately for each Shipping Bill) :

(Rupees in thousands)

S. No.	Details of specified services used for export of goods on which rebate of service tax is claimed	
	Details of shipping bill/ bill of export, etc. (2)	Details of goods exported (3)

	No.	Date	Date of Let Export Order	Bill of Lading or Airway Bill Number	Date.	Description of goods exported	Quantity	Unit	FOB value
(1)									
Details of specified services used for export of goods mentioned in Columns 2 and 3. (4)							Documents attached to evidence the amount of service tax paid and establish the use of specified service in the export of goods. (5)	Total amount of service tax paid which is claimed as rebate. (6)	
Name of service provider.	Service Tax Registration No./ Service	Invoice No (pl.attach original invoi	Date.	Description of specified service as per	Value of specified service used for export	Total amount of service tax paid.		In Figures.	As a percentage of

	Tax Code	ce)		the invoice	of goods as per the invoice				f.o.b. value in shipp ing bill

9. Declaration :-

I/We hereby declare that -

(i) the information given in this application form is true, correct and complete in every respect, in accordance with the notification and that I am authorised to sign on behalf of the exporter; electronic rebate of service tax has not been received from customs on the shipping bills on which rebate is claimed;

(ii) no CENVAT credit of service tax paid on the specified services used for export of goods has been taken/shall be taken under the CENVAT Credit Rules, 2004;

(iii) rebate has been claimed for service tax which has been actually paid on the specified services used for export of goods;

(iv) I/we shall maintain records pertaining to the specified services used for export of goods and shall make available, at the declared premises, at all reasonable time, such records for inspection and examination by the Central Excise Officer authorised in writing by the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be.

Date:

Place:

Signature and full address of Exporter

(Affix stamp)

Form A-2

Declaration by an exporter, for obtaining Service Tax Code

(referred under paragraph 2 (c) and 3(d) of Notification No. ___ /20__- ST dated _____)

1. Name of the exporter:

2. Address of the registered office or head office of the Exporter :

3. Permanent Account Number (PAN) of the Exporter :

4. Import Export Code (IEC) of the Exporter :

5. Details of Bank Account of the Exporter :

(a) Name of the Bank :

(b) Name of the Branch :

(c) Account Number :

6. (a)Constitution of Exporter [Proprietorship /Partnership/ Registered Private Limited Company /Registered Public Limited Company /Others (specify)]

(b) Name, address and telephone number of proprietor/partner/ director

7. Name, designation and address of the authorised signatory/ signatories:

8. I / We hereby declare that-

(i) the information given in this application form is true, correct and complete in every respect and that I am authorised to sign on behalf of the exporter;

(ii) I / we shall maintain records pertaining to specified services used for export of goods and shall make available, at the declared premises, at all reasonable time, such records for inspection and examination by the Central Excise Officer authorised in writing by the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be.

(Signature of the applicant/authorised person with stamp)

Date:

Place:

Schedule of rates

The Chapter or sub-Heading and descriptions of goods in the following Schedule are aligned with the tariff items and descriptions of goods in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). The General Rules for the Interpretation of the First Schedule to the said Customs Tariff Act, 1975 shall *mutatis mutandis* apply for classifying the export goods listed in the Schedule.

Sl. No.	**Chapter or sub-Heading No.**	**Description of goods**	**Rate**
(1)	(2)	(3)	(4)
1	01	Live animal	Nil
2	02	Meat and edible meat offal	0.12
3	03	Fish and crustaceans, molluscs and other aquatic invertebrates	0.12
4	04	Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included	0.12
5	05	Product of animal origin not elsewhere specified or included.	0.12
6	06	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage	0.12
7	07	Edible vegetables and certain roots and tubers	0.12

8	08	Edible fruits and nuts, peel of citrus fruit or melons	0.12
9	09	Coffee, tea, mate and spices	0.12
10	10	Cereals	0.12
11	11	Products of the milling industry; malt; starches; inulin; wheat gluten.	0.12
12	12	Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial and medicinal plants; straw and fodder	0.12
13	13	Lac; gums, resins and other vegetable saps and extracts	0.12
14	14	Vegetable plaiting materials; vegetable products, not elsewhere specified or included.	0.12
15	15	Animal or vegetable fats and oils and their cleavage products prepared edible fats; animal or vegetable waxes	0.12
16	16	Preparations of meat, or fish or of crustaceans, molluscs or other aquatic invertebrates	0.12
17	17	Sugars and sugar confectionery	0.12
18	18	Cocoa and cocoa preparations	0.12
19	19	Preparations of cereals, flour, starch or milk; pastry cooks' products	0.12
20	20	Preparation of vegetables, fruits, nuts or other parts of plants	0.20
21	21	Miscellaneous edible preparations	0.12
22	2201	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter not flavoured; ice and snow	0.12
23	2202	Waters, including mineral waters and aerated waters containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of heading 2009	0.12
24	2203	Beer made from malt	0.12
25	2204	Wine of fresh grapes, including fortified wines; grape must other than that of heading 2009	0.12
26	2205	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances	0.12
27	2206	Other fermented beverages (for example cider, perry, mead); mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included	0.12
28	2207	Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol. or higher; ethyl alcohol and other spirits, denatured, of any strength	0.12

29	2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol.; spirit, liquors and other spirituous beverages	0.12
30	2209	Vinegar and substitutes for vinegar obtained from acetic acid	0.12
31	23	Residues and waste from the food industries; prepared animal fodder	0.06
32	24	Tobacco and manufactured tobacco substitutes	0.04
33	25	Salt; sulphur; earths and stone; plastering materials, lime and cement	0.12
34	26	Ores, slag and ash	0.20
35	27	Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	Nil
36	28	Inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes	0.12
37	29	Organic chemicals	0.12
38	30	Pharmaceutical products	0.20
39	31	Fertilizers	Nil
40	32	Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks	0.04
41	33	Essential oils and resinoids; perfumery, cosmetic or toilet preparations	0.12
42	34	Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modeling pastes, "dental waxes" and dental preparations with a basis of plaster	0.12
43	35	Albuminoidal substances; modified starches; glues; enzymes	0.12
44	36	Explosives	0.12
45	37	Photographic or cinematographic goods	0.12
46	38	Miscellaneous chemical products	0.12
47	39	Plastics and articles thereof	0.12
48	40	Rubber and articles thereof	0.06
49	41	Raw hides and skins (other than fur skins) and leather	0.04
50	4201	Saddlery and harness for any animal (including traces, leads, knee pads, muzzles, saddle cloths, saddle bags, dog coats and the like), of any material	0.12

51	4202	Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, insulated food or beverages bags, toilet bags, rucksacks, handbags, shopping-bags, wallets, purses, map-cases, cigarette-cases, tobacco-pouches, tool bags, sports bags, bottle-cases, jewellery boxes, powder-boxes, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paper-board, or wholly or mainly covered with such materials or with paper	0.12
52	4203	Articles of apparel and clothing accessories, of leather or of composition leather	0.12
53	4204	Omitted	-
54	4205	Other articles of leather or of composition leather	0.12
55	4206	Articles of gut (other than silk-worm gut), of goldbeater's skin, of bladders or of tendons	0.12
56	4301	Raw fur skins (including heads, tails, paws and other pieces or cuttings, suitable for furriers' use), other than raw hides and skins of headings 4101, 4102 or 4103	Nil
57	4302	Tanned or dressed fur skins (including heads, tails, paws and other pieces or cuttings), unassembled, or assembled (without the addition of other materials) other than those of heading 4303	0.12
58	4303	Articles of apparel, clothing accessories and other articles of fur skin	0.12
59	4304	Artificial fur and articles thereof	0.12
60	4401	Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms	Nil
61	4402	Wood charcoal (including shell or nut charcoal), whether or not agglomerated	Nil
62	4403	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared	Nil
63	4404	Hoop wood; split poles; piles, pickets and stakes of wood, pointed but not sawn lengthwise; wooden sticks, roughly trimmed but not turned, bent or otherwise worked, suitable for the manufacture of walking sticks, umbrellas, tool handles or the like; chip wood and the like	Nil
64	4405	Wood wool; wood flour	Nil
65	4406	Railway or tramway sleepers (crossties) of wood	Nil
66	4407	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end jointed, of a thickness exceeding 6 mm	Nil

67	4408	Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm	0.12
68	4409	Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, v-jointed, beaded, moulded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or end-jointed	0.12
69	4410	Particle board, oriented strand board (OSB) and similar board (for example wafer board) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances	0.12
70	4411	Fiberboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances	0.12
71	4412	Plywood, veneered panels and similar laminated wood	0.12
72	4413	Densified wood, in blocks, plates, strips or profile shapes	0.12
73	4414	Wooden frames for paintings, photographs, mirrors or similar objects	0.12
74	4415	Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, Box pallets and other load boards, of wood; pallet collars of wood	0.12
75	4416	Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves	0.12
76	4417	Tools, tool bodies, tool handles, broom or brush bodies and handles, of wood; boot or shoe lasts and trees, of wood	0.12
77	4418	Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, Shingles and shakes	0.12
78	4419	Tableware and kitchenware, of wood	0.12
79	4420	Wood marquetry and inlaid wood; caskets and cases for jewellery or cutlery, and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling in chapter 94	0.12
80	4421	Other articles of wood	0.12
81	45	Cork and articles of cork	Nil
82	46	Manufactures of straw, of esparto or of other plaiting materials; basket-ware and wickerwork.	0.12
83	47	Pulp of wood or of other fibrous cellulosic material; recovered (waste and scrap) paper or paperboard	Nil
84	4801	Newsprint, in rolls or sheets	0.12

85	4802	Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes, and non perforated punch card and punch tape paper, in rolls or rectangular (including square)sheets of any size, other than paper of heading 4801 or 4803; hand-made paper and paperboard	0.12
86	4803	Toilet or facial tissue stock, towel or napkin stock and similar paper of a kind used for household or sanitary purposes, cellulose wadding and webs of cellulose fibres, whether or not creped, crinkled, embossed, perforated, surface-coloured, surface-decorated or printed, in rolls or sheets	0.12
87	4804	Uncoated craft paper and paperboard, in rolls or sheets, other than that of heading 4802 or 4803	0.12
88	4805	Other uncoated paper and paperboard, in rolls or sheets, not further worked or processed than as specified in Note 3 to this Chapter	0.12
89	4806	Vegetable parchment, greaseproof papers, tracing papers and glassine and other glazed transparent or translucent papers, in rolls or sheets	0.12
90	4807	Composite paper and paperboard (made by sticking flat layers of paper or paperboard together with an adhesive), not surface-coated or impregnated, whether or not internally reinforced, in rolls or sheets	0.12
91	4808	Paper and paperboard, corrugated (with or without glued flat surface sheets), creped, crinkled, embossed or perforated, in rolls or sheets, other than paper of the kind described in heading 4803	0.12
92	4809	Carbon paper, self-copy paper and other copying or transfer papers (including coated or impregnated paper for duplicator stencils or offset plates), whether or not printed, in rolls or sheets	0.12
93	4810	Paper and paperboard, coated on one or both sides with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating, whether or not surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size	0.12
94	4811	Paper, paperboard, cellulose wadding and webs of cellulose fibres, coated, impregnated, covered, surface coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810	0.12
95	4812	Filter blocks, slabs and plates, of paper pulp	0.12
96	4813	Cigarette paper, whether or not cut to size or in the form of booklets or tubes	0.12
97	4814	Wallpaper and similar wall coverings; window transparencies of paper	0.12

98	4815	Omitted	-
99	4816	Carbon-paper, self-copy paper and other copying or transfer papers (other than those of heading 4809), duplicator stencils and offset plates, of paper, whether or not put up in boxes	0.12
100	4817	Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery	0.18
101	4818	Toilet paper and similar paper, cellulose wadding or webs of cellulose fibres, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, table cloths, serviettes, napkins for babies, tampons, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibres	0.18
102	4819	Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like	0.18
103	4820	Registers, account books, note books, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, excise books, blotting-pads, binders (loose-leaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers, of paper or paperboard	0.18
104	4821	Paper or paperboard labels of all kinds, whether or not printed	0.18
105	4822	Bobbins, spools, cops and similar supports of paper pulp, paper or paperboard (whether or not perforated or hardened)	0.18
106	4823	Other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres	0.18
107	49	Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans	0.12
108	50	Silk	0.12
109	51	Wool, fine or coarse animal hair, horsehair yarn and woven fabrics	0.12
110	5201	Cotton, not carded or combed	0.04
111	5202	Cotton waste (including yarn waste and garnetted stock)	0.04
112	5203	Cotton, carded or combed	0.04
113	5204	Cotton sewing thread, whether or not put up for retail sale	0.04

114	5205	Cotton yarn (other than sewing thread), containing 85% or more by weight of cotton, not put up for retail sale	0.06
115	5206	Cotton yarn (other than sewing thread), containing less than 85% by weight of cotton, not put up for retail sale	0.06
116	5207	Cotton yarn (other than sewing thread) put up for retail sale	0.06
117	5208	Woven fabrics of cotton, containing 85% or more by weight of cotton, weighing not more than 200 g/m^2	0.12
118	5209	Woven fabrics of cotton, containing 85% or more by weight of cotton, weighing more than 200 g/m^2	0.12
119	5210	Woven fabrics of cotton, containing less than 85% by weight of cotton, mixed mainly or solely with man-made fibres, weighing not more than 200 g/m^2	0.12
120	5211	Woven fabrics of cotton, containing less than 85% by weight of cotton, mixed mainly or solely with man-made fibres, weighing more than 200 g/m^2	0.12
121	5212	Other woven fabrics of cotton	0.12
122	53	Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn	0.12
123	5401	Sewing thread of man-made filaments, whether or not put up for retail sale	0.06
124	5402	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex	0.06
125	5403	Artificial filament yarn (other than sewing thread), not put for retail sale, including artificial mono filament of less than 67 decitex	0.06
126	5404	Synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; strip and the like (for example, artificial straw) of synthetic textile materials of an apparent width not exceeding 5 mm	0.06
127	5405	Artificial monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; strip and the like (for example, artificial straw) of artificial textile materials of an apparent width not exceeding 5 mm	0.06
128	5406	Man-made filament yarn (other than sewing thread), put up for retail sale	0.06
129	5407	Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404	0.12
130	5408	Woven fabrics of artificial filament yarn, including woven fabrics obtained from materials of heading 5405	0.12
131	5501	Synthetic filament tow	0.06

132	5502	Artificial filament tow	0.06
133	5503	Synthetic staple fibres, not carded, combed or otherwise processed for spinning	0.06
134	5504	Artificial staple fibres, not carded, combed or otherwise processed for spinning	0.06
135	5505	Waste (including noils, yarn waste and garneted stock) of man-made fibres	0.06
136	5506	Synthetic staple fibres, carded, combed or otherwise processed for spinning	0.06
137	5507	Artificial staple fibres, carded, combed or otherwise processed for spinning	0.06
138	5508	Sewing thread of man-made staple fibres, whether or not put up for retail sale	0.06
139	5509	Yarn (other than sewing thread) of synthetic staple fibres, not put up for retail sale	0.06
140	5510	Yarn (other than sewing thread) of artificial staple fibres, not put up for retail sale	0.06
141	5511	Yarn (other than sewing thread) of man-made staple fibres, put up for retail sale	0.06
142	5512	Woven fabrics of synthetic staple fibres, containing 85% or more by weight of synthetic staple fibres	0.12
143	5513	Woven fabrics of synthetic staple fibres, containing less than 85% by weight of such fibres, mixed mainly or solely with cotton, of a weight not exceeding 170g/m^2	0.12
144	5514	Woven fabrics of synthetic staple fibres, containing less than 85% by weight of such fibres, mixed mainly or solely with cotton, of a weight exceeding 170 g/m^2	0.12
145	5515	Other woven fabrics of synthetic staple fibres	0.12
146	5516	Woven fabrics of artificial staple fibres	0.12
147	56	Wadding, felt and non-woven; special yarns; twine, cordage, ropes and cables and articles thereof	0.12
148	57	Carpets and other textile floor coverings	0.12
149	58	Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery	0.12
150	59	Impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use	0.12
151	60	Knitted or crocheted fabrics	0.12
152	61	Articles of apparel and clothing accessories, knitted or crocheted	0.18

153	62	Articles of apparel and clothing accessories, not knitted or crocheted	0.18
154	63	Other made up textiles articles; sets; worn clothing and worn textile articles; rags	0.18
155	64	Footwear, gaiters and the like; parts of such articles	0.12
156	65	Headgear and parts thereof	0.06
157	66	Umbrellas, sun umbrellas, walking-sticks, whips, riding-crops and parts thereof	0.04
158	67	Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair	0.12
159	68	Articles of stone, plaster, cement, asbestos, mica or similar materials	0.18
160	69	Ceramic products	0.18
161	70	Glass and glassware	0.18
162	71	Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metals, and articles thereof; imitation jewellery; coin	0.06
163	7201	Pig iron and spiegeleisen in pigs, blocks or other primary forms	0.08
164	7202	Ferro alloys	0.08
165	7203	Ferrous products obtained by direct reduction of iron ore and other spongy ferrous products, in lumps, pellets or similar forms; iron having minimum purity by weight of 99.94%, in lumps, pellets or similar forms	0.08
166	7204	Ferrous waste and scrap; remelting scrap ingots of iron or steel	0.08
167	7205	Granules and powders, of pig iron, spiegeleisen, iron or steel	0.08
168	7206	Iron and non-alloy steel in ingots or other primary forms (excluding iron of heading 7203)	0.08
169	7207	Semi-finished products of iron or non-alloy steel	0.08
170	7208	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated	0.08
171	7209	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated	0.08
172	7210	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated	0.08
173	7211	Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, not clad, plated or coated	0.08
174	7212	Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, clad, plated or coated	0.08

175	7213	Bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel	0.08
176	7214	Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling	0.08
177	7215	Other bars and rods of iron or non-alloy steel	0.08
178	7216	Angles, shapes and sections of iron or non-alloy steel	0.08
179	7217	Wire of iron or non-alloy steel	0.08
180	7218	Stainless steel in ingots or other primary forms; semi-finished products of stainless steel	0.08
181	7219	Flat-rolled products of stainless steel, of a width of 600 mm or more	0.08
182	7220	Flat-rolled products of stainless steel, of a width of less than 600 mm	0.08
183	7221	Bars and rods, hot-rolled, in irregularly wound coils, of stainless steel	0.08
184	7222	Other bars and rods of stainless steel; angles, shapes and sections of stainless steel	0.08
185	7223	Wire of stainless steel	0.08
186	7224	Other alloy steel in ingots or other primary forms; semi-finished products of other alloy steel	0.08
187	7225	Flat-rolled products of other alloy steel, of a width of 600 mm or more	0.08
188	7226	Flat-rolled products of other alloy steel, of a width of less than 600 mm	0.08
189	7227	Bars and rods, hot-rolled, in irregularly wound coils, of other alloy steel	0.08
190	7228	Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel	0.08
191	7229	Wire of other alloy steel	0.08
192	7301	Sheet piling of iron or steel, whether or not drilled, punched or made from assembled elements; welded angles, shapes and sections, of iron or steel	0.08
193	7302	Railway or tramway track construction material of iron or steel, the following: rails, check-rails and rack rails, switch blades, crossing frogs, point rods and other crossing pieces, sleepers (cross-ties), fish-plates, chairs, chair wedges, sole plates (base plates), rail clips, bedplates, ties and other material specialized for jointing or fixing rails	0.08

194	7303	Tubes, pipes and hollow profiles, of cast iron	0.08
195	7304	Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel	0.08
196	7305	Other tubes and pipes (for example, welded, riveted or similarly closed), having circular cross-sections, the external diameter of which exceeds 406.4 mm, of iron or steel	0.08
197	7306	Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel	0.08
198	7307	Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel	0.08
199	7308	Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel	0.08
200	7309	Reservoirs, tanks, vats and similar containers for any material (other than compressed or liquefied gas), of iron or steel, of a capacity exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment	0.08
201	7310	Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment	0.08
202	7311	Containers for compressed or liquefied gas, of iron or steel	0.08
203	7312	Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated	0.08
204	7313	Barbed wire of iron or steel; twisted hoop or single flat wire, barbed or not, and loosely twisted double wire, of a kind used for fencing of iron or steel	0.08
205	7314	Cloth (including endless bands), Grill, netting and fencing, of iron or steel wire; expanded metal of iron or steel	0.08
206	7315	Chain and parts thereof, of iron or steel	0.08
207	7316	Anchors, grapnels and parts thereof, of iron or steel	0.08
208	7317	Nails, tacks, drawing pins, corrugated nails, staples (other than those of heading 8305) and similar articles, of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper	0.08
209	7318	Screws, bolts, nuts, coach-screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel	0.08

210	7319	Sewing needles, knitting needles, bodkins, crochet hooks, embroidery stilettos and similar articles, for use in the hand, of iron or steel; safety pins and other pins, of iron or steel, not elsewhere specified or included	0.08
211	7320	Springs and leaves for springs, of iron or steel	0.08
212	7321	Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron or steel	0.08
213	7322	Radiators for central heating, not electrically heated, and parts thereof, of iron or steel; air heaters and hot air distributors (including distributors which can also distribute fresh or conditioned air), not electrically heated, incorporating a motor-driven fan or blower, and parts thereof, of iron or steel	0.08
214	7323	Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel	0.08
215	7324	Sanitary ware and parts thereof, of iron or steel	0.08
216	7325	Other cast articles of iron or steel	0.08
217	7326	Other articles of iron and steel	0.08
218	7401	Copper mattes; cement copper (precipitated copper)	0.08
219	7402	Unrefined copper; copper anodes for electrolytic refining	0.08
220	7403	Refined copper and copper alloys, unwrought	0.08
221	7404	Copper waste and scrap	0.08
222	7405	Master alloys of copper	0.08
223	7406	Copper powders and flakes	0.08
224	7407	Copper bars, rods and profiles	0.08
225	7408	Copper wire	0.08
226	7409	Copper plates, sheets and strip, of a thickness exceeding 0.15 mm	0.08
227	7410	Copper foil (whether or not printed or backed with paper, per board , plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.15 mm	0.08
228	7411	Copper tubes and pipes	0.08
229	7412	Copper tube or pipe fittings (for example, couplings, elbows, sleeves)	0.08
230	7413	Stranded wire, cables, plated bands and the like, of copper, not electrically insulated	0.08
231	7414	Omitted	-

232	7415	Nails, tacks, drawing pins, staples (other than those of heading 8305) and similar articles, of copper or of iron or steel with heads of copper; screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of copper	0.08
233	7416	Omitted	-
234	7417	Omitted	-
235	7418	Table, kitchen or other household articles and parts thereof, of copper; pot scourers and scouring or polishing pads, gloves and the like, of copper; sanitary ware and parts thereof, of copper	0.08
236	7419	Other articles of copper	0.08
237	75	Nickel and articles thereof	0.08
238	7601	Unwrought aluminium	0.08
239	7602	Aluminium waste and scrap	0.08
240	7603	Aluminium powders and flakes	0.08
241	7604	Aluminium bars, rods and profiles	0.08
242	7605	Aluminium wire	0.08
243	7606	Aluminium plates, sheets and strip, of a thickness exceeding 0.2 mm	0.08
244	7607	Aluminium foil (whether or not printed or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2mm	0.08
245	7608	Aluminium tubes and pipes	0.08
246	7609	Aluminium tube or pipe fittings (for example, couplings, elbows, sleeves)	0.08
247	7610	Aluminium structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); aluminium plates, rods, profiles, tubes and the like, prepared for use in structures	0.08
248	7611	Aluminium reservoirs, tanks, vats and similar containers, for any material (other than compressed or liquefied gas), of a capacity exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment	0.08
249	7612	Aluminium casks, drums, cans, boxes and similar containers (including rigid or collapsible tubular containers), for any material (other than compressed or liquefied gas), of a capacity not exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment	0.08

250	7613	Aluminium containers for compressed or liquefied gas	0.08
251	7614	Stranded wire, cables, plaited bands and the like, of aluminium, not electrically insulated	0.08
252	7615	Table, kitchen or other household articles and parts thereof, of aluminium; pot scourers and scouring or polishing pads, gloves and the like, of aluminium; sanitary ware and parts thereof, of aluminium	0.08
253	7616	Other articles of aluminium	0.08
254	78	Lead and articles thereof	0.06
255	79	Zinc and articles thereof	0.06
256	80	Tin and articles thereof	0.06
257	81	Other base metals; cermets, articles thereof	0.06
258	82	Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal	0.12
259	83	Miscellaneous articles of base metal	0.12
260	84	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	0.08
261	85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	0.08
262	86	Railway or tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signaling equipment of all kinds	0.06
263	8701	Tractors (other than tractors of heading 8709)	0.06
264	8702	Motor vehicles for the transport of ten or more persons, including the driver	0.06
265	8703	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars	0.06
266	8704	Motor vehicles for the transport of goods	0.06
267	8705	Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixers lorries, spraying lorries, mobile workshops, mobile radiological units)	0.06
268	8706	Chassis fitted with engines, for the motor vehicles of headings 8701 to 8705	0.06
269	8707	Bodies (including cabs), for the motor vehicles of headings 8701	0.06

		to 8705	
270	8708	Parts and accessories of the motor vehicles of headings 8701 to 8705	0.06
271	8709	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles	0.06
272	8710	Tanks and other armoured fighting vehicles, motorized, whether or not fitted with weapons, and parts of such vehicles	0.06
273	8711	Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars;	0.06
274	8712	Bicycles and other cycles (including delivery tricycles), not motorised	0.12
275	8713	Carriages for disabled persons, whether or not motorised or otherwise mechanically propelled	0.06
276	8714	Parts and accessories of vehicles of headings 8711 to 8713	0.12
277	8715	Baby carriages and parts thereof	0.06
278	8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof	0.06
279	88	Aircraft, spacecraft, and parts thereof	0.06
280	89	Ships, boats and floating structures	0.06
281	90	Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	0.12
282	91	Clocks and watches and parts thereof	0.06
283	92	Musical instruments; parts and accessories of such articles	0.20
284	93	Arms and ammunition; parts and accessories thereof	Nil
285	94	Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like; prefabricated buildings	0.06
286	95	Toys, games and sports requisites; parts and accessories thereof	0.20
287	96	Miscellaneous manufactured articles	0.06
288	97	Works of art, collector's pieces and antiques	Nil

EXEMPTION TO SERVICE PROVIDED BY COMMISSION AGENT LOCATED OUTSIDE INDIA

Notification No 42/2012 - Service Tax

New Delhi, the 29th June, 2012

G.S.R…. (E). -In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods (hereinafter referred to as the said goods), of the description specified in column (2) of the Table below (hereinafter referred to as the specified service), from so much of the service tax leviable thereon under section 66B of the said Act, as is [64]calculated on a value up to ten per cent of the free on board value of export goods for which the said specified service has been used, subject to the conditions specified in column (3) of the said Table, namely:-

Table

Sr. No.	Description of the taxable service	Conditions
(1)	(2)	(3)
1.	Service provided by a commission agent located outside India and engaged	(1) The exporter shall declare the amount of commission paid or payable to the commission agent in the shipping bill or bill

[64] Corrigendum dated 11 July 2012

	under a contract or agreement or any other document by the exporter in India, to act on behalf of the exporter, to cause sale of goods exported by him.	of export, as the case may be. (2) The exemption shall be limited to the service tax calculated on a value of ten per cent of the free on board value of export goods for which the said service has been used. (3) The exemption shall not be available on the export of canalised item, project export, or export financed under lines of credit extended by the Government of India or EXIM Bank, or export made by Indian partner in a company with equity participation in an overseas joint venture or wholly owned subsidiary. (4) The exporter shall submit with the half-yearly return after certification of the same as specified in clause (g) of the proviso— (*i*) the original documents showing actual payment of commission to the commission agent; and (*ii*) a copy of the agreement or contract entered into between the commission agent located outside India and the exporter in relation to sale of export goods outside India:

Provided that-

(a) the exemption shall be available to an exporter who,-

(i) informs the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory or the regional office or the head office, as the case may be, in Form EXP3 appended to this notification, before availing the said exemption;

(ii) is registered with an export promotion council sponsored by the Ministry of Commerce or the Ministry of Textiles, as the case may be;

(iii) is a holder of Import-Export Code Number;

(iv) is registered under section 69 of the said Act;

(v) is liable to pay service tax under sub-section (2) of section 68 of said Act, read with item (G) of sub-clause (i) of clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules,1994, for the specified service;

(b) the invoice, bill or challan, or any other document by whatever name called issued by the service provider to the exporter, on which the exporter intends to avail exemption, shall be issued in the name of the exporter.

(c) the exporter availing the exemption shall file the return in Form EXP4, every six months of the financial year, within fifteen days of the completion of the said six months;

(d) the exporter shall submit with the half yearly return, after certification, the documents in original specified in clause (b) and the certified copies of the documents specified in column (3) of the said Table;

(e) the documents enclosed with the return shall contain a certification from the exporter or the authorised person, to the effect that specified service to which the document pertains, has been received and used for export of goods by mentioning the specific shipping bill number on the said document.

(f) where the exporter is an individual or a proprietorship concern or an HUF or a partnership firm, the documents enclosed with the return shall be certified by the exporter himself and where the exporter is any other person, the documents enclosed with the return shall be certified by the person authorised by the Board of Directors or any other competent person;

(g) where the amount of commission charged in respect of the specified service exceeds ten per cent. of the free on board value of the export then, the service tax shall be paid within the period specified under rule 6 of the Service Tax Rules, 1994, on such amount, which is in excess of the said ten per cent;

2. This notification shall come into force on the 1st day of July, 2012.

Form EXP3

[See item (i) of clause (a) of proviso]

S.No----------

(to be filled in by the office of jurisdictional Assistant / Deputy Commissioner)

To,

The Deputy Commissioner /Assistant Commissioner of Central Excise

Sir,

I/We intend to avail of the exemption from service tax under Notification No. …/2012-ST, dated ….June, 2012 in respect of services provided by a commission agent located outside India, which have been used for export of goods and the relevant particulars are as follows :

.

1. Name of the exporter……

2. Service Tax Registration No…….

3. Division …… Commissionerate ……

4 Membership No. the Export Council…….

5 Name of the Export Council……

6. Address of the registered / head office of exporter:……..

7. Tel. No. and e-mail ID of the exporter……..:

8. Import -Export Code No……..

9. Details of Bank Account (Name of Bank, branch address and account number)……..

I/we undertake that I/we shall comply with the conditions laid down in the said notification and in case of any change in aforementioned particulars; I/We shall intimate the same.

Date:…..

Place:……..

Signature and full address of Exporter

(Affix stamp)

Receipt (to be given by office of Assistant Commissioner/ Deputy Commissioner having jurisdiction) Received Form EXP1 dated --/--/-- submitted by _____(name of the exporter). The said intimation is accepted and given acknowledgment No. _____(S. No. Above)

For Assistant, / Deputy Commissioner

(Stamp)

Form EXP4

[See clause (c) of proviso]

To,

The Deputy Commissioner /Assistant Commissioner of Central Excise

Sir,

I/We have availed of exemption of service tax under Notification No. …/2012-ST, dated ……, 2012 in respect of services provided by a commission agent, located outside India and have used the same for export of goods and the relevant particulars are as follows:

1. Name of the exporter……..
2. Address of the registered / head office of exporter……
3. Tel. No. and e-mail ID of the exporter……..:
4. Service Tax Registration No…….

5. Division …… Commissionerate ……
6. Membership No. Of the Export Council……
7. Import Export Code No……..
8. Name of the Export Council……..
9. Details of Bank Account (Name of Bank, branch address and account number)……..

Table-A

Sr. No.	Details of goods exported (on which exemption of service tax availed) during the six months ending on……..							
	Details of Shipping Bill/ Bill of export (Please enclose self attested copy of Shipping Bill or Bill of Export) and Details of goods exported (in case of exports of more than one commodity, please fill in the proforma, commodity-wise)							
	No.	Date	Date of Let export order	Export invoice no	Date	Description of goods exported	Quantity (please mention the unit)	FOB value (in rupees in lakh)

Table- B

Details of specified service used for export of goods, covered under the Shipping Bill or Bill of Export mentioned in Table A in respect of which the exemption has been availed during the six months ending on……..	Details of documents attached showing the use of such service for export, the details of which	Total amount of service tax claimed as exemption (rupees in lakhs)

				are mentioned in Table A (self attested)	
Name of service provider	Address of service provider	Invoice No.	Date		

9. Declaration:-

I / We hereby declare that-

(i) I have complied with all the conditions mentioned in Notification No. …/2012-ST, dated …. June, 2012;

(ii) the information given in this application form is true, correct and complete in every respect and that I am authorised to sign on behalf of the exporter;

(iii) no CENVAT credit of service tax paid on the specified service used for export of said goods taken under the CENVAT Credit Rules, 2004;

(iv) I / we, am/ are enclosing all the required documents. Further, I understand that failure to file the return within stipulated time or non-enclosure of the required document, duly certified, would debar me/us for the refund claimed aforesaid.

Date:……..

Place:……

Signature and full address of Exporter

(Affix stamp)

EXEMPTION TO RAILWAYS UPTO 30 SEPTEMBER 2012

Notification No. 43/2012-Service Tax

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services of the description mentioned in the Table below, provided by the Indian Railways from the whole of service tax leviable thereon under section 66B of the said Act, with effect from the date of publication of this notification in the Official Gazette, upto and including the **30th day of September, 2012**.

TABLE

Sl. No.	Description of taxable services
1.	Service of transportation of passengers, with or without accompanied belongings, by railways in -- (A)first class; or (B)an air conditioned coach
2.	Services by way of transportation of goods by railways

[F. No. 334/1/2012-TRU]

(Vikas)
Under Secretary to the Government of India

REVERSE CHARGE MECHANISM FOR DIRECTORS AND SECURITY SERVICES

Notification No. 45/2012 - Service Tax

New Delhi, the 7th August, 2012

G.S.R. (E).- In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.30/2012-Service Tax, dated the 20th June,2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 472 (E), dated the 20th June, 2012, namely:-

In the said notification,-

(a) in para I, in clause (A),-

(i) after the sub-clause (iv), the following sub-clause shall be inserted, namely :-

"(iva) provided or agreed to be provided by a director of a company to the said company;";

(ii) in sub-clause (v), after the words "manpower for any purpose", the words " or security services" shall be inserted.

(b) in para II, in the Table,-

(i) after Sl.No. 5, the following S.No. and entries shall be inserted, namely:-

"5A	in respect of services provided or agreed to be provided by a director of a company to the said company	Nil	100%"

(ii) in Sl.No. 8, in the entries under the heading 'Description of a service', after the words "manpower for any purpose", the words "or security services" shall be inserted.

[F.No. 334 /1/ 2012-TRU]
(Rajkumar Digvijay)
Under Secretary to the Government of India

Note.- *The principal notification was published in the Gazette of India, Extraordinary, vide notification No. 30/2012 - Service Tax, dated 20th June, 2012, vide number G.S.R. 472 (E), dated the 20th June, 2012 and the same has not been amended so far.*

STR AMENDED FOR REVERSE CHARGE MECHANISM FOR DIRECTORS AND SECURITY SERVICES

Notification No. 46/2012 - Service Tax

New Delhi, the 7th August, 2012

G.S.R. (E).- 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 hereby makes the following rules further to amend the Service Tax Rules, 1994, namely:—

1. (1) These rules may be called the Service Tax (Third Amendment) Rules, 2012.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Service Tax Rules, 1994, in rule 2, in sub-rule (1),-

(A) in clause (d), in sub-clause (i),-

(i) after the item (E), the following item shall be inserted, namely;-

"(EE) in relation to service provided or agreed to be provided by a director of a company to the said company, the recipient of such service;";

(ii) in the item (F), in the sub-item (b), after the words "manpower for any purpose", the words " or security services" shall be inserted.

(B) after clause (f), the following clause shall be inserted, namely:—

"(fa) "security services" means services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity;"

[F.No. 334 /01/2012- TRU]
(Raj Kumar Digvijay)
Under Secretary to the Government of India

Note.- *The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 2/94-ST, dated the 28th June, 1994 vide number G.S.R. 546(E), dated the 28th June, 1994 and was last amended by notification No. 36/2012-Service Tax, dated the 20th June, 2012 vide number G.S.R. 478 (E), dated the 20th June, 2012.*

SERVICE TAX RETURN TO BE FILED FOR FIRST QUARTER (APRIL 2012 TO JUNE 2012)

NOTIFICATION No 47/2012-SERVICE TAX

New Delhi, the 28th September, 2012
6 Asvina, 1934 Saka

G.S.R (E).-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 hereby makes the following rules further to amend the Service Tax Rules, 1994, namely:-

1. (1) These rules may be called the Service Tax(Fourth Amendment) Rules, 2012.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Service Tax Rules,1994, in rule 7, in sub-rule(2), the following proviso shall be inserted, namely:-

> "Provided that the Form 'ST-3' required to be submitted by the 25th day of October, 2012 shall cover the period between 1st April to 30th June, 2012 only."

F.No 341/21/2012-TRU
(Rajkumar Digvijay)
Under Secretary to the Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section(i) vide notification No. 2/94-ST, dated 28th June, 1994 vide number G.S.R 546(E), dated the 28th June, 1994 and were last amended by notification No 46/2012- Service Tax, dated the 7th August 2012 , vide GSR 622 (E) dated the 7th August 2012.

APPLICABILITY OF EDUCATION AND SECONDARY AND HIGHER EDUCATION CESS UNDER SECTION 66B

Circular No. 160/11/2012-ST

F.No.334/1/2012-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
(Tax Research Unit)
*****

Room No. 153, North Block,
New Delhi, 29th June, 2012.

To

Chief Commissioners of Customs and Central Excise (All)
Chief Commissioners of Central Excise & Service Tax (All)
Directors General of Service Tax/Central Excise Intelligence/Audit
Commissioners of Central Excise & Service Tax (All)
Commissioners of Service Tax (All)
Commissioners of Customs and Central Excise (All)

Madam/Sir,

Subject: Applicability of provisions of the Finance Act, 2004 relating to education cess and the Finance Act, 2007 relating to secondary and higher education cess– regarding.

There has been some doubt regarding the applicability of provisions of the Finance Act, 2004 relating to education cess and the Finance Act, 2007 relating to secondary and higher education cess as the concerned Acts make reference to section 66 of the Finance Act, 1994, which shall cease to have effect from July 1, 2012. In this connection, as also in general, you may kindly refer to the sub-section (1) of section 8 of the General Clauses Act, 1897 which reads as under:

> "Where this Act, or any Central Act or Regulation made after reference to the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provisions so re-enacted."

Thus any reference to section 66 of the Finance Act, 1994 shall be construed as reference to the newly re-enacted provision i.e. section 66B of the same Act. Despite the stated position of law, the matter has been settled by the issue of Removal of Difficulties Order No. 2/2012 dated 29.06.2012.

2. This circular may be communicated to the field formations and service tax assessees through Public Notice/Trade Notice. Hindi version would follow.

Yours faithfully,

(S. Jayaprahasam)
Technical Officer (TRU)
Tel/Fax: 011-23092037

ACOUNTING CODE

Circular No.161/12/2012 -ST

F.No.341/21/2012-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
Tax Research Unit

153, North Block,
New Delhi, 6th July, 2012

To
Chief Commissioners of Customs and Central Excise (All),
Chief Commissioners of Central Excise & Service Tax (All),
Director General (Service Tax), Director General(Systems), Director General (Central Excise Intelligence), Director General (Audit),
Commissioners of Service Tax (All),
Commissioners of Central Excise (All) &
Commissioners of Central Excise and Customs (All).

Madam/Sir,

Subject: Accounting Code for payment of service tax under the Negative List approach to taxation of services, with effect from the first day of July 2012 - regarding.

Negative List based comprehensive approach to taxation of services came into effect from the first day of July, 2012. For payment of service tax under the new approach, a new Minor Head - 'All taxable Services' has been allotted under the Major Head "0044-Service Tax".

2. Accounting codes for the purpose of payment of service tax under the Negative List approach, with effect from 1st July, 2012 is as follows:

Name of Services	Accounting codes			
	Tax collection	Other Receipts	Penalties	Deduct refunds
All Taxable Services	00441089	00441090	00441093	00441094

NOTE: (i) service specific accounting codes will also continue to operate, side by side, for accounting of service tax pertaining to the past period (meaning, for the period prior to 1st July, 2012); (ii) Primary Education Cess on all taxable services will be booked under 00440298 and Secondary and Higher Education Cess on all taxable services will be booked under 00440426; (iii) a new sub-head has

been created for payment of "penalty"; the sub-head "other receipts" is meant only for payment of interest etc. leviable on delayed payment of service tax; (iv) the sub-head "deduct refunds" is not to be used by the assessees, as it is meant for use by the Revenue/Commissionerates while allowing refund of tax.

3. Trade Notice/Public Notice may be issued to the field formations and tax payers. Please acknowledge the receipt of this Circular. Hindi version follows.

(S. Jayaprahasam)
Technical Officer
Tel: 011-23092037

CLARIFICATION ON POINT OF TAXATION

Circular No. 162/13 /2012 –ST

F. No. 354/111/2012-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs
(Tax Research Unit)
****

Room No 146, North Block, New Delhi-1,
Dated the 6th July 2012.

To

Chief Commissioner of Customs and Central Excise (All)
Chief Commissioner of Central Excise & Service Tax (All)
Director General of Service Tax
Director General of Central Excise Intelligence
Director General of Audit
Commissioner of Customs and Central Excise (All)
Commissioner of Central Excise and Service Tax (All)
Commissioner of Service Tax (All)

Madam/Sir,

Subject: Clarification on Point of Taxation Rules - regarding.

Consequent to the changes introduced at the time of Budget 2012 in the Point of Taxation Rules, 2011, together with revision of the service tax rate from 10% to 12% and the subsequent changes that have been made effective from 01.07.2012, the following clarifications have been desired:

(a) Point of taxation and the rate applicable in respect of continuous supply of services at the time of change in rates effective from 01.04.2012;

(b) Applicability of the revised rule 2A of the Service Tax (Determination of Value) Rules, 2006 to ongoing works contracts for determination of value when the value was being determined

under the erstwhile Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007; and

(c) Applicability of partial reverse charge provisions in respect of specified services.

2.1 The issues have been examined. The continuous supply of services was governed by rule 6 until 31.03.2012. The rule started with the wordings "notwithstanding anything contained in rules 3, 4 …" Therefore, the point of taxation in respect of services provided in terms of the said rule on or before 31.03.2012 would remain unaffected by rule 4.

2.2 To clarify the matter further, if the invoice had been issued or payment received in respect of such services on or before 31.03.2012, the point of taxation would stand determined under rule 6 accordingly and shall not alter due to the subsequent changes in the Point of Taxation Rules, 2011 that became effective only from 1.4.2012.

3.1 However the position has undergone a change at the time of transition towards the Negative List and the introduction of other accompanying changes in Service Tax (Determination of Value) Rules, 2006 and partial reverse charge. At the said time rule 6 stood omitted and the point of taxation was required to be determined ordinarily in such cases under the main rule i.e. rule 3. This rule is, however, overridden by rule 4 when there is a change in effective rate of tax. The "*change in effective rate of tax*" has been defined in clause (ba) of rule 2 to include a change in the portion of value on which tax is payable.

3.2 To illustrate, the following would be changes in effective rate of tax:-

(i) the change in the portion of total value liable to tax in respect of works contract other than original works (from @ 4.8% earlier to @ 12% on 60% of the total amount charged, or effectively @ 7.2% now).

(ii) exemption granted to certain works contracts w.e.f. 1st July 2012 which were earlier taxable.

(iii) taxability of certain works contracts which were hitherto exempted.

(iv) change in the manner of payment of tax from composition scheme under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 to payment on actual value under clause (i) of rule 2A of the Service Tax (Determination of Value) Rules, 2006.

3.3 However, the following will not be a change in effective rate of tax:-

(i) works contracts earlier paying service tax @ 4.8% under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 and now required to pay service tax @12% on 40% of the total amount charged, keeping the effective rate again at 4.8% (as only the manner of expression has been altered).

(ii) works contracts which were outside the scope of taxation (and not merely exempted) but have become now taxable e.g. construction of residential complex comprising of 2 to 12 residential units, construction of buildings meant for use by NGOs etc. (Rule 5 of the Point of Taxation Rules, 2011 shall apply to such services.)

3.4 Thus the point of taxation for services provided in respect of taxable works contracts in progress on 01.07.2012 would need to be determined under rule 4 of the Point of Taxation Rules unless there is no change in effective rate of tax.

4. It is further clarified that the provisions of partial reverse charge would also be applicable in respect of such services where point of taxation is on or after 01.07.2012 under the applicable rule in respect of the service provider.

5. This Circular may be communicated to the field formations and service tax assessees, through Public Notice/ Trade Notice. Hindi version to follow.

Yours faithfully,

(Dr. Shobhit Jain)
O.S.D. (TRU)
Fax: 23093037

CLARIFICATION ON SERVICE TAX ON REMITTANCES

Circular No. 163/ 14/2012 –ST

F. No. 354/ 119/2012- TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs
(Tax Research Unit)
Room No 146, North Block, New Delhi-1,

Dated the 10th July 2012.
To
Chief Commissioner of Customs and Central Excise (All)
Chief Commissioner of Central Excise & Service Tax (All)
Director General of Service Tax
Director General of Central Excise Intelligence
Director General of Audit
Commissioner of Customs and Central Excise (All)
Commissioner of Central Excise and Service Tax (All)
Commissioner of Service Tax (All)
Madam/Sir,

Subject: Clarification on service tax on remittances - regarding.
Concerns have been expressed in various forums regarding the leviability of service tax on the remittance of foreign currency in India from overseas.

2. The matter has been examined and it is clarified that there is no service tax *per se* on the amount of foreign currency remitted to India from overseas. In the negative list regime, 'service' has been defined in clause (44) of section 65B of the Finance Act 1994, as amended, which excludes transaction in money. As the amount of remittance comprises money, the activity does not comprise a 'service' and thus not subjected to service tax.

3. In case any fee or conversion charges are levied for sending such money, they are also not liable to service tax as the person sending the money and the company conducting the remittance are located outside India. In terms of the Place of

Provision of Services Rules, 2012, such services are deemed to be provided outside India and thus not liable to service tax.

4. It is further clarified that even the Indian counterpart bank or financial institution who charges the foreign bank or any other entity for the services provided at the receiving end, is not liable to service tax as the place of provision of such service shall be the location of the recipient of the service, i.e. outside India, in terms of Rule 3 of the Place of Provision of Services Rules, 2012.

5. This Circular may be communicated to the field formations and service tax assessees, through Public Notice/ Trade Notice. Hindi version to follow.

Yours faithfully,
(Dr. Shobhit Jain)
O.S.D. (TRU)
Fax: 23095590

APPLICABILITY OF SERVICE TAX ON VOCATIONAL EDUCATION/TRAINING COURSE

Circular No. 164/15/2012-ST

F. No. 356/17 /2012 - TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
(Tax Research Unit)

153, North Block,
New Delhi, 28th August, 2012

To
Chief Commissioner of Customs and Central Excise / Central Excise & Service Tax (All)
Director General of Service Tax /Central Excise Intelligence /Audit;
Commissioner of Customs and Central Excise/ Central Excise and Service Tax/ Service Tax (All)

Madam/Sir,

Subject: service tax – vocational education/training course -- regarding.

Clarification has been sought in respect of levy of service tax on certain vocational education/training/ skill development courses (VEC) offered by the Government (Central Government or State Government) or local authority themselves or by an entity independently established by the Government under the law, as a society or any other similar body.

2. The issue has been examined. When a VEC is offered by an institution of the Government or a local authority, question of service tax does not arise. In terms of section 66D (a), only specified services provided by the Government are liable to tax and VEC is excluded from the service tax.

3. When the VEC is offered by an institution, as an independent entity in the form of society or any other similar body, service

tax treatment is determinable by the application of either sub-clause (ii) or (iii) of clause (l) of section 66D of the Finance Act, 1994. Sub-clause (ii) refers to "qualification recognized by any law" and sub-clause (iii) refers to "approved VEC". In the context of VEC, qualification implies a Certificate, Diploma, Degree or any other similar Certificate. The words "recognized by any law" will include such courses as are approved or recognized by any entity established under a central or state law including delegated legislation, for the purpose of granting recognition to any education course including a VEC.

4. This Circular may be communicated to the field formations and service tax assessees, through Public Notice/Trade Notice. Hindi version to follow.

Yours faithfully,

(S.Jayaprahasam)
Technical Officer, TRU
Tel/Fax: 011-23092037

DRAFT CIRCULAR ON SERVICE TAX ON STAFF BENEFITS

[65]DRAFT CIRCULAR ON STAFF BENEFITS

F.No 354/127/2012-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs
Tax Research Unit

146 North Block, New Delhi
Dated 27th July 2012

Subject: - Draft Circular on leviability of service tax on staff benefits and employment related transactions- reg

Subsequent to the operationlisation of the Negative List, a number of issues have been raised in relation to the manpower supply or the services provided by the directors of a company or by the employer to the employees. These issues have been examined and are proposed to be clarified as follows:

This is a draft circular

A. Scope of manpower supply

2. After the operationlisation of the Negative List, the erstwhile definition of the manpower recruitment or supply agency is no more applicable. Thus, the words manpower supply would have to be given their natural

[65] Now, this Draft Circular is not available on the CBEC website http://www.cbec.gov.in/draft-circ/draft-circular.htm

meaning. The manpower supply is understood to mean when one person provides another person with the use of one or more individuals who are contractually employed or otherwise engaged by the first person. The essence of the employment should be that the individuals should be employed by the provider of the service and not by the recipient of the service.

3. There could be certain contracts in which such manpower is made available to execute another independent contract by the service provider. For example, a person may agree to carry out construction or a manufacture for another in which certain manpower may be engaged. As long as such manpower is not placed operationally under the superintendence or control of the recipient, it shall not be a case of manpower supply, though it will continue to be judged independently whether it comprises any other taxable service.

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4. There are also cases of secondment whereby certain staff belonging to an organization is placed at the disposal of a subsidiary company or any other associate company. Such cases will be covered by the definition of manpower supply as the contractual employment continues to be with the parvent company.

B. <u>Joint Employment</u>

5. There can also be cases where staff is employed by one or more employers who normally share the cost of such employment. The services provided by such employee will be covered by the exclusion provided in the definition of service. However, if the staff has been

engaged by one employer and only made available to other for a consideration, it shall not be a case of joint employment.

6. Another arrangement could be where one entity pays the salary and other expenses of the staff on behalf of other joint employers which are later recouped from the other employers on an agreed basis on actuals. Such recoveries will not be liable to service tax as it is merely a case of cost reimbursement.

C. Directors

7. Services of a director on the board of a company have now become taxable. A director may be appointed either in an individual capacity or to represent an entity (including government) who has either invested in the company or is otherwise authorized to nominate a director. When a director receives payment in his personal capacity, the same is liable to be taxed in the hands of the director. However, where the fee is charged by the entity appointing the director and is paid to such entity, the services shall be deemed to be supplied by such an entity and not by the individual director. Thus in the case of Govt. nominees, the services shall be deemed to be provided by the Govt. and liable to be taxed under the exclusion sub- (iv) of clause (a) of section 66D of the Finance Act, 1994 i.e. support services by Government to business. Such services are liable to be taxed on reverse charge basis.

This is a draft circular

D. Treatment of supplies made by the employer to employees

8. A number of activities are carried out by the employers for the employees for a consideration. Such activities fall within the definition of "service" and are liable to be taxed unless specified in the Negative List or otherwise exempted.

9. One of the ingredients for the taxation is that such activity should be provided for consideration. Where the employees pays for such services or where the amount is deducted from the salary, there does not seem to be any doubt. However, in certain situations, such services may be provided against a portion of the salary foregone by the employee. Such activities will also be considered as having been made for a consideration and thus liable to tax. Cenvat credit for inputs and input services used to provide such services will be eligible under extant rules. The said goods or services would now not be construed to be for personal use or consumption of an employee per se and rather shall be a constituent to the taxable service provided to an employee. The status of the employee would be as a service recipient rather than as a mere employee when consuming such output service. The valuation of the service so provided by the employer to the employee shall be determined as per the extant rules in this regard.

This is a draft circular

10. However, any activity available to all the employees free of charge without any reduction from the emoluments shall not be considered as an activity for consideration and will thus remain outside the purview of the service tax liability (facilities like crèche, gymnasium

or a health club which all employees may use without any charge or reduction from the salary will be outside the tax net). However the Cenvat credit for such inputs and input services will be guided by the extant rules.

11. Moreover, it would need to be seen whether the services provided by the employer are otherwise covered by the Negative List or exempt. For example, the services of food and catering provided by the employer in a canteen would normally fall outside the tax net unless such canteen has both the facility of air-conditioning as well as license to serve liquor (S. No. 19 of the Mega exemption). Likewise, services provided by way of guest house will also not be liable to tax if the tariff for such unit of accommodation is below Rs.1000 per day or equivalent (S. No. 18 of the Mega exemption). Similarly, services of telephone and motorcar for personal use will be covered by the service tax.

E. Treatment of reimbursements made by the employer to the employee.

12. Provision of service by an employee to the employer in the course of or in relation to his employment is excluded from the definition of the "service". Thus reimbursements of expenditure incurred on behalf of the employer in course of employment would not amount to a "service" per se and hence are non-taxable.

F. Treatment of supplies and reimbursements made by the employer to ex-employees/ pensioners.

13. The supplies made by the employer to the ex-employees or pensioners will be of same status as those to an employee and thus would accordingly attract taxability as per discussion in D above. The reimbursements to pensioners will also be treated at par with those of current employees when such reimbursements arise out of the initial employment contract or are in relation to that employment.

This is a draft circular

14. Chambers, trade, industry and field formations are requested to go through the draft Circular and offer their comments, views and suggestions. It is requested that comments, views and suggestions on the same may be forwarded to the undersigned on or before 24th August 2012. The same may also be emailed to shobhit.jain@nic.in

(Dr Shobhit Jain)
OSD TRU

DRAFT CIRCULAR ON SERVICE TAX ON AIR TRANSPORT

Draft Circular

F. No.354 /146/2012 - TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
(Tax Research Unit)

146-F, North Block,
New Delhi, 27th September, 2012

To
Chief Commissioner of Customs and Central Excise / Central Excise & Service Tax (All)
Director General of Service Tax /Central Excise Intelligence /Audit;
Commissioner of Customs and Central Excise/ Central Excise and Service Tax/ Service Tax (All)

Madam/Sir,

Subject: Draft circular -- service tax -- transport of passengers by air -- regarding.

Representation has been received seeking clarification regarding certain doubts which arise during the course of levy and collection of service tax on transport of passengers by air.

This is a draft circular

2. The issues have been examined and the guidance is as follows:

Issue (a) : Whether service tax of 4.944% (60% abatement) will apply to related charges such as reconfirmation fee, upgrade fee, date change, additional collection, etc., levied by airlines to passengers?

Clarification: These charges could be levied in either of the following manners: (a) as a consolidated charge without any break-up; (b) with break-up for individual services or at a point later to the initial booking. In case of (a) above the provisions of section 66F will apply and the service that imports the essential

character will determine the applicability of both the Place of Provision of Services (POP) Rules as well as abatement. In the case of (b) above, the individual components will need to be analyzed on their respective merits.

Various charges collected by airlines from a passenger can be broadly put into two categories: (a) charges which are directly related to the journey; and (b) charges which are not so related. Charges which are directly related will be covered by abatement. Re-confirmation fees, date-change fee, upgrade fee, preferred seat charges, additional collection in the nature of differential ticket fare towards the journey and unaccompanied minor charges are directly related charges. For the charges which are not directly related to the particular journey, abatement is not available. Sky-meal-on-order and escort charges are not directly related to the journey.

Issue (b): Whether abatement meant for transport of passenger by air service, is applicable for excess baggage charges?

This is a draft circular

Where a passenger embarks on an international journey, excess baggage charges are not leviable to service tax as the place of provision of such service will be outside India under Rule 10 of POP Rules. However, in the case of journey within the taxable territory, excess baggage charge is leviable to service tax without abatement. Similar will be the tax treatment for pet charges.

Issue (c): When a passenger puts a ticket for refund, whether full rate of 12% will apply to cancellation fee, refund fee, no show fee, since the passenger is not availing air transportation service?

Clarification : In terms of section 66B of the Finance Act, 1994, service tax is leviable on service provided or agreed to be provided. Thus service tax becomes payable when a booking is made, i.e. when the service is agreed to be provided, the subsequent cancellation of the ticket does not take it outside the purview of tax absolutely.

However, Rule 6(3) of the Service tax Rules, 1994, provides that 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, the assessee may take 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.
Thus the amount retained by the airlines in the event of cancellation of ticket, out of the original fare will remain liable to be taxed as originally taxed and hence is entitled to abatement applicable in this regard. However, if the ticketed amount is fully refunded to the passenger, but no-show (late cancellation charges) or cancellation fee is separately collected through an invoice or bill, abatement will not be applicable. Here, cancellation fee takes the nature of administrative charge.

Issue (d): (i) whether service tax will apply on related fees/charges on journeys starting outside India, even if the transaction for related charges is made in India? ; (ii) Whether service tax will apply on related fee charges on journeys starting in India, even if the transaction for related charges is made outside India?

Clarification: According to Rule 11 of Place of Provision of Services Rules, 2012, the place of provision of a passenger transportation service is the place where the passenger embarks on the conveyance for a continuous journey. Therefore, if place of embarkation of passenger is located within the taxable territory, service tax is leviable on the gross amount payable for such continuous journey, irrespective of where the ticket is booked and where fees/charges are collected. If the place of embarkation of a passenger on a continuous journey falls outside the taxable territory, service tax is not leviable, irrespective of where the tickets are booked and where fees/charges are collected. However, as mentioned at (a) above, only such charge will be determined under Rule 11 of POP as are directly related to the continuous journey. The POP of other charges will be judged on their own merits.

This is a draft circular

3. Field formations, business and industry chambers are requested to offer their comments, views and suggestions on the draft circular. It is requested that comments, views and suggestions may be forwarded to the undersigned on or before 15th October, 2012. The same also may be e-mailed to jm.kennedy@nic.in

(J.M.Kennedy)
Director, TRU
Tel/Fax: 011-23092634

INSTRUCTIONS – NEGATIVE LIST OF SERVICE TAX REGIME

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE & CUSTOMS
(TAX RESEARCH UNIT)
*****

V.K. Garg
Joint Secretary (TRU-II)
Tel: 23093027; Fax: 23093037
Email: garg.vk@nic.in

D.O.F.No.334/1/2012-TRU
New Delhi dated the 29th June, 2012.

Dear Madam/Sir,

You will be already aware that the Negative List, together with many other accompanying changes, comes into operation from July 1, 2012.

2. The necessary notifications from 25/2012-ST to 40/2012-ST and Notification No. 28/2012-CX (NT) were issued on June 20, 2012 and have comprehensive changes relating to exemptions, Place of Provision Rules, 2012, changes to Service Tax Rules, 1994, Cenvat Credit Rules, 2004 and details of all the notifications that are being rescinded.

3. Notification No 52/2011-ST dated 30.12.2011 relating to refunds on specified services has also been revised in accordance with the new regime and the new notification No.41/2012-ST dated 29.06.2012 has been issued under the revised section 93A. Services of commission agents to exporters on the existing lines have also been validated by the issue of Notification No.42/2012-ST dated 29.06.2012.

4. There has been some doubt regarding the applicability of provisions of the Finance Act, 2004 relating to education cess and the Finance Act, 2007 relating to secondary and higher education cess as the concerned acts make reference to section 66 of the Finance Act, 1994, which shall cease to have effect from July 1, 2012. In this connection, as also in general, you may kindly refer to the sub-section (1) of section 8 of the General Clauses Act, 1897 which reads as under:

"Where this Act, or any Central Act or Regulation made after reference to the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provisions so re-enacted."

Thus any reference to section 66 of the Finance Act, 1994 shall be construed as reference to the newly re-enacted provision i.e. section 66B of the same Act. Despite the stated position of law, the matter has been settled by the issue of Removal of Difficulties Order No. 2/2012 dated 29.06.2012.

5. It may be noted that Notification No. 11/2005-ST dated 19.04.2005 has not been rescinded to enable sanction of pending rebates. It shall, however, automatically cease to have effect for exports on or after July 1, 2012 as the Export of Services Rules, 2005 will stand superseded from the said date.

6. You may kindly go through all the changes and let me know at the earliest if anything is required in any manner for the smooth implementation of the new provisions.

7. The successful implementation of this reform requires an involved approach at all levels, in particular in the initial months. It is necessary that these changes are well understood by the tax payers as well as our staff. To this end CBEC has released an elaborate Educational Guide (with further improvisation over the draft Guidance Papers that were released at the time of budget) and adequate copies of the same should be available to you already or shortly. You may also like to download the same from CBEC website (from the dropdown menu under the title service tax).

8. It is clarified that any Board circular that is contrary to the revised law will stand automatically superseded. In case you have any doubt about any specific circular the same may be referred to the Board.

9. CBEC has already held five seminars during this month at Delhi, Chennai, Kolkata, Ahmedabad and Hyderabad for both the trade and some of the officers in and around these places. Seminar at Mumbai is scheduled on July 13, 2012.

10. It will be desirable if similar events are held locally, supplemented also by training of our officers who have to implement the new provisions. If you need, some of the TRU officers could also assist subject a little bit to the exigencies of work here. Those who desire may source a copy of the power point presentation from TRU (by sending a request at garg.vk@nic.in).

11. Despite a very elaborate consultative process starting from August, 2011, when the first concept paper was released, it is likely that the actual

implementation of negative list will throw some issues that appear a little complex. You may like to discuss them appropriately within your own set up and in appropriate cases refer them to the Board for suitable examination. Any precipitated action will be ill-advised at the early stages of implementation unless the revenue is at immediate stakes.

12. A list of services that are likely to come into the tax net in your charge may be drawn and communicated to me. This would help us to share the same with other formations as also provide information from other formations to you so that a coordinated approach is followed until the system gets streamlined.

13. In general any case resulting in taxation of an activity that is not liable to tax under the present regime should at least receive the attention of the Commissioner in charge before it is taken up for any further action.

14. Of equal importance is to devote attention to activities that are presently liable to tax and may cease to be taxed in future. Some of these have been clearly exempted. There could be others where, either due to a particular interpretation or due to applicability of Place of Provision Rules, 2012 or in some other manner, an interpretation may be taken that the same are no more liable to tax. Such cases may be immediately identified and in case of doubt referred to the Board.

15. The allotment of accounting heads is being communicated by a separate communication.

16. A spirit of Helpfulness, Understanding and Guidance (HUG for short) should guide us in balancing our task keeping in perspective the enormity of changes that are being implemented shortly.

With regards,
Yours sincerely,
(V.K. Garg)

----X----

INSTRUCTIONS - FILING OF ST-3 ONLY FOR THE PERIOD 1ST APRIL TO 30TH JUNE 2012

F. No. 137/22/2012-Service Tax
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
(Service Tax Wing)

Room No 263A North Block,
New Delhi, 28th September, 2012

To
Chief Commissioner of Customs and Central Excise / Central Excise & Service Tax (All)
Directors General of Service Tax /Central Excise Intelligence /Audit/Systems;
Commissioner of Customs and Central Excise/ Central Excise and Service Tax/ Service Tax (All)

Madam/Sir,

Subject: Filing of ST-3 only for the period 1st April to 30th June 2012

In terms of sub-rules (1) and (2) of Rule 7 of the Service Tax Rules, 1994, the half yearly return for the period 1st April to 30th September 2012, is to be filed by 25th October, 2012. In the current financial year , an assessee would have had to give data with respect to specific services and the corresponding legal provisions for the period 1-4-2012 to 30-6-2012. The data for the period 1-7-2012 to 30-9-2012, would have been with respect to different services and the corresponding legal provisions. Combination of all these provisions into one return would have made the return complex for the assessees .

2. I am directed to inform you that it has been decided that assessees have to provide data only for the period 1-4-2012 to 30-6-2012 in the first half yearly return which is due on 25-10-2012. (The data for the period from 1-7-2012 to 30-9-2012 should not be filed . Modifications will be made in the ACES so that any data filed for this period is rejected. Till such time as the modifications are made, ACES

will not be accepting returns) Accordingly notification 47/2012 dated 28-9-2012 has been issued today.

3. Data for the period 1-7-2012 to 30-9-2012 will have to be furnished in a return in a revised format. The revised format of the return and the last date for filing it will be indicated separately.

4. The above information may be communicated to departmental officers and assessees. Hindi version to follow.

Yours faithfully,
(S.M. Tata)
Commissioner(Service Tax)
Tel/Fax: 011-23092275

Order 3/2012 - Due date for filing of Service Tax return for 1 April 2012 to 30 June 2012 is 25 Nov. 12

F.No.137/99/2011-Service Tax
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

New Delhi, the 15th October, 2012

ORDER NO: 3/2012

In exercise of the powers conferred by sub-rule(4) of rule 7 of the Service Tax Rules, 1994, the Central Board of Excise & Customs hereby extends the date of submission of the return for the period 1st April 2012 to 30th June 2012, from 25th October, 2012 to 25th November,2012.

The circumstances of a special nature which have given rise to this extension of time are as follows:

a) ACES will start releasing the return in Form ST3 in a quarterly format, shortly before the due date of 25th October,2012.

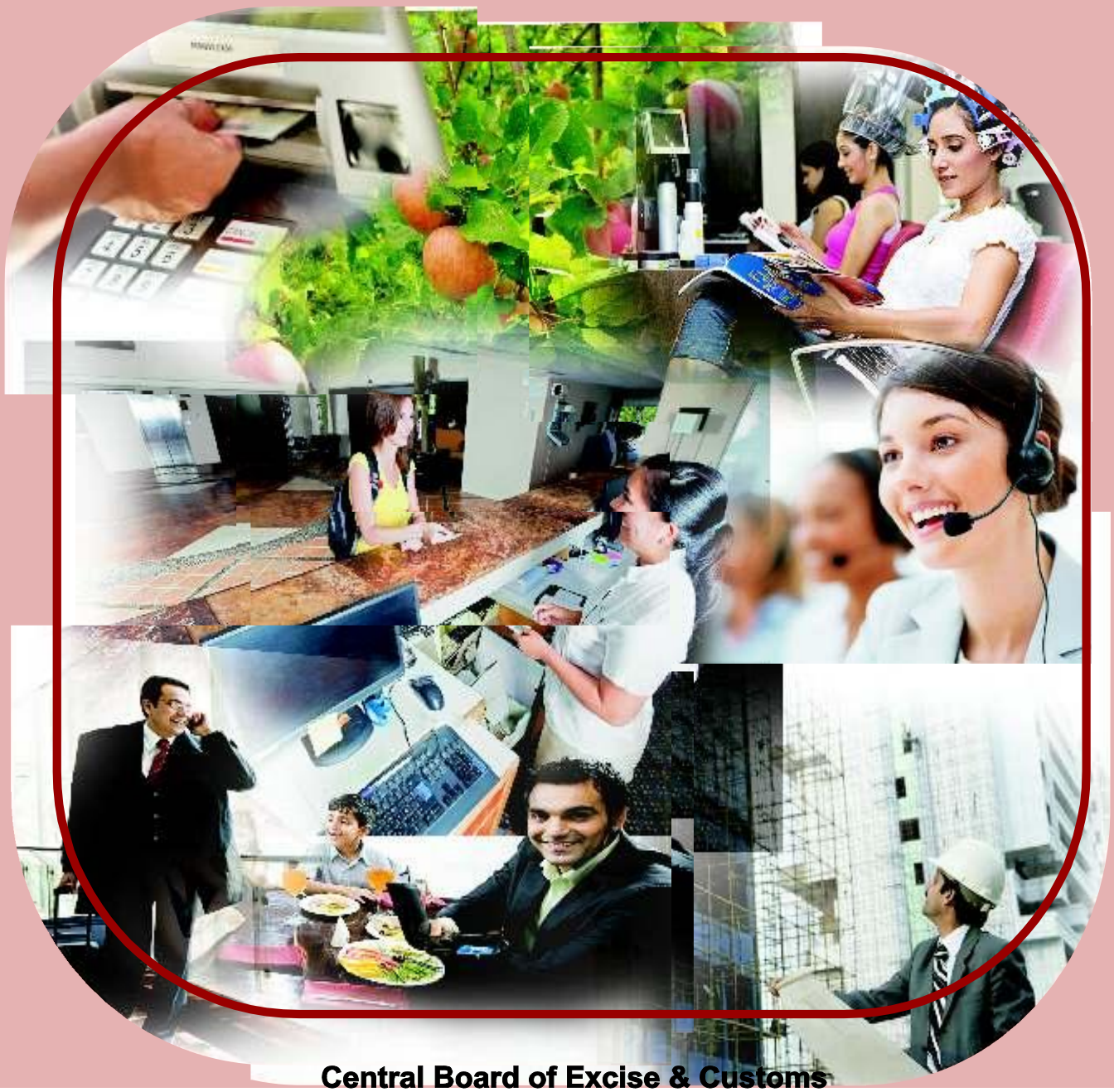
b) This will result in all the assesses attempting to file their returns in a short time period, which may result in problems in the computer network and delay and inconvenience to the assesses.

(S.M. Tata)
Commissioner Service Tax
Central Board of Excise and Customs

सत्यमेव जयते

Taxation of Services: An Education Guide

June 20, 2012



Central Board of Excise & Customs

Taxation of Services:

An Education Guide

June 20, 2012

TAX RESEARCH UNIT
Central Board of Excise & Customs,
Department of Revenue, Ministry of Finance
Government of India
New Delhi

S.K. Goel
Special Secretary
&
Chairman

GOVERNMENT OF INDIA
MINISTRY OF FINANCE/DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE & CUSTOMS
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Message

Our country is about to embrace the new system of taxation of services by way of the introduction of Negative List. These changes ushered as a part of Budget 2012 mark a paradigm shift in the taxation of services.

Besides providing for the comprehensive taxation of the entire service sector, the new changes will help to mitigate litigation and prepare both the Department as well as the taxpayers for the eventual transition towards the Goods and Services Tax (GST).

We, in the Central Board of Excise and Customs (CBEC) are highly conscious of our responsibility to explain the changes as lucidly and as comprehensively as possible. This educational Guide material has been prepared by a team of officers of our Tax Research Unit and goes far beyond the standard Q&A guides, budget circulars or similar tools that are commonly used for such purposes.

We are conscious that the concept is new and it may not have been possible to capture all the intricacies of the new provisions. But we do hope that our sincere effort will help to narrow the areas of differences while providing the taxpayers a ready guide for reference.

Any suggestions for further improvement of this guide booklet are most welcome.

(S.K.Goel)

June 19, 2012.

Preface

I write this on behalf of a number of persons collectively addressed as "We": the Team TRU, other officials of the Department as well as elsewhere, academicians, innumerable tax-payers, tax advisors, business entities and representatives from the chambers of trade and industry and professional institutes.

The comprehensive taxation of services, that appeared a pipedream less than a year back, is now ready to be implemented.

In perhaps the most transparent exercises in Indian budget making, the idea of the Negative List originated in the first concept paper in August, 2011. This was fiercely debated by all, some understandably cautious or even skeptical, a few ruthlessly opposed, while a large majority displayed the foresight to look at the larger canvas; all making many valuable suggestions.

It was evident that we were measuring up to the challenge of remote budget-making entrusted to us. But we knew we had to do some more work. Despite the Negative List being operational in most parts of the world, we had to address our own uniqueness and in our way.

With the level of confidence and trust that we had won, it was natural that we were kept in the picture and informed which of our suggestions were accepted and which were not. The revised concept paper followed in November. We realized that the government was serious with this piece of progressive reform. We had to be likewise. Once again we tried our best to critique and comment on various proposals.

When the Budget announcements came in March, it was no shock or surprise. It was largely an affirmation of what we had known all along. We could see our collective efforts bear fruit.

The Department was also becoming far more reliant in entrusting us the responsibility of reading two rather lengthy draft guidance papers, trying to explain the whole concept and seeking our inputs so that very little was left for experimentation through litigation on either side.

Innumerable seminars organized by various chambers and professional institutes were very illuminating with the CBEC also breaking tradition by holding its own seminar for business in Delhi immediately after the budget followed by a well-attended seminar at its academy for the officers. Not to rest on that laurel alone, CBEC further reinforced learning and doubt-clearing with seminars in Delhi, Ahmedabad, Kolkata, and Chennai in June (Mumbai to follow soon), collaborating with industry associations and professional bodies and making it grossly interactive.

And now the final packaged version is before us on June 20, 2012 ready to be operationalised from July 1, 2012.

The head of the family: the Hon'ble Finance Minister of India, who has personally supported this entire initiative, guiding it intellectually and in all other possible ways, has very readily and graciously agreed to find time, out of his most busy schedule, to release the final version of this Educational Guide, indigenously produced and directed by We: The Team Negative List.

(V. K. Garg)
Joint Secretary(TRU)
e-mail: garg.vk@nic.in

Dated: 20th June, 2012

TAXATION OF SERVICES: AN EDUCATION GUIDE

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Taxation of Services: An Education Guide

TRU, Central Board of Excise & Customs,
Department of Revenue, Ministry of Finance
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1. Introduction

1.1 Background

The journey of taxation of services began by selective taxation of just three services on July 1, 1994. The first year collections now appear a very modest at Rs 407 crore.

After appearing largely as just-another-tax for the first 8 years, with collections touching Rs 3,302 crore in 2001-02, service tax took some giant leaps in the next 7 years, both on the back of wider coverage as well as increase in tax rate, reaching Rs 60,941 crore in 2008-09. Next two years saw the growth somewhat moderating with collections reaching Rs 70,896 crore in 2010-11.

The buoyancy began once again on the back of some policy initiatives and Service Tax contributed Rs 97, 444 crore during 2011-12, an increase of nearly 37% over the previous year.

While the revenue expectations were often exceeded in all these years the administrative challenge began to assume unmanageable proportions. The newer additions to the list of services often raised issues of overlaps with the previously existing services, confounding both sides as to whether some activities were taxed for the first time or were already covered under an earlier, even if a little less specific head.

There was also a near unanimity across a wide section of thinkers that potential of service tax remained huge and largely untapped. Part of the problem identified was the lack of comprehensive taxation of services, not so much in the lack of coverage but more on account of lack of clarity and significant gaps in existing definitions, exposing the tax collection process to avoidable leakages and litigation.

Budget 2012 has ushered a new system of taxation of services; popularly known as Negative List. The new changes are a paradigm shift from the existing system where only services of specified descriptions are subjected to tax. In the new system all services, except those specified in the negative list, will be subject to taxation. For those who like to use modern-day terminology one could call it taxation of service version 2.0.

1.2 What is the aim of this Guide?

This guide is aimed at educating the tax payers and the tax administrators on various aspects of the new concept in order to assist them in gaining better understanding about the new system of taxation.

It is clarified at the outset that this guide is merely an educational aid based on a broad understanding of a team of officers of the issues. It is neither a "Departmental Circular" nor a manual of instructions issued by the Central Board of Excise and Customs. To that extent it does not command the required legal backing to be binding on either side in any manner. The guide is being released purely as a measure of facilitation so that all stakeholders obtain some preliminary understanding of the new issues for smooth transition to the new regime.

1.3 What is the key to using this Guide?

The guide consists of a number of Guidance Notes. Each of the notes deals with a specific topic relating to the negative list. The list of these educational notes is as follows-

Guidance Note 1 Introduction

Guidance Note 2 What is 'service'?

Guidance Note 3 Taxability of a 'service'

Guidance Note 4 Negative List

Guidance Note 5 Place of Provision of Service

Guidance Note 6 Declared Services

Guidance Note 7 Exemptions

Guidance Note 8 Valuation

Guidance Note 9 Rules of Interpretation

Guidance Note 10 Miscellaneous

In addition, the Guide has the following three Exhibits:

- ☐ Exhibit A1 - List of services specified in the negative list
- ☐ Exhibit A2 – Place of Provision of Service Rules, 2012.
- ☐ Exhibit A3- List of exemptions in mega notification

1.4 What is the broad scheme of new taxation?

The key features of the new system of taxation are as follows:

- ☐ At the outset 'service' has been defined in clause (44) of section65B of the Act.
- ☐ Section 66B specifies the charge of service tax which is essentially that service tax

shall be levied on all services provided or agreed to be provided in a taxable territory, other than services specified in the negative list.

- ☐ The negative list of services is contained in section 66D of the Act.
- ☐ Since provision of service in the taxable territory is an important ingredient of taxability, section 66C empowers the Central Government to make rules for determination of place of provision of service. Under these provisions the Place of Provision of Services Rules, 2012 have been made.
- ☐ To remove some ambiguities certain activities have been specifically defined by description as services and are referred as Declared Services (listed in section 66E).
- ☐ In addition to the services specified in the negative list, certain exemptions have been given. Most of the exemptions have been consolidated in a single mega exemption for ease of reference.
- ☐ Principles have been laid down in section 66F of the Act for interpretation wherever services have to be treated differentially for any reason and also for determining the taxability of bundled services.
- ☐ The system of valuation of services for levy of service tax and of availment and utilization of Cenvat credits essentially remains the same with only incidental changes required for the new system of taxation

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Guidance Note 2 –What is Service?

'Service' has been defined in clause (44) of the new section 65B and means –

- ☐ any activity
- ☐ for consideration
- ☐ carried out by a person for another
- ☐ and includes a declared service.

The said definition further provides that 'Service' does not include –

- ☐ any activity that constitutes only a transfer in title of (i) goods or (ii) immovable property by way of sale, gift or in any other manner
- ☐ (iii) a transfer, delivery or supply of goods which is deemed to be a sale of goods within the meaning of clause (29A) of article 366 of the Constitution
- ☐ a transaction only in (iv) money or (v) actionable claim
- ☐ a service provided by an employee to an employer in the course of the employment.
- ☐ fees payable to a court or a tribunal set up under a law for the time being in force

There are four explanations appended to the definition of 'service' which are dealt with in later part of this Guidance Note. Each of the ingredients bulleted above have been explained in the points below.

2.1 Activity

2.1.1 What does the word 'activity' signify?

'Activity'has not been defined in the Act. In terms of the common understanding of the word activity would include an act done, a work done, a deed done, an operation carried out, execution of an act, provision of a facility etc. It is a term with very wide connotation.

Activity could be active or passive and would also include forbearance to act. Agreeing to an obligation to refrain from an act or to tolerate an act or a situation has been specifically listed as a declared service under section 66E of the Act.

2.2 Consideration

2.2.1 The phrase 'consideration' has not been defined in the Act. What is, therefore, the meaning of 'consideration'?

As per Explanation (a) to section 67 of the Act "consideration" includes any amount that is payable for the taxable services provided or to be provided.

Since this definition is inclusive it will not be out of place to refer to the definition of 'consideration' as given in section 2 (d) of the Indian Contract Act, 1872 as follows-

"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise"

In simple terms, 'consideration' means everything received or recoverable in return for a provision of service which includes monetary payment and any consideration of non- monetary nature or deferred consideration as well as recharges between establishments located in a non-taxable territory on one hand and taxable territory on the other hand.

2.2.2 What are the implications of the condition that activity should be carried out for a 'consideration'?

- ☐ To be taxable an activity should be carried out by a person for a 'consideration'
- ☐ Activity carried out without any consideration like donations, gifts or free charities are therefore outside the ambit of service. For example grants given for a research where the researcher is under no obligation to carry out a particular research would not be a consideration for such research.
- ☐ An act by a charity for consideration would be a service and taxable unless otherwise exempted. (**for exemptions to charities please see Guidance Note 7)**
- ☐ Conditions in a grant stipulating merely proper usage of funds and furnishing of account also will not result in making it a provision of service.
- ☐ Donations to a charitable organization are not consideration unless charity is obligated to provide something in return e.g. display or advertise the name of the donor in a specified manner or such that it gives a desired advantage to the donor.

2.2.3 What is the meaning of monetary consideration?

Monetary consideration means any consideration received in the form of money. 'Money' has been defined in section 65B and includes not only cash but also cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveler's cheque, money order, postal or electronic remittance or any such similar instrument.

2.2.4 What is non-monetary consideration?

Non-monetary consideration essentially means compensation in kind such as the following:

- ☐ Supply of goods and services in return for provision of service
- ☐ Refraining or forbearing to do an act in return for provision of service
- ☐ Tolerating an act or a situation in return for provision of a service
- ☐ Doing or agreeing to do an act in return for provision of service

Illustrations

If……	And in return…
A agrees to dry clean B's clothes	B agrees to click A's photograph
A agrees not to open dry clean shop in B's neighborhood	B agrees not to open photography shop in A's neighborhood
A agrees to design B's house	B agrees not to object to construction of A's house in his neighborhood
A agrees to construct 3 flats for B on land owned by B	B agrees to provide one flat to Awithout any monetary consideration

Then

For the services provided by Ato B, the acts of B specified in 2nd column are non- monetary consideration provided by B to A. Conversely, for services provided by B to A, similar reasoning will be adopted.

2.2.5 Is the value of non-monetary consideration important?

Yes. The non-monetary consideration also needs to be valued for determining the tax payable on the taxable service since service tax is levied on the value of consideration received which includes both monetary consideration and money value of non-monetary consideration.

2.2.6 How is the money value of non-monetary consideration determined?

The value of non-monetary consideration is determined as per section 67 of the Act and the Service Tax (Determination of Value) Rules 2006, which is equivalent money value of such consideration and if not ascertainable, then as follows:-

- ☐ On the basis of gross amount charged for similar service provided to other person in the ordinary course of trade;
- ☐ Where value cannot be so determined, the equivalent money value of such consideration, not less than the cost of provision of service.

For details please refer to point no 8.1.8 and 8.1.9 of this Guide.

2.2.7 Are research grant with counter obligation on researcher to provide IPR rights on outcome of a research a consideration?

In case research grant is given with counter obligation on the researcher to provide IPR rights on the outcome of research or activity undertaken with the help of such grants then the grant is a consideration for the provision of service of research. General grants for researches will not amount to a consideration.

2.3 Activity for a consideration

The concept 'activity for a consideration' involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration. An activity done without such a relationship i.e. without the express or implied contractual reciprocity of a consideration would not be an 'activity for consideration' even though such an activity may lead to accrual of gains to the person carrying out the activity.

Thus an award received in consideration for contribution over a life time or even a singular achievement carried out independently or without reciprocity to the amount to be received will not comprise an activity for consideration.

There can be many activities without consideration. An artist performing on a street does an activity without consideration even though passersby may drop some coins in his bowl kept after feeling either rejoiced or merely out of compassion. They are, however, under no obligation to pay any amount for listening to him nor have they engaged him for his services. On the other hand if the same person is called to perform on payment of an amount of money then the performance becomes an activity for a consideration.

Provisions of free tourism information, access to free channels on TV and a large number of governmental activities for citizens are some of the examples of activities without consideration.

Similarly there could be cases of payments without an activity though they cannot be put in words as being "consideration without an activity". Consideration itself pre-supposes a certain level of reciprocity. Thus grant of pocket money, a gift or reward (which has not been given in terms of reciprocity), amount paid as alimony for divorce would be examples in this category. However a reward given for an activity performed explicitly on the understanding that the winner will receive the specified amount in reciprocity for a service to be rendered by the winner would be a consideration for such service. Thus amount paid in cases where people at large are invited to contribute to open software development (e.g. Linux) and getting an amount if their contribution is finally accepted will be examples of activities for consideration.

2.3.1 Would imposition of a fine or a penalty for violation of a provision of law be a consideration for the activity of breaking the law making such activity a 'service'?

No. To be a service an activity has to be carried out for a consideration. Therefore fines and penalties which are legal consequences of a person's actions are not in the nature of consideration for an activity.

2.3.2 Would the payments in the nature as explained in column A of the table below constitute a consideration for provision of service?

S. No.	A Nature of payment	B Whether consideration for service?
1.	Amount received in settlement of dispute.	Would depend on the nature of dispute. Per se such amounts are not consideration unless it represents a portion of the consideration for an activity that has been carried out. If the dispute itself pertai ns to consideration relating to service then it would be a part of consideration.
2.	Amount received as advances for performance of service.	Such advances are consideration for the agreement to perform a service.
3.	Deposits returned on cancellation of an agreement to provide a service.	Returned deposits are in the nature of a returned consideration. If tax has already been paid the tax payer would be entitled to refund to the extent specified and subject to provisions of law in this regard.
4.	Advances forfeited for cancellation of an agreement to provide a service.	Since service becomes taxable on an agreement to provide a service such forfeited deposits would represent consideration for the agreement that was entered into for provision of service.
5.	Security deposit that is returnable on completion of provision of service.	Returnable deposit is in the nature of security and hence do not represent consideration for service. However if the deposit is in the nature of a colorable device wherein the interest on the deposit substitutes for the consideration for service provided or the interest earned has a perceptible impact on the consideration charged for service then such interest would form part of gross amount received for the service. Also security deposit should not be in lieu of advance payment for the service.
6.	Security deposits forfeited for damages done by service receiver in the course of receiving a service	If the forfeited deposits relate to accidental damages due to unforeseen actions not relatable to provision of service then such forfeited deposits would not be a consideration in terms of clause (vi) of sub-rule (2) of rule 6 of the Valuation Rules.

7.	Excess payment made as a result of a mistake	If returned it is not consideration . If not returned and retained by the service provider it becomes a part of the taxable value.
8.	Demurrages payable for use of services beyond the period initially agreed upon e.g. retention of containers beyond the normal period.	This will be consideration and is covered by clause (x) of sub -rule (1) to Rule 6 of the Valuation Rules.

2.3.3 Can a consideration for service be paid by a person other than the person receiving the benefit of the service?

Yes. The consideration for a service may be provided by a person other than the person receiving the benefit of service as long as there is a link between the provision of service and the consideration. For example, holding company may pay for services that are provided to its associated companies.

2.4 By a person for another

2.4.1 What is the significance of the phrase 'carried out by a person for another'?

The phrase 'provided by one person to another'signifies that services provided by a person to self are outside the ambit of taxable service. Example of such service would include a service provided by one branch of a company to another or to its head office or vice-versa.

2.4.2 Are there any exceptions wherein services provided by a person to oneself are taxable?

Yes. Two exceptions have been carved out to the general rule that only services provided by a person to another are taxable. These exceptions, contained in Explanation 2 of clause (44) of section 65B, are:

- ☐ an establishment of a person located in taxable territory and another establishment of such person located in non-taxable territory are treated as establishments of distinct persons. [Similar provision exists presently in section 66A (2)].

- ☐ an unincorporated association or body of persons and members thereof are also treated as distinct persons. [Also exists presently in part as explanation to section 65].

Implications of these deeming provisions are that inter-se provision of services between such persons, deemed to be separate persons, would be taxable. For example, services provided by a club to its members and services provided by the branch office of a multi-national company to the headquarters of the multi-national company located outside India would be taxable provided other conditions relating to taxability of service are satisfied.

2.4.3 Are services provided by persons who have formed unincorporated joint ventures or profit-sharing arrangements liable to be taxed?

The services provided, both by the so constituted JV or profit sharing association of persons (AOP), as well as by each of the individual persons constituting the JV/AOP will be liable to be taxed separately, subject of course to the availability of the credit of the tax paid by independent persons to the JV/AOP and as otherwise admissible under Cenvat Rules..

2.4.4 Who is a 'person'? Is it only a natural person or includes an artificial or a juridical person?

'Person' is not restricted to natural person. 'Person' has been defined Section 65 B of the Act. The following shall be considered as persons for the purposes of the Act:

- ☐ an individual
- ☐ a Hindu undivided family
- ☐ a company
- ☐ a society
- ☐ a limited liability partnership
- ☐ a firm
- ☐ an association or body of individuals, whether incorporated or not
- ☐ Government
- ☐ a local authority, or
- ☐ every artificial juridical person, not falling within any of the preceding sub-clauses.

2.4.5 Are Government and local authorities also liable to pay tax?

Yes. However, most of the services provided by the Government or local authorities are in the negative list.

2.4.6 What is the rationale behind taxing certain activities of the Government or local authorities?

Only those activities of Government or local authorities are taxed where similar or substitutable services are provided by private entities. The rationale is as follows-

☐ to provide a level playing field to private entities in these areas as exemption to Government in such activities would lead to competitive inequities; and

☐ to avoid break in Cenvat chain as the support services provided by Government are normally in the nature of intermediary services.

2.4.7 What is the meaning of 'Government'?

The phrase 'Government'has not been defined in the Act. As per clause (23) of section 3 of the General Clauses Act, 1897 'Government'includes both Central Government and any State

Government. As per clause (8) of section 3 of the said Act 'Central Government', in relation to anything done or to be done after the commencement of the Constitution, mean the President. As per article 53 of the Constitution the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, in terms of article 77 of the Constitution all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President.

Similarly as per clause (60) of section 3 of the General Clauses Act,1897 'State Government', as respects anything done after the commencement of the Constitution, shall be in a State the Governor, and in Union Territory the Central Government. Further as per article 154 of the Constitution the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, as per article 166 of the Constitution all executive actions of the Government of State shall be expressed to be taken in the name of Governor. Therefore, State Government means the Governor or the officers subordinate to him who exercise the executive power of the State vested in the Governor and in the name of the Governor.

2.4.8 What is a local authority?

Local authority is defined in clause (31) of section 65B and means the following:-

- ☐ A Panchayat as referred to in clause (d) of article 243 of the Constitution
- ☐ A Municipality as referred to in clause (e) of article 243P of the Constitution
- ☐ A Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund
- ☐ ACantonment Board as defined in section 3 of the Cantonments Act, 2006
- ☐ A regional council or a district council constituted under the Sixth Schedule to the Constitution
- ☐ A development board constituted under article 371 of the Constitution, or
- ☐ A regional council constituted under article 371A of the Constitution.

2.4.9 Are all local bodies constituted by a State or Central Law local authorities?

No. The definition of 'local authority' is very specific as explained in point no 2.4.8 above and only those bodies which fall in the definition comprise 'local authorities'. It would not include other bodies which are merely described as a local body by virtue of a local law.

However it may be noted that services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution are specifically exempt under the mega exemption. 'Governmental authority' has been defined in the said mega exemption as a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under

article 243W of the Constitution. Thus some of these local bodies may comprise governmental authorities.

2.4.10 Would various entities like a statutory body, corporation or an authority constituted under an Act passed by the Parliament or any of the State Legislatures be 'Government' or "local authority"?

Astatutory body, corporation or an authority created by the Parliament or a State Legislature is neither 'Government' nor a 'local authority' as would be evident from the meaning of these terms explained in point nos. 2.4.7 and 2.4.8 above respectively. Such statutory body, corporation or an authority are normally created by the Parliament or a State Legislature in exercise of the powers conferred under article 53(3)(b) and article 154(2)(b) of the Constitution respectively. It is a settled position of law Government (Agarwal Vs. Hindustan Steel AIR 1970 Supreme Court 1150) that the manpower of such statutory authorities or bodies do not become officers subordinate to the President under article 53(1) of the Constitution and similarly to the Governer under article 154(1). Such a statutory body, corporation or an authority as a juristic entity is separate from the state and cannot be regarded as Central or State Government and also do not fall in the definition of 'local authority'.

Thus regulatory bodies and other autonomous entities which attain their entity under an act would not comprise either government or local authority.

2.4.11 Would services provided by one department of the Government to another Department of the Government be taxable?

If services are provided by one department of the Central Government to another department of the Central Government or by a department of a State Government to another department of the same State Government then such service would not be taxable as it would amount to self-service. To be taxable a service has to be provided to another person.

On the other hand if a service is provided by a Central Government department to a State Government department or vice versa or a by a State to another State Government or by a Government to an autonomous body, the same would be taxable if such service does not fall in the negative list. It is another matter that most of the services provided by the Government are in the negative list. For details please refer to point no. 4.1 of this Guide.

2.4.12 Would taxable services provided by Government or local authorities still be liable to tax if they are covered under any other head of the negative list or are otherwise exempted?

No. For example, transport services provided by Government to passengers by way of a stage carriage would not be taxable as transport of passengers by stage carriage has separately been specified in the negative list of services. The specified services provided by the Government or local authorities are taxable only to the extent they are not covered elsewhere i.e. either in the negative list or in the exemptions.

2.5 Activities specified in the declared list are services.

Declared Services are activities that have been specified in Section 66 E of the Act. When such activities are carried out by one person for another in the taxable territory for a

consideration then such activities are taxable services. For guidance on the declared services please refer to **Guidance Note 6.**

2.6 Activity to be taxable should not constitute only a transfer in title of goods or immovable property by way of sale, gift or in any other manner

- ☐ Mere transfer of title in goods or immovable property by way of sale, gift or in any other manner for a consideration does not constitute service.
- ☐ Goods has been defined in section 65B of the Act as 'every kind of moveable property other than actionable claims and money; and includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under contract of sale'.
- ☐ Immovable property has not been defined in the Act. Therefore the definition of immovable property in the General Clauses Act, 1897 will be applicable which defines immovable property to include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

2.6.1What is the significance of the phrase 'transfer of title'?

'Transfer of title' means change in ownership. Mere transfer of custody or possession over goods or immovable property where ownership is not transferred does not amount to transfer of title. For example giving the property on rent or goods for use on hire would not involve a transfer of title.

2.6.2 What is the significance of the word 'only' in the said exclusion clause in the definition of 'service'?

The word 'only' signifies that activities which constitute only:

- ☐ transfer of title in goods or immovable property; or
- ☐ transfer , supply or delivery which is deemed to be a deemed sale of goods or constitute; or
- ☐ a transaction in money or an actionable claim-are outside the definition of service.

A transaction which in addition to a transfer of title in goods or immovable property involves an element of another activity carried out or to be carried out by the person transferring the title would not be outrightly excluded from the definition of service. Such transactions are liable to be treated as follows-

- ☐ If two transactions, although associated, are two discernibly separate transactions then each of the separate transactions would be assessed independently. In other words the discernible portion of the transaction which constitutes, let's say, a transfer of title in goods, would be excluded from the definition of service by operation of the said exclusion clause while the service portion would be included in the definition of

service. For example a builder carrying out an activity for a client wherein a flat is constructed by the builder for the client for which payments are received in instalments and on completion of the construction the title in the flat is transferred to the client involves two elements namely provision of construction service and transfer of title in immovable property. The two activities are discernibly separate. The activity of construction carried out by the builder would, therefore, be a service and the activity of transfer of title in the flat would be outside the ambit of service.

- In cases of composite transactions, i.e. transactions involving an element of provision of service and an element of transfer of title in goods in which various elements are so inextricably linked that they essentially form one composite transaction then the nature of such transaction would be determined by the application of the dominant nature test laid down by the Supreme Court in BSNL's case. The judgement has been explained in detail in point no 2.6.3. Although the judgement was given in the context of composite transactions involving an element of transfer in title of goods by way of sale and an element of provision of service, the ratio would equally apply to other kind of composite transactions involving a provision of service and transfer in title in immovable property or actionable claim.

2.6.3 What is the manner of dealing with composite transactions which in addition to a transfer of title in goods involve an element of provision of service?

The manner of treatment of such composite transactions for the purpose of taxation, i.e. are they to be treated as sale of goods or provision of service, has been laid down by the Honorable Supreme Court in the case of Bharat Sanchar Nigam Limited vs Union of India [2006(2)STR161(SC)]. The relevant paras 42 and 43 of the said judgment are reproduced below -

"**42.** Of all the different kinds of composite transactions the drafters of the 46th Amendment chose three specific situations, a works contract, a hire purchase contract and a catering contract to bring within the fiction of a deemed sale. Of these three, the first and third involve a kind of service and sale at the same time. Apart from these two cases where splitting of the service and supply has been Constitutionally permitted in Clauses (b) and (g) of Clause 29A of Art. 366, there is no other service which has been permitted to be so split. For example the clauses of Article 366(29A) do not cover hospital services. Therefore, if during the treatment of a patient in a hospital, he or she is given a pill, can the sales tax authorities tax the transaction as a sale? Doctors, lawyers and other professionals render service in the course of which can it be said that there is a sale of goods when a doctor writes out and hands over a prescription or a lawyer drafts a document and delivers it to his/her client? Strictly speaking with the payment of fees, consideration does pass from the patient or client to the doctor or lawyer for the documents in both cases.

43. The reason why these services do not involve a sale for the purposes of Entry 54 of List II is, as we see it, for reasons ultimately attributable to the principles enunciated in Gannon Dunkerley's case, namely, if there is an instrument of contract which may be composite in form in any case other than the exceptions in Article 366(29-A), unless the transaction in truth represents two distinct and separate contracts and is discernible as such, then the State would not have the power to separate the agreement to sell from the agreement to render service, and impose tax on the sale. The test therefore for composite contracts other than

those mentioned in Article 366 (29A) continues to be - did the parties have in mind or intend separate rights arising out of the sale of goods. If there was no such intention there is no sale even if the contract could be disintegrated. The test for deciding whether a contract falls into one category or the other is to as what is the substance of the contract. We will, for the want of a better phrase, call this the **dominant nature test."**

The following principles emerge from the said judgment for ascertaining the taxability of composite transactions-

- ☐ Except in cases of works contracts or catering contracts [exact words in article 366(29A) being – 'service wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the service'] composite transactions cannot be split into contracts of sale and contracts of service.

- ☐ The test whether a transaction is a 'composite transaction' is that did the parties intend or have in mind that separate rights arise out of the constituent contract of sale and contract of service. If no then such transaction is a composite transaction even if the contracts could be disintegrated.

- ☐ The nature of a composite transaction, except in case of two exceptions carved out by the Constitution, would be determined by the element which determines the 'dominant nature' of the transaction.

  - _ If the dominant nature of such a transaction is sale of goods or immovable property then such transaction would be treated as such.

  - _ If the dominant nature of such a transaction is provision of a service then such transaction would be treated as a service and taxed as such even if the transaction involves an element of sale of goods.

- ☐ In case of works contracts and 'service wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the service' the 'dominant nature test' does not apply and service portion is taxable as a 'service' This has also been declared as a service under section 66E of the Act**.** For guidance on these two types of composite transactions and the manner of determining the value portion of service portion of such composite transactions please refer to point nos. 5.8 and 5.9 of this Guidance Paper.

- ☐ If the transaction represents two distinct and separate contracts and is discernible as such then contract of service in such transaction would be segregated and chargeable to service tax if other elements of taxability are present. This would apply even if a single invoice is issued.

The principles explained above would, mutatis mutandis, apply to composite transactions involving an element of transfer of title in immovable property or transaction in money or an actionable claim.

2.6.4 Why has notification 12/2003-ST been deleted?

Notification 12/2003 – ST exempted so much of the value of all taxable services as was equal to the value of goods and materials **sold** (emphasis supplied) by the service provider to the service recipient subject to condition that there is documentary proof of such value of goods and materials. This was necessary under the regime of taxation of services based on specified descriptions as some of the specified descriptions could include an element of transfer of title in goods.

On the other hand, under the negative list scheme, specified descriptions of taxable services have been done away with and transactions that involve transfer of title in goods or are 'deemed to be sale of goods' under the Constitution are excluded from the ambit of service by the very definition of service. Therefore if, in the course of providing a service, goods are also being sold by a service provider for which there is such documentary proof as to make the sale a distinct and a separate transaction then the activity of sale of such goods gets excluded from the definition of service itself. The essence and intent of notification no 12/2003 has, therefore, been fully captured in the definition of service itself.

2.6.5 Will the goods portion in transactions like annual maintenance contracts or erection and commissioning or construction be includible in the value of services consequent to the deletion of Notification 12/2003-ST?

All the examples given in the question now comprise "works contracts" and only the service portion of such contracts comprise service. By the express provisions contained in the definition of service (which is mandated by constitutional provisions) it is not possible to tax the goods portion of works contracts. However the principles of segregation of the value of goods are provided in Rule 2Aof the Valuation Rules. Thus there is no basis for the taxation of goods in such contracts even after the deletion of the stated notification.

Even for the sale of any equipment for which a separate contract for warranty or after sales services or maintenance is entered the discernible sales portion is not to be included in the discernible portion of the value of service. For all practical purposes these will be two separate contracts. However for artificial segregation of value between goods and services, to save either of the taxes on goods or services, the benefit was neither available earlier under the stated notification and the position continues to be the same under the new regime.

2.6.6 "Securities" have been included as goods. What are securities?

Securities have been defined in section 65B of the Act as having the same meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956 (42 0f 1956) in terms of which 'securities' includes –

- ☐ Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate.
- ☐ Derivative.
- ☐ Security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

- ☐ Units or any other such instrument issued to the investors under any mutual fund scheme.
- ☐ Any certificate or instrument (by whichever name called), issued to any investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;
- ☐ Government securities;
- ☐ Such other instruments as may be declared by the Central Government to be securities.
- ☐ Rights or interest in securities.

2.6.7 What are the implications of inclusion of 'securities' as 'goods'?

The definition of 'goods' has essentially been borrowed from the Sale of Goods Act, 1930 with the only variation that in the inclusion clause of the said definition the phrase 'stocks and shares' been replaced with 'securities'. In effect, therefore, activities that are in the nature of only transfer of title by way of sale, redemption, purchase or acquisition of securities on principal-to-principal basis, excluding services of dealers, brokers or agents in relation to such transactions, are outside the ambit of 'services. However activities which are not in the nature of transfer of title in securities (for example a person agreeing not to exercise his right in a security for a given period of time for a consideration) would not be included in this exclusion clause to the definition of 'service.

2.6.8 What is a derivative?

As per in clause (ac) of section 2 of the Securities Contract (Regulation) Act, 1956 (42 0f 1956) "derivative" includes—

(A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;

(B) a contract which derives its value from the prices, or index of prices, of underlying securities.

The definition of 'derivatives' in the said Act is an inclusive definition. Moreover, it may be noticed that as per the said definition 'derivative' includes security derived from a 'contract of difference' which is of a very wide ambit.

It would thus be prudent to keep in mind definition of derivatives as contained in Clause (a) of Section 45U of the RBI Act, 1935 as per which a 'derivates' means an instrument, to be settled at a future date, whose value is derived from change in interest rate, foreign exchange rate, credit rating from credit index, price of securities (also called "underlying") , or a combination of a more than one of them and includes interest rates swaps, forward rate agreements, foreign currency swaps, foreign currency-rupee swaps, foreign currency options, foreign currency–rupee options or such other instruments as may be specified by the Bank

from time-to- time. Transactions, including over the counter transactions, in such securities would therefore be out of the ambit of definition of 'service'.

However if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be considerations for provision of service and chargeable to service tax.

2.6.9 Would buying or selling of mutual funds or debentures be a 'service'?

No. buying or selling of mutual funds or debentures would not be a service as the same would be a transaction in securities.

2.6.10 Whether the service tax would be chargeable on the 'entry and exit load' amount charged by a mutual fund to the investor?

As per the definition of 'service' only activities which are in the nature of transfer of title in goods (which includes securities) are excluded. As a consideration for the transfer of title in mutual funds the investors pay amounts equal to NAV of the mutual fund. Entry or exit loads are in the nature of consideration for documentation, covering initial expenses, asset management etc. Hence service tax would be leviable on such entry and exit loads.

Service tax would also be leviable on fund management activity undertaken by an asset management company (AMC) for which an AMC charges the mutual fund an 'investment and advisory fee', in accordance with provisions contained in the SEBI regulation.

2.6.11 What is the meaning of 'immoveable property'?

'Immoveable property'has not been defined in the Act. Therefore, the definition of 'immoveable property as given in clause (26) of the General Clauses Act, 1897 has to be taken as per which "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

2.7 Activity to be taxable should not constitute merely a transfer, delivery or supply of goods which is deemed to be a sale of goods within the meaning of clause (29A) of article 366 of the Constitution.

2.7.1 What are 'deemed sales' defined in article 366(29A)?

The six categories of deemed sales as defined in article 366(29A) of the Constitution are –

- ☐ transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration
- ☐ transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract
- ☐ delivery of goods on hire-purchase or any system of payment by installments
- ☐ transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration

- ☐ supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration
- ☐ supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration.

2.7.2 Once transfer of title by way of sale of goods is specifically excluded, what is the need to exclude deemed sales specifically?

Some categories of deemed sales do not involve transfer of title in goods like transfer of goods on hire-purchase or transfer of right to use goods. Accordingly, deemed sales have been specifically excluded.

2.7.3Is there a possible conflict between exclusion of transactions covered under Article 366 (29A) and activities that have been declared as services under section 66E?

No. Activities specified under section 66E, which are related to transactions that are deemed as sales under article 366 (29A), have been carefully specified to ensure that there is no conflict. This would be evident from the following illustrations-

- ☐ Transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract is a category of deemed sales. On the other hand the declared list entry is limited to the service portion in execution of a works contract.
- ☐ Delivery of goods on hire-purchase or any system of payment by installments is deemed to be a sale under article 366 (29A), while the related declared service list entry is limited to activities related to delivery of goods on hire-purchase or any system of payment by installments
- ☐ Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration is again a specified category of deemed sales. The declared list entry in clause (f) of section 66E specifies transfer of goods by way of hiring, leasing or licensing or in any such manner without involving transfer of right to use goods as a declared service.
- ☐ Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration is a deemed sale of goods. Such supply takes place in restaurants or in catering. On the other hand clause (i) of section 66E restricts the declared service to service portion in an activity where such supply of food or drinks takes place.

It is thus evident that the activities specified as declared services in section 66E do not encroach upon the area of deemed sales. In fact most of the declared services have been specified with the intent of clarifying the distinction between deemed sales and activities related thereto which are outside the realm of deemed sales but qualify as a service.

2.8 Transactions only in money or actionable claims do not constitute service

2.8.1 What kind of activities would come under 'transaction only in money'?

- ☐ The principal amount of deposits in or withdrawals from a bank account.
- ☐ Advancing or repayment of principal sum on loan to someone.
- ☐ Conversion of Rs 1,000 currency note into one rupee coins to the extent amount is received in money form.

2.8.2 Would a business chit fund comes under 'transaction only in money'?

In business chit fund since certain commission received from members is retained by the promoters as consideration for providing services in relation to the chit fund it is not a transaction only in money. The consideration received for such services is therefore chargeable to service tax.

2.8.3 Would the making of a draft or a pay order by a bank be a transaction only in money?

No. Since the bank charges a commission for preparation of a bank draft or a pay order it is not a transaction only in money. However, for a draft or a pay order made by bank the service provided would be only to the extent of commission charged for the bank draft or pay order. The money received for the face value of such instrument would not be consideration for a service since to the extent of face value of the instrument it is only a transaction in money.

2.8.4 Would an investment be transaction only in money?

Investment of funds by a person with another for which the return on such investment is returned or repatriated to the investors without retaining any portion of the return on such investment of funds is a transaction only in money. Thus a partner being admitted in a partnership against his share will be a transaction in money. However, if a commission is charged or a portion of the return is retained as service charges, then such commission or portion of return is out of the purview of transaction only in money and hence taxable. Also, if a service is received in lieu of an investment it would cease to be a transaction only in money to the extent the investment represents the consideration for the service received.

2.8.5 What is the significance of Explanation 2 to the definition of service in clause (44) of section 65B of the Act?

The said Explanation 2 clarifies that transaction in money does not include any activity in relation to money by way of its use or conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged. The implications of this explanation are that while mere transactions in money are outside the ambit of service, any activity related to a transaction in money by way of its use or conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination would not be treated as a transaction in money if a separate consideration is charged for such an activity. While the transaction in

money, per-se, would be outside the ambit of service the related activity, for which a separate consideration is charged, would not be treated as a transaction of money and would be chargeable to service tax if other elements of taxability are present. For example a foreign exchange dealer while exchanging one currency for another also charges a commission (often inbuilt in the difference between the purchase price and selling price of forex). The activity of exchange of currency, per-se, would be a transaction only in money, the related activity of providing the services of conversion of forex, documentation and other services for which a commission is charged separately or built in the margins would be very much a 'service'.

2.8.6 Would debt collection services or credit control services be considered to be transaction only in money?

No. Such services provided for consideration are taxable.

2.8.7 What are actionable claims?

As per section 3 of the Transfer of Property Act, 1893 actionable claims means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

Illustrations of actionable claims are -

- ☐ Unsecured debts
- ☐ Right to participate in the draw to be held in a lottery.

2.8.8 If an unsecured debt is transferred to a third person for a consideration would this activity be treated as service?

No. Since unsecured debt is an actionable claim, a transaction only in such actionable claim is outside the ambit of service. However if a service fee or processing fee or any other charge is collected in the course of transfer or assignment of a debt then the same would be chargeable to service tax.

2.8.9 Would sale, purchase, acquisition or assignment of a secured debt like a mortgage also constitute a transaction in money?

Yes. However if a service fee or processing fee or any other charge is collected in the course of transfer or assignment of a debt then the same would be chargeable to service tax.

2.8.10 What is the scope of 'beneficial interest in moveable property' in the definition of actionable claim?

Black's Law Dictionary defines 'beneficial interest' as follows-

"A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing. For example, a person with a beneficial interest in a trust receives income from the trust but does not hold legal title to the trust property"

Therefore 'beneficial interest in moveable property' is a right or expectancy in a moveable property like right to receive income accruing from a moveable property. It may be noted that accrual of income from a moveable property could be in the nature of a consideration for a taxable service, e.g. a hiring fees or a license fee accruing on hiring or licensing of a moveable property. In such a situation the service being provided in relation to such moveable property would not be covered in the exclusion clause. It is only if the beneficial interest in such property is transferred to another person for a consideration that the activity of transferring the beneficial interest would be covered.

2.8.11 Would vouchers that entitle a person to enjoy a service, for example a health club, be an actionable claim?

No. Such a voucher does not create a 'beneficial interest' in a moveable property but only entitles a person to enjoy a particular service for a single or specified number of times.

2.8.12 Would recharge vouchers issued by service companies for enabling clients/ consumers to avail services like mobile phone communication, satellite TV broadcasts, DTH broadcasts etc be 'actionable claims?

No. Such recharge vouchers do not create a 'beneficial interest' in a moveable property but only enable a person to enjoy a particular service.

2.9 Provision of service by an employee to the employer is outside the ambit of service

2.9.1 Are all services provided by an employer to the employee outside the ambit of services?

No. Only services that are provided by the employee to the employer in the course of employment are outside the ambit of services. Services provided outside the ambit of employment for a consideration would be a service. For example, if an employee provides his services on contract basis to an associate company of the employer, then this would be treated as provision of service.

2.9.2 Would services provided on contract basis by a person to another be treated as services in the course of employment?

No. Services provided on contract basis i.e. principal-to-principal basis are not services provided in the course of employment.

2.9.3Would amounts received by an employee from the employer on premature termination of contract of employment be chargeable to service tax?

No. Such amounts paid by the employer to the employee for premature termination of a contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, amounts so paid would not be chargeable to service tax. However any amount paid for not joining a competing business would be liable to be taxed being paid for providing the service of forbearance to act.

2.9.4 What is the status of services provided by casual workers or contract labour?

If……. taxable	Then……
Services provided by casual worker to employer who gives wages on daily basis to the worker	These are services provided by the worker in the course of employment
Casual workers are employed by a contractor, like a building contractor or a security services agency, who deploys them for execution of a contract or for provision of security services to a client	Services provided by the workers to the contractor are services in the course of employment and hence not taxable. However, services provided by the contractor to his client by deploying such workers would not be a service provided by the workers to the client in the course of employment. The consideration received by the contractor would therefore be taxable if other conditions of taxability are present.

2.10 Explanations to the definition of 'service'

- **Explanation 1** clarifies that 'service' does not cover functions or duties performed by Members of Parliament, State Legislatures, Panchayat, Municipalities or any other local authority, any person who holds any post in pursuance of the provisions of the Constitution or any person as a Chairperson or a Member or a Director in a body established by the Central or State Governments or local authority and who is not deemed as an employee.

- **Explanation 2** clarifies that transaction in money does not include any activity in relation to money by way of its use or conversion by cash or by any other mode ,from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged.'(please refer to point no 2.8.5 for further guidance on this)

- **Explanation 3** creates two exceptions, by way of a deeming provision, to the general rule that only services provided by a person to another are taxable. As per these deeming provisions establishment of a person located in taxable territory and establishment of such person located in non-taxable territory are deemed to be establishments of distinct persons. Further an unincorporated association or body of persons and members thereof are also deemed as separate persons. For implications please see point no 2.4.2 of this Guide.

- **Explanation 4** explains that a branch or an agency of a person through which the person carries out business is also an establishment of such person.

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Guidance Note 3 – Taxability of Services

The taxability of services or the charge of service tax has been specified in section 66B of the Act. To be a taxable a service should be –

- ☐ provided or agreed to be provided by a person to another
- ☐ in the taxable territory
- ☐ and should not be specified in the negative list.

3.1 Provided or agreed to be provided

3.1.1 What is the significance of the phrase 'agreed to be provided'?

The phrase "agreed to be provided" has been retained from the definition of taxable service as contained in the erstwhile clause (105) of section 65 of the Act. The implications of this phrase are –

- ☐ Services which have only been agreed to be provided but are yet to be provided are taxable
- ☐ Receipt of advances for services agreed to be provided become taxable before the actual provision of service
- ☐ Advances that are retained by the service provider in the event of cancellation of contract of service by the service receiver become taxable as these represent consideration for a service that was agreed to be provided.

3.1.2 Does the liability to pay the service tax on a taxable service arise the moment it is agreed to be provided without actual provision of service?

No. The point of taxation is determined in terms of the Point of Taxation Rules, 2011. As per these Rules point of taxation is –

- ☐ the time when the invoice for the service provided or agreed to be provided is issued;
- ☐ if invoice is not issued within prescribed time period(30 days except for specified financial sector where it is 45 days) of completion of provision of service then the date of completion of service;
- ☐ the date of receipt of payment where payment is received before issuance of invoice or completion of service.

Therefore agreements to provide taxable services will become liable to pay tax only on issuance of invoice or date of completion of service if invoice is not issued within prescribed period of completion or on receipt of payment. For specific cases covered under the said Rules, including continuous supply of service, please refer to the Point of Taxation Rules, 2011.

3.2 Provided in the taxable territory

- ☐ Taxable territory has been defined in section 65B of the Act as the territory to which the Act applies i.e. the whole of territory of India other than the State of Jammu and Kashmir.

- ☐ "India" includes not only the land mass but its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976(- of 1976); the sea-bed and the subsoil underlying the territorial waters; the air space above its territory and territorial waters; and the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.

- ☐ Detailed rules called the Place of Provision of Services Rules, 2012 have been made which determine the place of provision of service depending on the nature and description of service.

- ☐ Please refer to Guidance Note 5 relating to the Place of Provision of Services Rules, 2012

3.3 Service should not be specified in the negative list

As per section 66B, to be taxable a service should not be specified in the negative list. The negative list of services has been specified in section 66D of the Act. For the sake of simplicity the negative list of services has been reproduced in **Exhibit AI** to this Guidance Paper. For guidance on the negative list please refer to **Guidance Note 4.**

3.4 Relevant Questions relating to taxability of services

3.4.1 How do I know that I am performing a taxable service in the absence of a positive list?

The drill to identify whether you are providing taxable service is very simple. Pose the questions listed in Step 1 and Step 2 below-

Step 1

To determine whether you are providing a 'Service'

Pose the following questions to yourself

S.NO.	QUESTION	ANSWER
	1	
1	2 Am I doing an activity (including, but not limited to, an activity specified in section 66E of the Act) for another person*?	Yes
2	Am I doing such activity for a consideration?	Yes
3	Does this activity consist only of transfer of title in goods or immovable property by way of sale, gift or in any other manner?	No
4.	Does this activity constitute only a transfer, delivery or supply of goods which is deemed to be a sale of goods within the meaning of clause (29A) of article 366 of the Constitution	No
5	Does this activity consist only of a transaction in money or actionable claim?	No
6	Is the consideration for the activity in the nature of court fees for a court or a tribunal?	No
7	Is such an activity in the nature of a service provided by an employee of such person in the course of employment?	No
8	Is the activity covered in any of the categories specified in Explanation 1 or Explanation 2 to clause (44) of section 65B of the Act (para 2.10)	No

[*if you are a person doing business through an establishment located in the taxable territory and another establishment located in non taxable territory OR an association or body of persons or a member thereof then please see Explanation 3 to clause (44) of section 65B of the Act (para 2.10) before answering this question]

If the answer to the above questions is as per the answers indicated in column 3 of the table above THEN you are providing a service.

Step 2

To determine whether service provided by you is taxable

If you are providing a 'service'(Step 1) and then pose the following questions to yourself-

S.NO.	QUESTION	ANSWER
	1	
1	2 Have I provided or agreed to provide the service?	Yes
2	Have I provided or agreed to provide the service in the taxable territory?	Yes
3	Is this activity entirely covered in any of the services described in the negative list of services specified in section 66D of the Act?	No

If the answer to the above questions is also as per the answers given in column 3 of the table above THEN you are providing a 'taxable service'

3.4.2 Will I have to pay service tax for all taxable services provided in the taxable territory?

No. You will not have to pay service tax on taxable services provided by you in the following cases:

- ☐ if in the previous financial year the aggregate value of taxable services provided by you was less than Rs.10 lakh and in the present financial year the aggregate value of taxable services provided by you is also less than Rs.10 lakh. (you start paying service tax after crossing the threshold of Rs 10 lakh)
- ☐ If the taxable service provided by you is covered under any one of the exemptions issued under section 93 of the Act.

3.4.3 How do I know that the service provided by me is an exempt service?

There are certain exemption notifications that have been issued under section 93 of the Act of which the main exemption no 25/2012-ST dated 20/6/12 has 39 heads (mega notification). If the service provided by you fits into the nature and description of services specified in these notifications then the service being provided by you is an exempted service. For the sake of convenience the proposed mega exemption has been reproduced at **Exhibits A3 of this Guide.**

3.4.4 Are declared services also covered by exemptions?

Yes.

3.4.5 Are services other than declared services taxable?

Yes. All services, whether declared or not, which are covered under Section 66B of the Act are taxable if elements of taxability are present. The only purpose behind declaring activities as service is to bring uniformity in assessment of such activities across the country.

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Guidance Note 4 – Negative List of Services

In terms of Section 66B of the Act, service tax will be leviable on all services provided in the taxable territory by a person to another for a consideration other than the services specified in the negative list. The services specified in the negative list therefore go out of the ambit of chargeability of service tax. The negative list of service is specified in the Act itself in Section 66 D. For ease of reference the negative list of services is given in **Exhibit A1**. In all, there are seventeen heads of services that have been specified in the negative list. The scope and ambit of these is explained in paras below.

4.1 Services provided by Government or local authority

4.1.1 Are all services provided by Government or local authority covered in the negative list?

No. Most services provided by the Central or State Government or local authorities are in the negative list except the following:

a) services provided by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services carried out on payment of commission on non government business;

b) services in relation to a vessel or an aircraft inside or outside the precincts of a port or an airport;

c) transport of goods and/or passengers;

d) support services, other than those covered by clauses (a) to (c) above, to business entities.

4.1.2 Would the taxable services provided by the Government be charged to tax if they are otherwise exempt or specified elsewhere in the negative list?

No. If the services provided by the government or local authorities that have been excluded from the negative list entry are otherwise specified in the negative list then such services would also not be taxable.

4.1.3 'Government' has not been defined in the Act. What is the meaning of Government?

Please refer to point no. 2.4.7.

4.1.4 Are various corporations formed under Central Acts or State Acts or various government companies registered under the Companies Act, 1956 or autonomous institutions set up by a special Acts covered under the definition of 'Government'?

No. For detailed analysis please refer to point no. 2.4.10.

4.1.5 What entities are then covered under 'Government'?

'Government' would include various departments and offices of the Central or State Government or the U.T. Administrations which carry out their functions in the name and by order of the President of India or the Governor of a State.

4.1.6 Would a department of the Government need to get itself registered for each of the services listed in answer to Q. No.4.1.1 above?

For the support services provided by the Government, other than where such support services are by way of renting of immovable property, to business entities government departments will not have to get registered because service tax will be payable on such services by the service receiver i.e. the business entities receiving the service under reverse charge mechanism in terms of the provisions of section 68 of the Act and the notification issued under the said section as well Service Tax Rules, 1994. For services mentioned at (a) to (c) of the list (point 4.1.1 above refers) and renting of immovable properties the tax will be payable by the concerned department.

4.1.7 What is the meaning of "support services" which appears to be a phrase of wide ambit?

Support services have been defined in section 65B of the Act as 'infrastructural, operational, administrative, logistic marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of movable or immovable property, security, testing and analysis.

Thus services which are provided by government in terms of their sovereign right to business entities, and which are not substitutable in any manner by any private entity, are not support services e.g. grant of mining or licensing rights or audit of government entities established by a special law, which are required to be audited by CAG under section 18 of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 (such services are performed by CAG under the statue and cannot be performed by the business entity themselves and thus do not constitute support services.)

4.1.8 Will the services provided by Police or security agencies to PSUs or corporate entities or sports events held by private entities be taxable?

Yes**.** Services provided by government security agencies are covered by the main portion of the definition of support service as similar services can be provided by private entities. In any case it is also covered by the inclusive portion of the definition. However the tax will be actually payable on reverse charge by the recipient.

4.1.9 What is the meaning of local authority?

Please refer to point no 2.4.8 and 2.4.9.

4.1.10 Department of Posts provides a number of services. What is the status of those services for the purpose of levy of service tax?

As per sub-clause (i) of clause (a) of section 66D services provided by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services carried out on payment of commission on non government business are excluded from the negative list. Therefore, the following services provided by Department of Posts are not liable to service tax.

- ☐ Basic mail services known as postal services such as post card, inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations.
- ☐ Transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services.

4.1.11 Would agency or intermediary services on commission basis (distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills), which are provided by the Department of Posts to non-government entities be liable to service tax?

Yes**.** Agency services carried out on payment of commission on non government business are excluded from the negative list entry relating to services provided by Government or a local authority.

4.2 Services provided by Reserve Bank of India

4.2.1 Are all services provided by the Reserve Bank of India in the negative list?

Yes. All services provided by the Reserve Bank of India are in the negative list.

4.2.2 What about services provided to the Reserve Bank of India?

Services provided to the Reserve Bank of India are not in the negative list and would be taxable unless otherwise covered in any other entry in the negative list.

4.2.3 Would services provided by banks to RBI be also taxable?

Yes. Services provided by banks to RBI would be taxable as these are neither in the negative list nor covered in any of the exemptions.

4.3 Services by a foreign diplomatic mission located in India

Any service that is provided by a diplomatic mission of any country located in India is in the negative list. This entry does not cover services, if any, provided by any office or establishment of an international organization.

4.4 Services relating to agriculture or agricultural produce.

The services relating to agriculture or agricultural produce that are specified in the negative list are services relating to –

- ☐ agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
- ☐ supply of farm labour;
- ☐ processes carried out at the agricultural farm including tending, pruning, cutting, harvesting, drying cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter essential characteristics of agricultural produce but makes it only marketable for the primary market;
- ☐ renting of agro machinery or vacant land with or without a structure incidental to its use;
- ☐ loading, unloading, packing, storage and warehousing of agricultural produce;
- ☐ agricultural extension services;
- ☐ services provided by any Agricultural Produce Marketing Committee or Board or services provided by commission agent for sale or purchase of agricultural produce;

4.4.1 What is the meaning of 'agriculture'?

'Agriculture' has been defined in the Act as cultivation of plants and rearing or breeding of animals and other species of life forms for foods, fibre, fuel, raw materials or other similar products but does not include rearing of horses.

4.4.2 Are activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry included in the definition of agriculture?

Yes. These activities are included in the definition of agriculture.

4.4.3 What is the meaning of agricultural produce?

Agricultural produce has also been defined in section 65B of the Act which means any produce of agriculture on which either no processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market. It also includes specified processes in the definition like tending, pruning, grading, sorting etc. which may be carried out at the farm or elsewhere as long as they do not alter the essential characteristics.

4.4.4 Would plantation crops like rubber, tea or coffee be also covered under agricultural produce?

Yes. Such plantation crops are also covered under agricultural produce.

4.4.5 Would potato chips or tomato ketchup qualify as agricultural produce?

No. In terms of the definition of agricultural produce, only such processing should be carried out as is usually done by cultivator producers which does not alter its essential characteristics

but makes it marketable for primary market. Potato chips of tomato ketchup are manufactured through processes which alter the essential characteristic of farm produce (potatoes and tomatoes in this case).

4.4.6 Would operations like shelling of paddy or cleaning of wheat carried out outside the farm be covered in the negative list entry relating to agriculture as sub-clause (iii) of clause (d) of section 66D relating to services by way of processes carried out at an agricultural farm?

The said sub-clause (iii) also includes 'such like operations which do not alter the essential characteristic of agricultural produce'. Therefore, activities like the processes carried out in agricultural farm would also be covered if the same are performed outside the agricultural farm provided such processes do not alter the essential characteristics of agricultural produce but only make it marketable in the primary market. Therefore, cleaning of wheat would be covered in the negative list entry even if the same is done outside the farm. Shelling of paddy would not be covered in the negative list entry relating to agriculture as this process is never done on a farm but in a rice sheller normally located away from the farm.

However, if shelling is done by way of a service i.e. on job work then the same would be covered under the exemption relating to 'carrying out of intermediate production process as job work in relation to agriculture'.

4.4.7 Would agricultural products like cereals, pulses, copra and jaggery be covered in the ambit of 'agricultural produce' since on these products certain amount of processing may be done by a person other than a cultivator or producer?

'Agricultural produce' has been defined in clause (5) of section 65B as 'any produce resulting from cultivation or rearing of plants, animals including all life- forms, on which either no further processing is done or such processing is done as is usually done by the cultivator or producer which does not alter essential characteristics of agricultural produce but make it marketable for primary market'. The processes contemplated in the said definition are those as are 'usually done by the cultivator or producer'

4.4.8 Would the processes of grinding, sterilizing, extraction packaging in retail packs of agricultural products, which make the agricultural products marketable in retail market, be covered in the negative list?

No. Only such processes are covered in the negative list which make agricultural produce marketable in the primary market.

4.4.9 Would leasing of vacant land with a green house or a storage shed meant for agricultural produce be covered in the negative list?

Yes. In terms of the specified services relating to agriculture 'leasing' of vacant land with or without structure incidental to its use' is covered in the negative list. Therefore, if vacant land has a structure like storage shed or a green house built on it which is incidental to its use for agriculture then its lease would be covered under the negative list entry.

4.4.10 What is the meaning of agricultural extension services?

Agricultural extension services have been defined in section 65B of the Act as application of scientific research and knowledge to agricultural practices through farmer education or training**.**

4.4.11 What are the services referred to in the negative list entry pertaining to Agricultural Produce Marketing Committee or Board?

Agricultural Produce Marketing Committees or Boards are set up under a State Law for purpose of regulating the marketing of agricultural produce. Such marketing committees or boards have been set up in most of the States and provide a variety of support services for facilitating the marketing of agricultural produce by provision of facilities and amenities like, sheds, water, light, electricity, grading facilities etc. They also take measures for prevention of sale or purchase of agricultural produce below the minimum support price. APMCs collect market fees, license fees, rents etc. Services provided by such Agricultural Produce Marketing Committee or Board are covered in the negative list. However any service provided by such bodies which is not directly related to agriculture or agricultural produce will be liable to tax e.g. renting of shops or other property.

4.5 Trading of goods

4.5.1 Would activities of a commission agent or a clearing and forwarding agent who sells goods on behalf of another for a commission be included in trading of goods?

No. The services provided by commission agent or a clearing and forwarding agent are not in the nature of trading of goods. These are auxiliary for trading of goods. In terms of the provision of clause (1) of section 66F reference to a service does not include reference to a service used for providing such service. (For guidance on clause (1) of section 66F please refer to Guidance Note 9) Moreover the title in the goods never passes on to such agents to come within the ambit of trading of goods.

4.5.2 Would forward contracts in commodities be covered under trading of goods?

Yes. Forward contracts would be covered under trading of goods as these are contracts which involve transfer of title in goods on a future date at a pre-determined price.

4.5.3 Would commodity futures be covered under trading of goods?

In commodity futures actual delivery of goods does not normally take place and the purchaser under a futures contract normally offset all obligations or closes out by selling an equal quantity of goods of the same description under another contract for delivery on the same date. These are in the nature of derivatives which have been dealt with in point no. 4.14.9.

4.5.4 Would auxiliary services relating to future contracts or commodity futures be covered in the negative list entry relating to trading of goods?

No. Such services provided by commodity exchanges clearing houses or agents would not be covered in the negative list entry relating to trading of goods.

4.6 Processes amounting to manufacture or production of goods

The phrase 'processes amounting to manufacture or production of goods' has been defined in section 65B of the Act as a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944) or any process amounting to manufacture of

alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act. This entry, therefore, covers manufacturing activity carried out on contract or job work basis, which does not involve transfer of title in goods, provided duties of excise are leviable on such processes under the Central Excise Act, 1944 or any of the State Acts.

4.6.1 Would service tax be leviable on processes which do not amount to manufacture or production of goods?

Yes. Service tax would be levied on processes, unless otherwise specified in the negative list, not amounting to manufacture or production of goods carried out by a person for another for consideration. Some of such services relating to processes not amounting to manufacture are exempt as specified in entry no. 30 of Exhibit A3.

4.6.2 Would service tax be leviable on processes on which Central Excise Duty is leviable under the Central Excise Act, 1944 but are otherwise exempted?

No. If Central Excise duty is leviable on a particular process, as the same amounts to manufacture, then such process would be covered in the negative list even if there is a central excise duty exemption for such process. However if central excise duty is wrongly paid on a certain process which does not amount to manufacture, with or without an intended benefit, it will not save the process on this ground.

4.7 Selling of space or time slots for advertisements other than advertisements broadcast by radio or television

'Advertisement' has been defined in section 65 B of the Act as "any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person."

4.7.1 Sale of space of time for advertisements not including sale of space for advertisement in print media and sale of time by a broadcasting agency or organization is currently taxed under clause (zzzm) of sub-section (105) of the Finance Act,1944. So what kind of sale of space or time would become taxable and what would be not taxable?

Taxable	Non-taxable
Sale of space or time for advertisement to be broadcast on radio or television	Sale of space for advertisement in print media
Sale of time slot by a broadcasting organization.	Sale of space for advertisement in bill boards, public places (including stadia), buildings, conveyances, cell phones, automated teller machines, internet
	Aerial advertising

4.7.2 Would services provided by advertisement agencies relating to preparation of advertisements be covered in the negative list entry relating to sale of space for advertisements?

No. Services provided by advertisement agencies relating to making or preparation of advertisements would not be covered in this entry and would thus be taxable. This would also not cover commissions received by advertisement agencies from the broadcasting or publishing companies for facilitating business, which may also include some portion for the preparation of advertisement.

4.7.3 In case a person provides a composite service of providing space for advertisement that is covered in the negative list entry coupled with taxable service relating to design and preparation of the advertisement how will its taxability be determined?

- ☐ This would be a case of bundled services taxability of which has to be determined in terms of the principles laid down in section 66F of the Act.
- ☐ Bundled services have been defined in the said section as provision of one type of service with another type or types of services.
- ☐ If such services are bundled in the ordinary course of business then the bundle of services will be treated as consisting entirely of such service which determines the dominant nature of such a bundle.
- ☐ If such services are not bundled in the ordinary course of business then the bundle of services will be treated as consisting entirely of such service which attracts the highest liability of service tax.

For guidance on how to determine whether or not a combination of services is bundled in the ordinary course of business please refer to **Guidance Note 9 of this Guide.**

4.7.4 Whether merely canvassing advertisement for publishing on a commission basis by persons/agencies is taxable?

Yes. These services are not covered in the negative list entry.

4.8 Access to a road or a bridge on payment of toll charges

4.8.1 Is access to national highways or state highways also covered in this entry?

Yes. National highways or state highways are also roads and hence covered in this entry.

4.8.2 Are collection charges or service charges paid to any toll collecting agency also covered?

No. The negative list entry only covers access to a road or a bridge on payment of toll charges. Services of toll collection on behalf of an agency authorized to levy toll are in the nature of services used for providing the negative list services. As per the principle laid down in sub section (1) of section 66F of the Act the reference to a service by nature or description in the Act will not include reference to a service used for providing such service.

4.9 Betting, gambling or lottery

"Betting or gambling'has been defined in section 65B of the Act as 'putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring'.

4.9.1 Are auxiliary services that are used for organizing or promoting betting or gambling events also covered in this entry?

No. These services are in the nature of services used for providing the negative list services of betting or gambling. As per the principle laid down in sub section (1) of section 66F of the Act the reference to a service by nature or description in the Act will not include reference to a service used for providing such service.

4.10 Entry to Entertainment Events and Access to Amusement Facilities.

'Entertainment event'has been defined in section 65B of the Act 'as an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, such as exhibition of cinematographic films, circus, concerts, sporting events, fairs, pageants, award functions, dance performances, musical performances, theatrical performances including cultural programs, drama, ballets or any such event or programme'.

'Amusement facility'has been defined in the Act as 'a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided'.

4.10.1 If a cultural programme, drama or a ballet is held in an open garden and not in a theatre would it qualify as an entertainment event?

Yes. The words used in the definition are 'theatrical performances'and not 'performances in theatres'. Acultural programme, drama or a ballet preformed in the open does not cease to be a theatrical performance provided it is performed in the manner it is performed in a theatre, i.e. before an audience.

4.10.2 Would a standalone ride set up in a mall qualify as an amusement facility?

Yes. A standalone amusement ride in a mall is also a facility in which fun or recreation is provided by means of a ride. Access to such amusement ride on payment of charges would be covered in the negative list.

4.10.3 Would entry to video parlors exhibiting movies played on a DVD player and displayed through a TV screen be covered in the entry?

Yes. Such exhibition is an exhibition of cinematographic film.

4.10.4 Would membership of a club qualify as access to an amusement facility?

No. Aclub does not fall in the definition of an amusement facility.

4.10.5 Would auxiliary services provided by a person, like an event manager, for organizing an entertainment event or by an entertainer for providing the entertainment to an entertainment event organizer be covered in this entry?

No. Such services are in the nature of services used for providing the service specified in this negative list entry and would not be covered in the ambit of such specified service by operation of the rule of interpretation contained in clause (1) of section 66F of the Act. For guidance on the rules of interpretation please refer to **Guidance Note 9.**

4.11 Transmission or distribution of electricity

4.11.1 What is the meaning of electricity transmission or distribution utility?

An 'electricity transmission or distribution utility' has also been defined in section 65B of the Act. It includes the following –

- ☐ the Central Electricity Authority
- ☐ a State Electricity Board
- ☐ the Central Transmission Utility (CTU)
- ☐ a State Transmission Utility (STU) notified under the Electricity Act, 2003 (36 of 2003)
- ☐ a distribution or transmission licensee licensed under the said Act
- ☐ any other entity entrusted with such function by the Central or State Government

4.11.2 If charges are collected by a developer or a housing society for distribution of electricity within a residential complex then are such services covered under this entry?

No. The developer or the housing society would be covered under this entry only if it is entrusted with such function by the Central or a State government or if it is, for such distribution, a distribution licensee licensed under the Electricity Act, 2003.

4.11.3 If the services provided by way installation of gensets or similar equipment by private contractors for distribution of electricity covered by this entry?

No. the entry does not cover services provided by private contractors. Moreover the services provided are not by way of transmission or distribution of electricity.

4.12 Specified services relating to education

The following services relating to education are specified in the negative list –

- ☐ pre-school education and education up to higher secondary school or equivalent

- ☐ education as a part of a prescribed curriculum for obtaining a qualification recognized by law for the time being in force;
- ☐ education as a part of an approved vocational education course

4.12.1 What is the meaning of 'education as a part of curriculum for obtaining a qualification recognized by law'?

It means that only such educational services are in the negative list as are related to delivery of education as 'a part' of the curriculum that has been prescribed for obtaining a qualification prescribed by law. It is important to understand that to be in the negative list the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions which lead grant of qualifications recognized by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification.

4.12.2 What are the courses which would qualify as an approved vocational education courses?

Approved vocational education courses have been specified in section 65B of the Act. These are –

- ☐ a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961(52 of 1961)
- ☐ a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Ministry of Labour and Employment, Government of India;
- ☐ a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India.

4.12.3 Are services provided by international schools giving certifications like IB also covered in this entry?

Yes. Services by way of education up to higher secondary school or equivalent are covered in this entry.

4.12.4 Are services provided by boarding schools covered in this entry?

Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled services if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in section 66F of the Act. Such services in the case of boarding schools are bundled in the ordinary course of business. Therefore the bundle of services will be treated as consisting entirely of such service which determines the dominant nature of such a bundle. In this case since dominant nature is determined by the service of education other dominant service of providing residential dwelling is also covered in a separate entry of the negative list, the entire bundle would be treated as a negative list service.

4.12.5 Are services provided to educational institutions also covered in this entry?

No. Such services are not covered under the negative list entry. However certain services provided to or by educational institutions are separately exempted under the mega–notification. These are services provided to or by an educational institution in respect of education exempted from service tax, by way of,-

(a) auxiliary educational services; or

(b) renting of immovable property

4.12.6 What are auxiliary educational services?

'Auxiliary educational services' are defined in the mega notification. In term of the definition, the following activities are auxiliary educational services:

- ☐ any services relating to imparting any skill, knowledge or education, or
- ☐ development of course content, or
- ☐ any other knowledge – enhancement activity, whether for the students or the faculty, or
- ☐ any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including following services relating to:
  - _ admission to such institution
  - _ conduct of examination
  - _ catering for the students under any mid-day meals scheme sponsored by Government
  - _ transportation of students, faculty or staff of such institution.

4.12.7 Are the auxiliary educational services for all educational institutions exempt?

No. Exemption is available for services to or by educational institutions in respect of education exempted from service tax. Therefore, service tax is chargeable on such auxiliary educational services which are in respect of education chargeable to service tax.

4.12.8 Are private tuitions covered in the entry relating to education?

No. However, private tutors can avail the benefit of threshold exemption.

4.12.9 Are services provided by way of education as a part of a prescribed curriculum for obtaining a qualification recognized by a law of a foreign country covered in the negative list entry?

No. To be covered in the negative list a course should be recognized by an Indian law.

4.12.10 If a course in a college leads to dual qualification only one of which is recognized by law would the service provided by the college by way of such education be covered in this entry?

Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately. Service in respect of each qualification would, therefore, be assessed separately. If an artificial bundle of service is created by clubbing two courses together, only one of which leads to a qualification recognized by law, then by application of the rule of determination of taxability of a service which is not bundled in the ordinary course of business contained in section 66F of the Act it is liable to be treated as a course which attracts the highest liability of service tax. However incidental auxiliary courses provided by way of hobby classes or extra-curricular activities in furtherance of overall well being will be an example of naturally bundled course. One relevant consideration in such cases will be the amount of extra billing being done for the unrecognized component viz-a-viz the recognized course. (For guidance on 'bundled services' please refer to **Guidance Note 9**).

4.12.11 Are placement services provided to educational institutions for securing job placements for the students covered in this negative list entry?

No. Such services do not fall in the category of exempt services provided to educational institutions (please refer to point no 4.12.5 above).

4.12.12 Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses/ MNCs, who come to the institutes for recruiting candidates through campus interviews. Whether services provided by such institutions are taxable?

Yes. Service tax is liable on services provided by such institutions in relation to campus recruitment as such services are not covered in the negative list.

4.12.13 Are services of conducting admission tests for admission to colleges exempt?

Yes in case the educational institutions are providing qualification recognized by law for the time being in force (please refer to point no 4.12.3 above).

4.12.14 In addition to the services specified in the negative list, which educational services are exempt if provided by a charitable organization?

Please refer to point no 7.4.1.

4.13 Services by way of renting of residential dwelling for use as residence

'Renting'has been defined in section 65B as ''allowing, permitting or granting access, entry, occupation, usageor any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property'.

4.13.1 What is a 'residential dwelling'?

The phrase 'residential dwelling' has not been defined in the Act. It has therefore to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, camp–site, lodge, house boat, or like places meant for temporary stay.

4.13.2 Would renting of a residential dwelling which is for use partly as a residence and partly for non residential purpose like an office of a lawyer or the clinic of a doctor be covered under this entry?

This would also be a case of bundled services as renting service is being provided both for residential use and for non residential use. Taxability of such bundled services has to be determined in terms of the principles laid down in section 66F of the Act. (Please refer to Guidance Note 9).

4.13.3 Would the nature of renting transactions explained in column 1 of the table below be covered in this negative list entry?

1	2
If.....	**Then.....**
(i) a residential house taken on rent is used only or predominantly for commercial or non-residential use.	the renting transaction is not covered in this negative list entry.
(ii) if a house is given on rent and the same is used as a hotel or a lodge	the renting transaction is not covered in this negative list entry because the person taking it on rent is using it for a commercial purpose.
(iii) rooms in a hotel or a lodge are let out whether or not for temporary stay	the renting transaction is not covered in this negative list entry because a hotel or a lodge is not a residential dwelling.
(iv) government department allots houses to its employees and charges a license fee	such service would be covered in the negative list entry relating to services provided by government and hence non- taxable.
(v) furnished flats given on rent for temporary stay (a few days)	such renting as residential dwelling for the bonafide use of a person or his family for a reasonable period shall be residential use; but if the same is given for a short stay for different persons over a period of time the same would be liable to tax.

4.14 Financial sector

4.14.1 What is the manner of dealing with various services provided by banks and other financial institutions?

Banks and financial institutions provide a bouquet of financial services relating to lending or borrowing of money or investments in money. For such services invariably a variety of instruments, often complex in nature, are used in the financial markets. Transactions in such instruments have to be examined on the touchstone of definition of 'service' given in clause (44) of section 65B and the list of services specified in the negative list to see whether such transactions would be chargeable to service tax. Broadly, the following legal provisions would have a bearing on determining the taxability of such transactions.

- ☐ The definition of 'service' excludes activities that constitute only transactions in money or actionable claims. 'Money' has been defined in clause (33) of section 65B to include instruments like cheques, drafts, pay orders, promissory notes, letters of credit etc. Therefore activities that are only transactions in such instruments would be outside the definition of service. This would include transactions in Commercial Paper ('CP') and Certificate of Deposit ('CD') (on the understanding of being in the nature of promissory notes), issuance of drafts or letters of credit etc.

- ☐ Explanation 2 to clause (44) of section 65B has to be kept in mind which clarifies that transaction in money does not include any activity in relation to money by way of its use or conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged. The implications of this explanation are that while mere transactions in money are outside the ambit of service, any activity related to a transaction in money by way of its use or conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination would not be treated as a transaction in money if a separate consideration is charged for such an activity. While the transaction in money, per-se, would be outside the ambit of service the related activity, for which a separate consideration is charged, would not be treated as a transaction of money and would be chargeable to service tax if other elements of taxability are present therefore service tax would be levied on service charges normally charged for various transactions in money including charges for making drafts, letter of credit issuance charges, service charges relating to issuance of CDs/CPs etc.

- ☐ Activities that constitute only transactions in 'goods' are also excluded from the definition of service. 'Goods' have been defined in clause (25) of section 65 B to include 'securities'. Definition of 'securities include 'derivatives'. These two instruments have been discussed in detail in point no. 2.6.6 to 2.6.8. Transactions in instruments like interest rate swaps and foreign exchange swaps would be excluded from the definition of 'service' as such instruments are derivatives, being securities, based on contracts of difference. Since only transfer of title in securities is excluded from the definition of 'service' any attendant service charges or fees would be chargeable to service tax.

- ☐ Further services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount. This has been explained in point nos. 14.2 to 14.4 below.

4.14.2 What are the "services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount"?

The negative list entry covers any such service wherein moneys due are allowed to be used or retained on payment of interest or on a discount. The words used are 'deposits, loans or advances and have to be taken in the generic sense. They would cover any facility by which an amount of money is lent or allowed to be used or retained on payment of what is commonly called the time value of money which could be in the form of an interest or a discount. This entry would not cover investments by way of equity or any other manner where the investor is entitled to a share of profit.

Illustrations of such services are -

- ☐ Fixed deposits or saving deposits or any other such deposits in a bank or a financial institution for which return is received by way of interest.
- ☐ Providing a loan or overdraft facility or a credit limit facility in consideration for payment of interest.
- ☐ Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.
- ☐ Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.

4.14.3 If any service charges or administrative charges or entry charges are recovered in addition to interest on a loan, advance or a deposit would such charges be also a part of this negative list entry?

No. The services of loans, advances or deposits are exempt in so far as the consideration is represented by way of interest or discount. Any charges or amounts collected over and above the interest or discount amounts would represent taxable consideration.

4.14.4 To what extent is invoice discounting or cheque discounting or any other similar form of discounting covered in the negative list entry?

Such discounting is covered only to the extent consideration is represented by way of discount as such discounting is nothing else but a manner of extending a credit facility or a loan.

4.14.5 Would services provided by banks or authorized dealers of foreign exchange by way of sale of foreign exchange to general public be covered in this entry?

No. This entry only covers sale and purchase of foreign exchange between banks or authorized dealers of foreign exchange or between banks and such dealers

4.14.6 Would transactions entered into by banks in instruments like repos and reverse repos be covered in this negative list entry?

Section 45U(c) of the RBI Act, 1934 defines 'repos'as an instrument for borrowing funds by selling securities with an agreement to repurchase the securities on a mutually agreed future date at an agreed price which includes interest for the funds borrowed'.

Section 45U (d) of the RBI Act, 1934 defines 'reverse repos' as an instrument for lending funds by buying securities with an agreement to resell the securities on a mutually agreed future date at an agreed price which includes interest for the funds lent'.

Repos and reverse repos are financial instruments of short term call money market that are normally used by banks to borrow from or lend money to RBI. The margins, called the repo rate or reverse repo rate in such transactions are nothing but interest charged for lending or borrowing of money. Thus they have the characteristics of loans and deposits for interest. However they are more appropriately excluded from the definition of service itself being the sale and purchase of securities, which are goods.

4.14.7 Would subscription to or trading in Commercial Paper (CP) or Certificates of Deposit (CD) be taxable?

Commercial Paper ('CP') and Certificate of Deposit ('CD') are understood as unsecured money market instruments which may be issued in the form of a promissory note or in a dematerialized form through any of the depositories approved by and registered with SEBI. CPs are normally issued by highly rated companies, primary dealers and financial institutions at a discount to the face value. CDs can be issued by Scheduled Commercial Banks (excluding RRBs and Local Area Banks) and All – India Financial Institutions (FIs) permitted by RBI.

Since these are instruments for lending or borrowing money where in consideration is represented by way of a discount issue or subscription to CPs or CDs would be covered in the negative list entry relating to 'serivces by way of extending deposits, loans or advances in so far as consideration is represented by way of interest or discount'. It may also be borne in mind that promissory note is included in the definition of money in the Act as given in clause (33) of section 65B.

However if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be considerations for provision of service and chargeable to service tax.

4.14.8 Would forward contracts in commodities or currencies be within the ambit of definition of 'service'?

A forward contract is an agreement, executed, to purchase or sell a pre-determined amount of a commodity or currency at a pre-determined future date at a pre-determined price. The settlement could be by way of actual delivery of underlying commodity/currency or by way of net settlement of differential of the forward rate over the prevailing market rate on the settlement date.

In a forward contract effectively two contracts are entered into, one for purchase and other for sale at a future date at a pre-determined price. These contracts would be in the nature of

transfer in title in goods (in case the forward contract relates to a commodity) or transaction only money (in case the forward contract relates to transaction and money). Therefore, forward contracts in commodities or currencies would not fall in the ambit of definition of 'service'. For transactions in money Explanation 2 to clause (44) of section 65B should also be kept in mind.

However if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be considerations for provision of service and chargeable to service tax.

4.14.9 Would 'future contracts' be chargeable to Service tax?

Future contracts are in the nature of financial derivatives price of which is depended on the value of underlying stocks or index of stocks or certain approved currencies and the settlement happens normally by way of net settlement with no actual delivery.

Since future contracts are in the nature of contracts of difference based on the prices of underlying stocks or index of stocks or approved currencies, they would be outside to the ambit of definition of 'service' as being transactions only in transfer of title in derivatives. For details please refer to point no. 2.6.8.

4.14.10 Would charges for late payment of dues on credit card outstandings be chargeable to service tax?

In case of a credit card, issuing entity allows the facility of payment of the purchases made by the card holder within a specified period failing which some charges are levied. The question that arises is whether the credit so extended for this payment is in the nature of a loan or advance for interest.

Interest for delayed payment of any consideration for the sale of goods or provision of service has been specifically excluded from value by rule 6 of valuation rules. Thus ordinarily any interest charged for delayed payment of consideration would have been outside the gambit of service tax. However in the case of credit cards the credit extended is not for the delayed payment of consideration for the provision of services. The services in the case of the credit card are by way of levy of issuing charges or the commission charged from merchants etc. The interest in this case is not for the consideration for the use of the card. Thus the benefit under the valuation rules will not be available to credit card companies.

The other question is whether such credit extended will amount to loans or advances. Loans and advances are meant to signify amounts contractually negotiated as such (loan or advance) and not merely failure to pay an amount at the due date. The exorbitant charges have also no relationship with the prevailing interest for the same class of creditworthiness and are in the nature of consideration for the services rendered for using the convenience of using the services by way of a credit card and hence taxable.

4.15 Services relating to transportation of passengers

The following services relating to transportation of passengers**,** with or without accompanied belongings, have been specified in the negative list.

Services by:

- ☐ a stage carriage;
- ☐ railways in a class other than (i) first class; or (ii) an AC coach;
- ☐ metro, monorail or tramway;
- ☐ inland waterways;
- ☐ public transport, other than predominantly for tourism purpose, in a vessel, between places located in India; and
- ☐ metered cabs, radio taxis or auto rickshaws.

Following terms have also been defined in section 65B of the Act –

- ☐ stage carriage
- ☐ inland waterways
- ☐ metered cab

4.15.1 Are services by way of giving on hire of motor vehicles to state transport undertakings covered in this negative list entry?

No. However such services provided by way of hire of a motor vehicle meant to carry more than 12 passengers to a State transport undertaking is exempt (refer entry no. 22 of Exhibit A3).

4.15.2 In some cases contract carriages get permission or temporary permits to ply as stage carriages. Would such services be taxable?

Specific exemption is available to services of transport passengers by a contract carriage for transportation of passengers, excluding tourism, conducted tours, charter or hire. (Refer entry No. 23 of Exhibit A3).

4.15.3 Are national waterways covered in the definition of inland waterways?

Yes.

4.15.4 Would services by way of transportation of passengers on a vessel, from say Chennai to Port Blair (mainland – island) or Port Blair to Havelock (inter island), be covered in the negative list entry?

Yes in case the transportation is not predominantly for tourism purpose. Such transportation by a vessel (of any size) is covered in negative list since such transportation is between two places located in India.

4.15.5 What is the scope of the phrase 'predominantly for tourism purpose' which qualifies the negative list entry relating to public transportation of passengers by a vessel in sub-clause (v) of clause (o) of section 66D?

The words 'other than predominantly for tourism purpose' qualify the preceding words "public transport". This implies that the public transport by a vessel should not be predominantly for

tourism purposes. Normal public ships or other vessels that sail between places located in India would be covered in the negative list entry even if some of the passengers on board are using the service for tourism as predominantly such service is not for tourism purpose. However services provided by leisure or charter vessels or a cruise ship, predominant purpose of which is tourism, would not be covered in the negative list even if some of the passengers in such vessels are not tourists.

4.16 Service relating to transportation of goods

The following services provided in relation to transportation of goods are specified in the negative list of services:-

- ☐ by road except the services of (i) a goods transportation agency; or (ii) a courier agency
- ☐ by aircraft or vessel from a place outside India up to the customs station of clearance in India; or
- ☐ by inland waterways.

4.16.1 Are all services provided by goods transport agency excluded from the negative list?

Yes. However, there are separate exemptions available to the services provided by the goods transport agency. These are services by way of transportation of –

- ☐ fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
- ☐ goods where gross amount charged on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or
- ☐ goods where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty.

4.16.2 Are goods transport agencies liable to pay tax in all cases or are provisions relating to reverse charge also applicable after introduction of negative list?

The provisions relating to reverse charge, i.e. service tax is liable to be paid by the consigner or consignee in specified cases, are applicable even after the introduction of negative list.

4.16.3 Some transporters under-take door-to-door transportation of goods or articles and they have made special arrangements for speedy transportation and timely delivery of such goods or articles. Such services are known as 'Express Cargo Service' with assurance of timely delivery. Whether such 'Express cargo service' is excluded as courier agency service under this negative list entry?

"Courier" has been defined in section 65B as any person engaged in door-to-door delivery of time sensitive documents, goods or articles utilizing the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles. The nature of service provided by 'Express Cargo Service'falls within the scope and definition of the courier agency.

Hence, the said service is excluded from the negative list entry relating to transportation of goods by road.

4.16.4 Whether services provided by 'angadia' are liable to service tax as a courier service?

'Angadia' undertakes delivery of documents, goods or articles received from a customer to another person for a consideration. Therefore, 'angadias' are covered within the definition of a 'courier' and services provided by angadia are liable to service tax.

4.16.5 Are the following services of transportation of goods covered in the negative list entry?

Nature of service relating to transportation of goods	Whether covered in the negative list entry?
By railways	No
By air within the country or abroad	No
By a vessel in the coastal waters	No
By a vessel on a national waterway	Yes
Services provided by a GTA	No

4.16.6 Are services provided as agents for inland waterways covered by this entry?

No. these are in the nature of services used for providing the negative list entry service of transport of goods on inland waterways and would not be covered by application of the rule for interpretation where services are specified by way of description contained in clause (1) of section 66F of the Act. (for guidance on this rule please refer to **Guidance Note 9**)

4.16.7 If transportation of goods takes place from Delhi to Jammu by road then how would the taxability of such transportation be determined considering that Jammu is located in at a place outside taxable territory?

Please refer to Guidance note 5 relating to **Place of Provision of Services.**

4.17 Funeral, burial, crematorium or mortuary services including transportation of the deceased

This negative list entry is self-explanatory.

Guidance Note 5
Place of Provision of Services Rules, 2012

5.1 Introduction

5.1.1 What is the relevance of the 'Place of Provision of Services Rules, 2012'?

The 'Place of Provision of Services Rules, 2012' specify the manner to determine the taxing jurisdiction for a service. Hitherto, the task of identifying the taxing jurisdiction was largely limited in the context of import or export of services. For this purpose rules were formulated which handled the subject of place of provision of services somewhat indirectly, confining to define the circumstances in which a provision of service would constitute import or export.

The new rules will, on the other hand, determine the place where a service shall be deemed to be provided, in terms of section 66C of the Finance Act, 2012, read with section 94 (hhh) of Chapter V of the Finance Act, 1994. Under Section 66B, a service is taxable only when, inter alia, it is "provided (or agreed to be provided) in the taxable territory". Thus, the taxability of a service will be determined based on the "**place of its provision**". The 'Place of Provision of Services Rules, 2012' will replace the 'Export of Services, Rules, 2005' and 'Taxation of Services (Provided from outside India and received in India) Rules, 2006.

5.1.2 For whom are these rules meant?

These rules are primarily meant for persons who deal in cross-border services. They will also be equally applicable for those who have operations with suppliers or customers in the state of Jammu and Kashmir.

Additionally service providers operating within India from multiple locations, without having centralized registration will find them useful in determining the precise taxable jurisdiction applicable to their operations. The rules will be equally relevant for determining services that are wholly consumed within a SEZ, to avail the outright exemption.

5.1.3 What is the basic philosophy of these rules?

The essence of indirect taxation is that a service should be taxed in the jurisdiction of its consumption. This principle is more or less universally applied. In terms of this principle, exports are not charged to tax, as the consumption is elsewhere, and services are taxed on their importation into the taxable territory.

However, this determination is not easy. Services could be provided by a person located at one location, actually performed at another while being delivered to a person located at a third location, and occasionally actually consumed at a third location or over a larger geographical territory, falling in more than one taxable jurisdiction. For example a person located in Mumbai may buy a ticket on internet from a service provider located outside India for a journey from Delhi to London. On other occasions the exact location of service recipient itself may not be available e.g. services supplied electronically. As a result it is necessary to lay down rules determining the exact place of provision, while ensuring a certain level of

harmonization with international practices in order to avoid both the double taxation as well as double non-taxation of services.

It is also a common practice to largely tax services provided by business to other business entities, based on the location of the customers and other services from business to consumers based on the location of the service provider. Since the determination in terms of above principle is not easy, or sometimes not practicable, nearest proxies are adopted to provide specificity in the interpretation as well as application of the law.

5.2 Basic Framework

5.2.1 How will a person determine the taxability of a service in terms of these rules?

As stated earlier, in terms of section 66B, a service is taxable only when, inter alia, it is "provided (or agreed to be provided) in the taxable territory". Thus, the taxability of a service will be determined based on the place of its provision. For determining the taxability of a service, therefore, one needs to ask the following questions sequentially:-

1. Which rule applies to the service provided specifically? In case more than one rules apply equally, which of these come later in the order given in the rules?

2. What is the place of provision of the service in terms of the above rule?

3. Is the place of provision in taxable territory? If yes, tax will be payable. If not, tax will not be payable.

4. Is the provider 'located' in the taxable territory? If yes, he will pay the tax.

5. If not, is the service receiver located in taxable territory? If yes, he may be liable to pay tax on reverse charge basis.

6. Is the service receiver an individual or government receiving services for a non-business purpose, or a charity receiving services for a charitable activity? If yes, the same is exempted.

7. If not, he is liable to pay tax.

5.2.2 What is "taxable territory"? What is its significance?

Taxable territory has been defined in sub-section 52 of section 65B. It means the territory to which the provisions of Chapter V of the Finance Act, 1994 apply i.e. whole of India excluding the state of Jammu and Kashmir. "Non-taxable territory" is defined in sub-section 35 ibid accordingly as the territory other than the taxable territory.

"India" is defined in sub-section 27 of section 65 B, as follows:

"India" means—

(a) the territory of the Union of India as referred to in clauses (2) and (3) of article 1 of the Constitution;

(b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976;

(c) the sea-bed and the subsoil underlying the territorial waters;

(d) the air space above its territory and territorial waters; and

(e) the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

The new charging section, section 66B, enables taxation of only such services as are provided in taxable territory.Thus services that are provided in a non-taxable territory are not chargeable to service tax.

5.2.3 What is the significance of "Location" of a Service Provider or Receiver for determining taxing jurisdiction?

In terms of explanation (2) to sub-section 44 of section 65B, an establishment of a person outside the taxable territory is a person distinct from an establishment in a taxable territory. Thus, services provided from overseas are to be carefully judged whether they are being rendered by the establishment outside the taxable territory or within.

Similarly, from the taxpayer's perspective the jurisdiction of the field formation, which is relevant for compliance with registration formalities, filing of returns, refund claims etc. by the person liable to pay tax (provider or receiver as the case may be), will be the "location" as determined in terms of these rules.

5.2.4 How will such "location" be determined?

The location of a service provider or receiver (as the case may be) is to be determined by applying the following steps sequentially:

A. where the service provider or receiver has obtained only one registration, whether centralized or otherwise, the premises for which such registration has been obtained;

B. where the service provider or receiver is not covered by Aabove:

i. the location of his business establishment; or

ii. where services are provided or received at a place other than the business establishment i.e. a fixed establishment elsewhere, the location of such establishment;

iii. where services are provided or received at more than one establishment, whether business or fixed, the establishment most directly concerned with the provision or use of the service; and

iv. in the absence of such places, the usual place of residence of the service provider or receiver.

It is important to note that in the case of a service receiver, the place relevant for determining location is the place where the service is "used" or "consumed".

Flow Diagram F1 at the end of this section illustrates the manner of determination of location.

5.2.5 What is the meaning of "business establishment"?

'Business establishment' is the place where the essential decisions concerning the general management of the business are adopted, and where the functions of its central administration are carried out. This could be the head office, or a factory, or a workshop, or shop/ retail outlet. Most significantly, there is only one business establishment that a service provider or receiver can have.

5.2.6 What is the meaning of a "fixed establishment"?

A "fixed establishment" is a place (other than the business establishment) which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to provide the services that are to be supplied by it, or to enable it to receive and use the services supplied to it for its own needs.

Temporary presence of staff by way of a short visit at a place cannot be called a fixed establishment. Also, the number of staff at a location is not important. What is relevant is the adequacy of the arrangement (of human and technical resources), to carry out an activity for a consideration, or to receive and use a service supplied. Similarly, it will be important to evaluate the permanence of the arrangement i.e. whether it is capable of executing the task.

For further guidance on when a fixed establishment of a service receiver would be treated as "location", please see para 5.3.4.

5.2.7 How will the establishment "most directly concerned with the supply" be determined?

This will depend on the facts and supporting documentation, specific to each case. The documentation will include the following:-

- ☐ the contract(s) between the service provider and receiver;
- ☐ where there are no written contracts, any written account (documents, correspondence/e-mail etc) between parties which sets out in detail their understanding of the oral contract;
- ☐ in particular, for suppliers, from which establishment the services are actually provided;
- ☐ in particular, for receivers, at which establishment the services are actually consumed, effectively used or enjoyed;
- ☐ details of how the business fits into any larger corporate structure;
- ☐ the establishment whose staff is actually involved in the execution of the job;

- ☐ performance agreements (which may be indicative both of the substance and actual nature of work performed at a particular establishment);

Thus , normally in the case of multiple establishments of a person, it will be the establishment that actually provides, or receives (i. e. uses or consumes), a service that would be treated as 'directly concerned' with the provision of service, notwithstanding the contractual position, or invoicing or payment. For further guidance in this regard, please see section 5.3.4.

Illustration 1

A business has its headquarters in India, and branches in London, Dubai, Singapore and New York. Its business establishment is in India.

Illustration 2

An overseas business house sets up offices with staff in India to provide services to Indian customers. Its fixed establishment is in India.

Illustration 3

A company with a business establishment abroad buys a property in India which it leases to a tenant. The property by itself does not create a fixed establishment. If the company sets up an office in India to carry on its business by managing the property, this will create a fixed establishment in India.

Illustration 4

A company is incorporated in India, but provides its services entirely from Singapore. The location of this service provider is Singapore, being the place where the establishment most directly concerned with the supply is located.

5.2.8 What does "usual place of residence" mean?

The usual place of residence, in case of a body corporate, has been specified as the place where it is incorporated or otherwise legally constituted.

The usual place of residence of an individual is the place (country, state etc) where the individual spends most of his time for the period in question. It is likely to be the place where the individual has set up his home, or where he lives with his family or is in full time employment. Individuals are not treated as belonging in a country if they are short term, transitory visitors (for example if they are visiting as tourists, or to receive medical treatment or for a short term educational course). An individual cannot have more than one usual place of residence.

In addition, in the case of telecommunication services, it has been prescribed that the usual place of residence of the receiver shall be the billing address. This in effect means the address that is available in the records of the service provider for billing the receiver of the

telecommunication service. This provision will be applicable to individual customers (generally referred to as subscribers) of a telecommunication service, who are provided a subscriber identification module (commonly referred to as SIM card, which may be post-paid or pre-paid) and a unique identification number (10-digit or 8-digit, as the case may be) by the service provider.

5.3 Main Rule- Rule 3- Location of the Receiver

5.3.1 What is the implication of this Rule?

The main rule or the default rule provides that a service shall be deemed to be provided where the receiver is located.

The main rule is applied when none of the other later rules apply (by virtue of rule 14 governing the order of application of rules- see para 5.14 of this guidance paper). In other words, if a service is not covered by an exception under one of the later rules, and is consequently covered under this default rule, then the receiver's location will determine whether the service is leviable to tax in the taxable territory.

The principal effect of the Main Rule is that:-

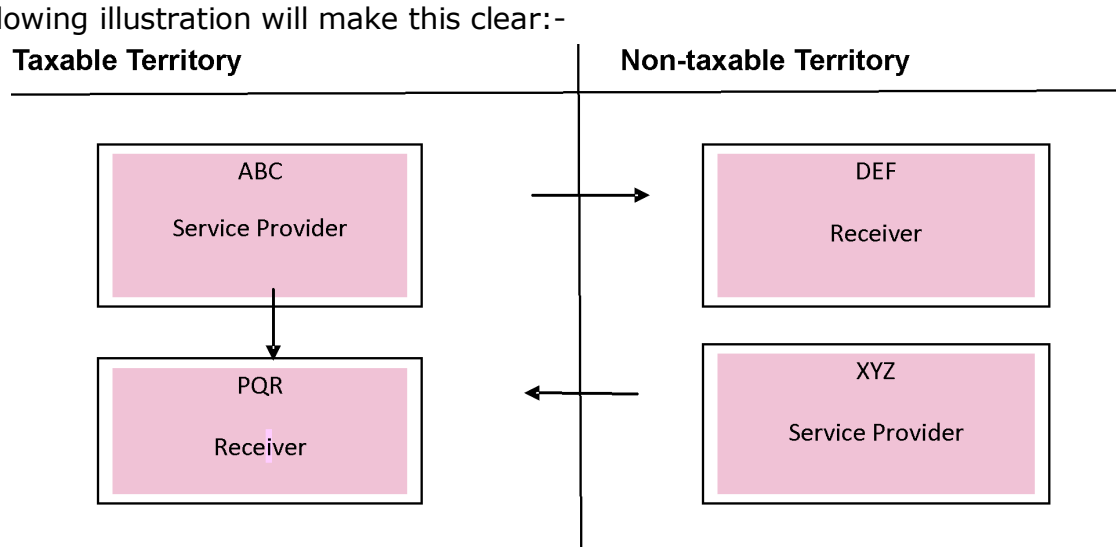
A. Where the location of receiver of a service is in the taxable territory, such service will be deemed to be provided in the taxable territory and service tax will be payable.
B. However if the receiver is located outside the taxable territory, no service tax will be payable on the said service.

5.3.2 If the place of provision of a taxable service is the location of service receiver, who is the person liable to pay tax on the transaction?

Service tax is normally required to be paid by the provider of a service, except where he is located outside the taxable territory and the place of provision of service is in the taxable territory.

Where the provider of a service is located outside the taxable territory, the person liable to pay service tax is the receiver of the service in the taxable territory, unless of course, the service is otherwise exempted.

Following illustration will make this clear:-



A company ABC provides a service to a receiver PQR, both located in the taxable territory. Since the location of the receiver is in the taxable territory, the service is taxable. Service tax liability will be discharged by ABC, being the service provider and being located in taxable territory.

However, if ABC were to supply the same service to a recipient DEF located in non-taxable territory, the provision of such service is not taxable, since the receiver is located outside the taxable territory.

If the same service were to be provided to PQR (located in taxable territory) by an overseas provider XYZ (located in non-taxable territory), the service would be taxable, since the recipient is located in the taxable territory. However, since the service provider is located in a non-taxable territory, the tax liability would be discharged by the receiver, under the reverse charge principle (also referred to as "tax shift").

5.3.3 Who is the service receiver?

Normally, the person who is legally entitled to receive a service and, therefore, obliged to make payment, is the receiver of a service, whether or not he actually makes the payment or someone else makes the payment on his behalf.

Illustration

A lady leaves her car at a service station for the purpose of servicing. She asks her chauffer to collect the car from the service station later in the day, after the servicing is over. The chauffer makes the payment on behalf of the lady owner and collects the car. Here the lady is the 'person obliged to make the payment' towards servicing charges, and therefore, she is the receiver of the service.

5.3.4 What would be the situation where the payment for a service is made at one location (say by the headquarters of a business) but the actual rendering of the service is elsewhere (i.e. a fixed establishment)?

Occasionally, a person may be the person liable to make payment for the service provided on his behalf to another person. For instance, the provision of a service may be negotiated at the headquarters of an entity by way of centralized sourcing of services whereas the actual provision is made at various locations in different taxing jurisdictions (in the case of what is commonly referred to as a multi-locational entity or MLE). Here, the central office may act only as a facilitator to negotiate the contract on behalf of various geographical establishments. Each of the geographical establishments receives the service and is obligated to make the payment either through headquarters or sometimes directly. When the payment is made directly, there is no confusion. In other situations, where the payment is settled either by cash or through debit and credit note between the business and fixed establishments, it is clear that the payment is being made by a geographical location. Wherever a fixed establishment bears the cost of acquiring, or using or consuming a service through any internal arrangement (normally referred to as a "recharge", "reallocation", or a "settlement"), these are generally made in accordance with corporate tax or other statutory requirements. These accounting arrangements also invariably aid the MLE's management in budgeting and financial performance measurement.

Various accounting and business management systems are generally employed to manage, monitor and document the entire purchasing cycle of goods and services (such as the ERP-Enterprise Resource Planning System). These systems support and document the company processes, including the financial and accounting process, and purchasing process. Normally, these systems will provide the required information and audit trail to identify the establishment that uses or consumes a service.

It should be noted that in terms of proviso to section 66B, the establishments in a taxable and non-taxable territory are to be treated as distinct persons. Moreover, the definition of "location of the receiver" clearly states that "where the services are "used" at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service" will be the location. Thus, the taxing jurisdiction of service, which is provided under a 'global framework agreement' between two multinational companies with the business establishment located outside the taxable territory, but which is used or consumed by a fixed establishment located in the taxable territory, will be the taxable territory.

Illustration

The following example illustrates the above, by comparing the place of provision of services rendered under a Global Agreement[1] vis-à-vis a Global Framework Agreement[2].

AAA is a firm with its manufacturing unit and business establishment located in the taxable territory A. It has got two other manufacturing plants located in countries X and Y(say,AAA-X and AAA-Y respectively). AAAwishes to obtain IT services for a new production process for its three manufacturing plants in the region.

BBB is an IT firm located in the taxable territory (location of business establishment). BBB Ltd also has fixed establishments (subsidiaries) located in country X (say BBB-X) and in country Y(say, BBB- Y).

AAA engages BBB for meeting its IT service requirement.

~~Scenario 1~~ [See Flow Diagram F 2 at the end of this section]

AAA enters into a **Global (centralized purchasing) agreement** with BBB for provision of IT services for the whole group. Following are the different transactions under which services are provided:-

a) Under the global agreement, some component of IT service is provided by BBB to AAAin country A(say, Transaction 1).

b) To meet the requirements of providing IT solutions specific to the plantsAAA-X and AAA-Y in countries X and Y, BBB enters into agreements with its subsidiaries BBB-X (in country X) and BBB-Y (in country Y), under which they provide IT services to

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1A 'Global Contract or Agreement' is between two parent companies for provision of services from one to the other, where actual provision of services is to be made to subordinate offices of the recipient company in different tax jurisdictions.

2A 'Global Framework Agreement' is between two parent companies for provision of services, but here, the 'framework agreement' only specifies the broad terms of the agreement i.e. fees, terms and conditions, the list of recipient branches/offices or even the details of provision of services to be made. The subsidiaries in different locations then enter into separate and independent business agreements, for provision of services and payments.

BBB (say, Transaction 2 and Transaction 3). Though these services are provided by BBB-X and BBB-Y to BBB, these are rendered as under:-

- ☐ By BBB-X to AAA-X (in country X)- under transaction 2, and
- ☐ By BBB-Y to AAA-Y (in country-Y) – under transaction 3.

c) AAA enters into separate agreements with AAA-X and AAA-Y, under which AAA Ltd provides IT services to them (transaction 4 and transaction 5).

The transactions and provision of service under each are illustrated in the Flow diagram F2 titled 'Scenario1' at the end of this section.

~~Scenario 2~~ [See Flow Diagram F 3 at the end of this section]

AAA enters into a **Framework Agreement** with BBB for provision of IT services for the whole group. The Framework agreement covers the broad contours of supply between the two parties, payment milestones, obligations relating to confidentiality, penalty for default, limitations of liability and warranties etc, which would apply as and when group companies enter into separate agreements, in accordance with the terms envisaged in the framework agreement. BBB-X and BBB-Y could then enter into separate and independent business agreements with AAA-X and AAA-Y, in countries X and Y respectively, for provision of IT services. There are four agreements, but only three transactions involving provision of services, as indicated in the Flow diagram F3- Scenario 2 at the end of this section.

5.3.5 What is the place of provision where the location of receiver is not ascertainable in the ordinary course of business?

Generally, in case of a service provided to a person who is in business, the provider of the service will have the location of the recipient's registered location, or his business establishment, or his fixed establishment etc, as the case may be. However, in case of certain services (which are not covered by the exceptions to the main rule), the service provider may not have the location of the service receiver, in the ordinary course of his business. This will also be the case where a service is provided to an individual customer who comes to the premises of the service provider for availing the service and the provider has to, more often than not, rely on the declared location of the customer. In such cases the place of provision will be the location of the service provider. It may be noted that the service provider is not required to make any extraordinary efforts to trace the address of the service receiver. The address should be available in the ordinary course of business.

In case of certain specified categories of services, the place of provision shall be the place where the services are actually performed. These are discussed in the following paragraphs.

5.4 Rule 4- Performance based Services

5.4.1 What are the services that are provided "in respect of goods that are made physically available, by the receiver to the service provider, in order to provide the service"?- sub-rule (1):

Services that are related to goods, and which require such goods to be made available to the service provider or a person acting on behalf of the service provider so that the service can

be rendered, are covered here. The essential characteristic of a service to be covered under this rule is that the goods temporarily come into the physical possession or control of the service provider, and without this happening, the service cannot be rendered. Thus, the service involves movable objects or things that can be touched, felt or possessed. Examples of such services are repair, reconditioning, or any other work on goods (not amounting to manufacture), storage and warehousing, courier service, cargo handling service (loading, unloading, packing or unpacking of cargo), technical testing/inspection/certification/ analysis of goods, dry cleaning etc. It will not cover services where the supply of goods by the receiver is not material to the rendering of the service e.g. where a consultancy report commissioned by a person is given on a pen drive belonging to the customer. Similarly, provision of a market research service to a manufacturing firm for a consumer product (say, a new detergent) will not fall in this category, even if the market research firm is given say, 1000 nos. of 1 kilogram packets of the product by the manufacturer, to carry for door-to-door surveys.

5.4.2 What is the implication of the proviso to sub-rule (1)?

The proviso to this rule states as follows:-

> "Provided further that where such services are provided from a remote location by way of electronic means, the place of provision shall be the location where goods are situated at the time of provision of service."

In the field of information technology, it is not uncommon to provide services in relation to tangible goods located distantly from a remote location. Thus the actual place of performance of the service could be quite different from the actual location of the tangible goods. This proviso requires that the place of provision shall be the actual location of the goods and not the place of performance, which in normal situations is one and the same.

5.4.3 What are the services that are provided "to an individual … which require the physical presence of the receiver … with the provider for provision of the service."?- sub-rule (2)

Certain services like cosmetic or plastic surgery, beauty treatment services, personal security service, health and fitness services, photography service (to individuals), internet café service, classroom teaching, are examples of services that require the presence of the individual receiver for their provision. As would be evident from these examples, the nature of services covered here is such as are rendered in person and in the receiver's physical presence. Though these are generally rendered at the service provider's premises (at a cosmetic or plastic surgery clinic, or beauty parlor, or health and fitness centre, or internet café), they could also be provided at the customer's premises, or occasionally while the receiver is on the move (say, a personal security service; or a beauty treatment on board an aircraft).

5.4.4 What is the significance of "..in the physical presence of an individual, whether represented either as the service receiver or a person acting on behalf of the receiver" in this rule?

This implies that while a service in this category is capable of being rendered only in the presence of an individual, it will not matter if, in terms of the contractual arrangement between the provider and the receiver (formal or informal, written or oral), the service is actually rendered by the provider to a person other than the receiver, who is acting on behalf of the receiver.

Illustration

A modelling agency contracts with a beauty parlour for beauty treatment of say, 20 models. Here again is a situation where the modelling agency is the receiver of the service, but the service is rendered to the models, who are receiving the beauty treatment service on behalf of the modelling agency. Hence, notwithstanding that the modelling agency does not qualify as the individual receiver in whose presence the service is rendered, the nature of the service is such as can be rendered only to an individual, thereby qualifying to be covered under this rule.

5.5 Rule 5- Location of Immovable Property

In the case of a service that is 'directly in relation to immovable property', the place of provision is where the immovable property (land or building) is located, irrespective of where the provider or receiver is located.

5.5.1 What is "immovable property"?

"Immovable Property" has not been defined in the Finance Act, 1994. However, in terms of section 4 of the General Clauses Act, 1897, the definition of immovable property provided in sub-section 3 (26) of the General Clauses Act will apply, which states as under:

"Immovable Property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."

It may be noted that the definition is inclusive and thus properties such as buildings and fixed structures on land would be covered by the definition of immovable property. The property must be attached to some part of earth even if underwater.

5.5.2 What are the criteria to determine if a service is 'directly in relation to' immovable property located in taxable territory?

Generally, the following criteria will be used to determine if a service is in respect of immovable property located in the taxable territory:

i) The service consists of lease, or a right of use, occupation, enjoyment or exploitation of an immovable property;

ii) the service is physically performed or agreed to be performed on an immovable property (e.g. maintenance) or property to come into existence (e.g. construction);

iii) the direct object of the service is the immovable property in the sense that the service enhances the value of the property, affects the nature of the property, relates to preparing the property for development or redevelopment or the environment within the limits of the property (e.g. engineering, architectural services, surveying and sub-dividing, management services, security services etc);

iv) the purpose of the service is:

a) the transfer or conveyance of the property or the proposed transfer or conveyance of the property (e.g., real estate services in relation to the actual or proposed acquisition, lease or rental of property, legal services rendered to the owner or beneficiary or potential owner or beneficiary of property as a result of a will or testament);

b) the determination of the title to the property.

There must be more than a mere indirect or incidental connection between a service provided in relation to an immovable property, and the underlying immovable property. For example, a legal firm's general opinion with respect to the capital gains tax liability arising from the sale of a commercial property in India is basically advice on taxation legislation in general even though it relates to the subject of an immovable property.This will not be treated as a service in respect of the immovable property.

5.5.3 Examples of land-related services

i) Services supplied in the course of construction, reconstruction, alteration, demolition, repair or maintenance (including painting and decorating) of any building or civil engineering work;

ii) Renting of immovable property;

iii) Services of real estate agents, auctioneers, architects, engineers and similar experts or professional people, relating to land, buildings or civil engineering works. This includes the management, survey or valuation of property by a solicitor, surveyor or loss adjuster.

iv) Services connected with oil/gas/mineral exploration or exploitation relating to specific sites of land or the seabed.

v) The surveying (such as seismic, geological or geomagnetic) of land or seabed.

vi) Legal services such as dealing with applications for planning permission.

vii) Packages of property management services which may include rent collection, arranging repairs and the maintenance of financial accounts.

viii) The supply of hotel accommodation or warehouse space.

5.5.4 What if a service is not directly related to immovable property?

The place of provision of services rule applies only to services which relate directly to specific sites of land or property. In other words, the immovable property must be clearly identifiable to be the one from where, or in respect of which, a service is being provided. Thus, there needs to be a very close link or association between the service and the immovable property. Needless to say, this rule does not apply if a provision of service has only an indirect connection with the immovable property, or if the service is only an incidental component of a more comprehensive supply of services.

For example, the services of an architect contracted to design the landscaping of a particular resort hotel in Goa would be land-related. However, if an interior decorator is engaged by a retail chain to design a common décor for all its stores in India, this service would not be land-related. The default rule i.e. Rule 3 will apply in this case.

5.5.5 Examples of services which are not land-related

i) Repair and maintenance of machinery which is not permanently installed. This is a service related to goods.

ii) Advice or information relating to land prices or property markets because they do not relate to specific sites.

iii) Land or Real Estate Feasibility studies, say in respect of the investment potential of a developing suburb, since this service does not relate to a specific property or site.

iv) Services of a Tax Return Preparer in simply calculating a tax return from figures provided by a business in respect of rental income from commercial property.

v) Services of an agent who arranges finance for the purchase of a property.

5.6 Rule 6- Services relating to Events

5.6.1 What is the place of provision of services relating to events?

Place of provision of services provided by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational, entertainment event, or a celebration, conference, fair, exhibition, or any other similar event and of services ancillary to such admission, shall be the place where the event is held.

5.6.2 What are the services that will be covered in this category?

Services in relation to admission as well as organization of events such as conventions, conferences, exhibitions, fairs, seminars, workshops, weddings, sports and cultural events are covered under this Rule.

Illustration 1

A management school located in USA intends to organize a road show in Mumbai and New Delhi for prospective students. Any service provided by an event manager, or the right to entry (participation fee for prospective students, say) will be taxable in India.

Illustration 2

An Indian fashion design firm hosts a show at Toronto, Canada. The firm receives the services of a Canadian event organizer. The place of provision of this service is the location of the event, which is outside the taxable territory. Any service provided in relation to this event, including the right to entry, will be non-taxable.

5.6.3 What is a service ancillary organization or admission to an event?

Provision of sound engineering for an artistic event is a prerequisite for staging of that event and should be regarded as a service ancillary to its organization. Aservice of hiring a specific equipment to enjoy the event at the venue (against a charge that is not included in the price of entry ticket) is an example of a service that is ancillary to admission.

5.6.4 What are event-related services that would be treated as not ancillary to admission to an event?

A service of courier agency used for distribution of entry tickets for an event is a service that is not ancillary to admission to the event.

5.7 Rule 7- Part performance of a service at different locations

5.7.1 What does this Rule imply?

This Rule covers situations where the actual performance of a service is at more than one location, and occasionally one (or more) such locations may be outside the taxable territory.

This Rule states as follows:-

"Where any service stated in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided".

The following example illustrates the application of this Rule:-

Illustration 1

An Indian firm provides a 'technical inspection and certification service' for a newly developed product of an overseas firm (say, for a newly launched motorbike which has to meet emission standards in different states or countries). Say, the testing is carried out in Maharashtra (20%), Kerala (25%), and an international location (say, Colombo 55%).

Notwithstanding the fact that the greatest proportion of service is outside the taxable territory, the place of provision will be the place in the taxable territory where the greatest proportion of service is provided, in this case Kerala.

This rule is, however, not intended to capture insignificant portion of a service rendered in any part of the taxable territory like mere issue of invoice, processing of purchase order or recovery, which are not by way of service actually performed on goods.

It is clarified that this rule is applicable in performance-based services or location-specific services (immovable property related or event-linked). Normally, such services when provided in a non-taxable territory would require the presence of separate establishments in such territories. By virtue of an explanation of sub-clause (44) of section 65B, they would constitute distinct persons and thus it would be legitimate to invoice the services rendered individually in the two territories.

5.8 Rule 8- Services where the Provider as well as Receiver is located in Taxable Territory

5.8.1 What is the place of provision of a service where the location of the service provider and that of the service receiver is in the taxable territory?

The place of provision of a service, which is provided by a provider located in the taxable territory to a receiver who is also in the taxable territory, will be the location of the receiver.

5.8.2 What is the implication of this Rule?

This Rule covers situations where the place of provision of a service provided in the taxable territory may be determinable to be outside the taxable territory, in terms of the application of one of the earlier Rules i.e. Rule 4 to 6, but the service provider, as well as the service receiver, are located in the taxable territory.

The implication of this Rule is that in all such cases, the place of provision will be deemed to be in the taxable territory, notwithstanding the earlier rules. The presence of both the service provider and the service receiver in the taxable territory indicates that the place of consumption of the service is in the taxable territory. Services rendered, where both the provider and receiver of the service are located outside the taxable territory, are now covered by the mega exemption.

Illustration

A helicopter of Pawan Hans Ltd (India based) develops a technical snag in Nepal. Say, engineers are deputed by Hindustan Aeronautics Ltd, Bangalore, to undertake repairs at the site in Nepal. But for this rule, Rule 4, sub-rule (1) would apply in this case, and the place of provision would be Nepal i.e. outside the taxable territory. However, by application of Rule 7, since the service provider, as well as the receiver, are located in the taxable territory, the place of provision of this service will be within the taxable territory.

5.9 Rule 9- Specified services- Place of provision is location of the service provider

5.9.1 What are the specified services where the place of provision is the location of the service provider?

Following are the specified services where the place of provision is the location of the service provider:-

i) Services provided by a banking company, or a financial company, or a non-banking financial company to account holders;

ii) Online information and database access or retrieval services;

iii) Intermediary services;

iv) Service consisting of hiring of means of transport, up to a period of one month.

5.9.2 What is the meaning of "account holder"? Which accounts are not covered by this rule?

"Account" has been defined in the rules to mean an account which bears an interest to the depositor. Services provided to holders of demand deposits, term deposits, NRE (non-resident external) accounts and NRO (non-resident ordinary) accounts will be covered under this rule. Banking services provided to persons other than account holders will be covered under the main rule (Rule 3- location of receiver).

5.9.3 What are the services that are provided by a banking company to an account holder (holder of an account bearing interest to the depositor)?

Following are examples of services that are provided by a banking company or financial institution to an "account holder", in the ordinary course of business:-

i) services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc;

ii) transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.

5.9.4 What are the services that are not provided by a banking company or financial institution to an account holder, in the ordinary course of business, and will consequently be covered under another Rule?

Following are examples of services that are generally NOT provided by a banking company or financial institution to an account holder (holder of a deposit account bearing interest), in the ordinary course of business:-

i) financial leasing services including equipment leasing and hire-purchase;

ii) merchant banking services;

iii) Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;

iv) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services;

v) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;

vi) banker to an issue service.

In the case of any service which does not qualify as a service provided to an account holder, the place of provision will be determined under the default rule i.e. the Main Rule 3. Thus, it will be the location of the service receiver where it is known (ascertainable in the ordinary course of business), and the location of the service provider otherwise.

5.9.5 What are "Online information and database access or retrieval services"?

"Online information and database access or retrieval services" are services in relation to on-line information and database access or retrieval or both, in electronic form through computer network, in any manner. Thus, these services are essentially delivered over the internet or an electronic network which relies on the internet or similar network for their provision. The other important feature of these services is that they are completely automated, and require minimal human intervention.

Examples of such services are:-

i) online information generated automatically by software from specific data input by the customer, such as web-based services providing trade statistics, legal and financial data, matrimonial services, social networking sites;

ii) digitized content of books and other electronic publications, subscription of online newspapers and journals, online news, flight information and weather reports;

iii) Web-based services providing access or download of digital content.

The following services will not be treated as "online information and database access or retrieval services":-

i) Sale or purchase of goods, articles etc over the internet;

ii) Telecommunication services provided over the internet, including fax, telephony, audio conferencing, and videoconferencing;

iii) A service which is rendered over the internet, such as an architectural drawing, or management consultancy through e-mail;

iv) Repair of software, or of hardware, through the internet, from a remote location;

v) Internet backbone services and internet access services.

5.9.6 What are "Intermediary Services"?

Generally, an "intermediary" is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus, an intermediary is involved with two supplies at any one time:

i) the supply between the principal and the third party; and

ii) the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.

For the purpose of this rule, an intermediary in respect of goods (such as a commission agent i.e. a buying or selling agent, or a stockbroker) is excluded by definition.

Also excluded from this sub-rule is a person who arranges or facilitates a provision of a service (referred to in the rules as "the main service"), but provides the main service on his own account.

In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-

Nature and value:An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.

Separation of value: The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission".

Identity and title: The service provided by the intermediary on behalf of the principal is clearly identifiable.

In accordance with the above guiding principles, services provided by the following persons will qualify as 'intermediary services':-

i) Travel Agent (any mode of travel)

ii) Tour Operator

iii) Commission agent for a service [an agent for buying or selling of goods is excluded]

iv) Recovery Agent

Even in other cases, wherever a provider of any service acts as an intermediary for another person, as identified by the guiding principles outlined above, this rule will apply. Normally, it is expected that the intermediary or agent would have documentary evidence authorizing him to act on behalf of the provider of the 'main service'.

Illustration

A freight forwarder arranges for export and import shipments. There could be two possible situations here- one when he acts on his own account, and the other, when he acts as an intermediary.

When the freight forwarder acts on his own account (say, for an export shipment)

A freight forwarder provides domestic transportation within taxable territory (say, from the exporter's factory located in Pune to Mumbai port) as well as international freight service (say, from Mumbai port to the international destination), under a single contract, on his own account (i.e. he buys-in and sells fright transport as a principal), and charges a consolidated amount to the exporter. This is a service of transportation of goods for which the place of supply is the destination of goods. Since the destination of goods is outside taxable territory, this service will not attract service tax. Here, it is presumed that ancillary freight services (i.e. services ancillary to transportation- loading, unloading, handling etc) are "bundled" with the principal service owing to a single contract or a single price (consideration).

On an import shipment with similar conditions, the place of supply will be in the taxable territory, and so the service tax will be attracted.

When the freight forwarder acts as an intermediary

Where the freight forwarder acts as an intermediary, the place of provision will be his location. Service tax will be payable on the services provided by him. However, when he provides a service to an exporter of goods, the exporter can claim refund of service tax paid under notification for this purpose.

Similarly, persons such as call centres, who provide services to their clients by dealing with the customers of the client on the client's behalf, but actually provided these services on their own account, will not be categorized as intermediaries.

5.9.7 What is the service of "hiring of means of transport"?

The services of providing a hire or lease, without the transfer of right to use (explained in guide at point 6.6), is covered by this rule. Normally the following will constitute means of transport:-

i) Land vehicles such as motorcars, buses, trucks;
ii) Vessels;
iii) Aircraft;
iv) Vehicles designed specifically for the transport of sick or injured persons;
v) Mechanically or electronically propelled invalid carriages;
vi) Trailers, semi-trailers and railway wagons.

The following are not 'means of transport':-

i) Racing cars;
ii) Containers used to store or carry goods while being transported;
iii) Dredgers, or the like.

5.9.8 What if I provide a service of hiring of a fleet of cars to a company on an annual contract? What will be place of provision of my service if my business establishment is located in New Delhi, and the company is located in Faridabad (Haryana)?

This Rule covers situations where the hiring is for a period of upto one month. Since hiring period is more than one month, this sub-rule cannot be applied to the situation. The place of provision of your service will be determined in terms of Rule 3 i.e. receiver location, which in this case is Faridabad (Haryana).

5.10 Rule 10- Place of Provision of a service of transportation of goods

5.10.1 What are the services covered under this Rule?

Any service of transportation of goods, by any mode of transport (air, vessel, rail or by a goods transportation agency), is covered here. However, transportation of goods by courier or mail is not covered here.

5.10.2 What is the place of provision of a service of transportation of goods?

Place of provision of a service of transportation of goods is the place of destination of goods, except in the case of services provided by a Goods Transportation Agency in respect of transportation of goods by road, in which case the place of provision is the location of the person liable to pay tax (as determined in terms of rule 2(1)(d) of Service Tax Rules, 1994 (since amended).

Illustration

A consignment of cut flowers is consigned from Chennai to Amsterdam. The place of provision of goods transportation service will be Amsterdam (outside India, hence not liable to service tax). Conversely, if a consignment of crystal ware is consigned from Paris to New Delhi, the place of provision will be New Delhi.

5.10.3 What does the proviso to this Rule imply?

The proviso to this Rule states as under:-

"Provided that the place of provision of services of transportation of goods by goods transportation agency shall be the location of the person liable to pay tax."

Sub-rule 2(1)(d) of Service Tax Rules, 1994 provides that where a service of transportation of goods is provided by a 'goods transportation agency', and the consignor or consignee is covered under any of the specified categories prescribed therein , the person liable to tax is the person who pays, or is liable to pay freight (either himself or through his agent) for the transportation of goods by road in a goods carriage. If such person is located in non-taxable territory, then the person liable to pay tax shall be the service provider.

Illustration 1

A goods transportation agency ABC located in Delhi transports a consignment of new motorcycles from the factory of XYZ in Gurgaon (Haryana), to the premises of a dealer in Bhopal, Madhya Pradesh. Say, XYZ is a registered assessee and is also the person liable to pay freight and hence person liable to pay tax, in this case. Here, the place of provision of the service of transportation of goods will be the location of XYZ i.e. Haryana.

Illustration 2

A goods transportation agency ABC located in Delhi transports a consignment of new motorcycles from the factory of XYZ in Gurgaon (Haryana), to the premises of a dealer in Jammu (non-taxable territory). Say, as per mutually agreed terms between ABC and XYZ, the dealer in Jammu is the person liable to pay freight. Here, in terms of amended provisions of rule 2(1)(d), since the person liable to pay freight is located in non-taxable territory, the person liable to pay tax will be ABC. Accordingly, the place of provision of the service of transportation of goods will be the location of ABC i.e. Delhi.

5.11 Rule 11- Passenger Transportation Services

5.11.1 What is the place of provision of passenger transportation services?

The place of provision of a passenger transportation service is the place where the passenger embarks on the conveyance for a continuous journey.

5.11.2 What does a "continuous journey" mean?

A "continuous journey" means a journey for which:-

(i) a single ticket has been issued for the entire journey; or

(ii) more than one ticket or invoice has been issued for the journey, by one service provider, or by an agent on behalf of more than one service providers, at the same time, and there is no scheduled stopover in the journey

5.11.3 What is the meaning of a stopover? Do all stopovers break a continuous journey?

"Stopover" means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time. All stopovers do not cause a break in continuous journey. Only such stopovers will be relevant for which one or more separate tickets are issued. Thus a travel on Delhi-London-New York-London-Delhi on a single ticket with a halt at London on either side, or even both, will be covered by the definition of continuous journey. However if a separate ticket is issued, say New York-Boston-New York, the same will be outside the scope of a continuous journey.

5.11.4 The Table below contains illustrations which explain the principle enunciated in this Rule.

Illustrations

S. No.	Journey	Place of Provision	Taxability
Single Ticket (No stopover)			
1	Mumbai-Delhi	Mumbai	Yes, Mumbai being the place of embarkation.
2	Mumbai-Delhi-Jaipur	Mumbai	Yes, Mumbai, being the place of embarkation for the continuous journey.
3	Mumbai-Delhi-London-Delhi-London	Mumbai	-do-
4	Delhi-London-New York-London-New York	Delhi	Yes, New Delhi, being the place of provision for continuous journey with single return ticket.
5	Delhi-London-New York	Delhi	-do-
6	New York-London-Delhi	New York	No, New York is place of provision for continuous journey with single return ticket.

S. No.	Journey	Place of Provision	Taxability
7	New York-London-Delhi-Mumbai-Delhi-London-New York	New York	-do-
8	Delhi-Jammu-Delhi	Delhi	Yes, Delhi is the place of provision for continuous journey.
9	Jammu-Delhi-Jammu	Jammu	No, Jammu is the place of provision for continuous journey with single return ticket
More than one ticket for a journey (issued by a single service provider, or by a single agent, for more than one service providers)			
1	(a) Delhi-Bangkok-Delhi (b) Bangkok-Bali-Bangkok	Delhi is place of provision for journey (a); Bangkok is place of provision for journey (b)	Journey (a) is taxable since place of provision is in taxable territory;Journey (b) is not taxable since place of provision is outside taxable territory.
2	(a) Delhi-New York-Delhi (b) New York-Boston-New York	Delhi is place of provision for journey (a); New York is place of provision for journey (b)	Journey (a) is taxable since place of provision is in taxable territory; Journey (b) is not taxable since place of provision is not in taxable territory.
3	(a) London-Delhi-London (b)Delhi-Chandigarh (c) Chandigarh-Amritsar (d) Amritsar-Delhi	London is place of provision for journey (a); Delhi is place of provision for journey (b); Chandigarh is place of provision for journey (c); Amritsar is place of provision for journey (d)	Journey (a) is not taxable since place of provision is outside taxable territory; Journeys (b), (c) and (d) are taxable since place of provision is in taxable territory.
4	(a) Delhi-Jammu (b) Jammu-Delhi	Delhi is place of provision for journey (a)Jammu is place of provision for journey (b)	Journey (a)is taxable since place of provision is in taxable territory. Journey (b) is not taxable since place of provision is outside taxable territory.
5	(a) Jammu-Delhi-Jammu (b) Delhi-Bangkok-Delhi	Jammu is place of provision for journey (a); Delhi is place of provision for journey (b)	Journey (a) is not taxable since place of provision is outside taxable territory for the continuous journey with single, return ticket.Journey (b) is taxable, since place of provision is in taxable territory for the journey with single, return ticket.
6	(a) Jammu-Delhi (b) Delhi-Bangkok-Delhi (c) Delhi-Lucknow (d) Lucknow-Jammu	Jammu is place of provision for journey (a); Delhi is place of provision for journey (b); Delhi is place of provision for journey (c); Lucknow is place of provision for journey (d)	Journey (a) is not taxable since place of provision is not in taxable territory; Journeys (b), (c) and (d) are taxable since place of provision is in taxable territory for each of these.

It may also be pertinent to mention that for flights originating from, or terminating in, the north-east region, though the place of provision will be determined in terms of this rule, there is an exemption for air transportation of passengers, embarking from, or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal. The examples in the table below illustrate some situations.

S. No.	Journey	Place of Provision	Taxability
Single ticket (No stopover)			
1	Dibrugarh-Kolkata-Mumbai	Dibrugarh is the place of provision	Journey is taxable, but no service tax is payable owing to the exemption.
2	Dibrugarh-Kolkata-Mumbai-Kolkata-Dibrugrah	Dibrugarh is the place of provision	Journey is taxable, but no service tax is payable owing to the exemption. Here it is relevant to note that the journey is against a single, return ticket.
3	Guwahati-Kolkata-Bangkok-Kolkata-Guwahati	Guwahati is the place of provision for the continuous journey	Place of provision being in the taxable territory, the service is taxable, but no service tax is payable owing to the exemption and journey is deemed continuous.
4	Kolkata-Guwahati-Kolkata	Kolkata is the place of provision for the continuous journey.	Place of provision being in the taxable territory, the service is taxable, but no service tax is payable owing to the exemption (the onward and return legs of journey terminate and originate in exempted territory respectively).
More than one ticket for a journey (issued by a single service provider, or by a single agent, for more than one service providers)			
1	(a) Bagdogra-Kolkata (b) Kolkata-Delhi	Place of provision for journey (a) is Bagdogra. Place of provision for journey (b) is Kolkata.	In these cases, generally, the passenger would be required to change aircraft after exiting the airport, and is required to obtain a fresh boarding pass for the next leg. This is deemed to be a stopover. Thus, journey (b) is taxable, and service tax is payable on leg (b).
2	(a) Guwahati-Kolkata-Guwahati (b) Kolkata-Bangkok-Kolkata	Each journey is deemed continuous based on the assumption that two single return tickets are purchased. For journey (a) place of provision is Guwahati, and for journey (b) place of provision is Kolkata.	Generally, in such cases, since separate return tickets have been purchased for the two journeys, after completing journey (a) the passenger will be required to disembark from the aircraft and y complete check-in formalities for journey (b). Thus, the journey will not be deemed to be continuous and place of provision for journey (b) will be Kolkata.

5.12 Rule 12- Services provided on board conveyances

5.12.1 What are services provided on board conveyances?

Any service provided on board a conveyance (aircraft, vessel, rail, or roadways bus) will be covered here. Some examples are on-board service of movies/music/video/ software games on demand, beauty treatment etc, albeit only when provided against a specific charge, and not supplied as part of the fare.

5.12.2 What is the place of provision of services provided on board conveyances?

The place of provision of services provided on board a conveyance during the course of a passenger transport operation is the first scheduled point of departure of that conveyance for the journey.

Illustration

A video game or a movie-on-demand is provided as on-board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi flight. The place of provision of this service will be Bangkok (outside taxable territory, hence not liable to tax).

If the above service is provided on a Delhi-Kolkata-Bangkok-Jakarta flight during the Bangkok-Jakarta leg, then the place of provision will be Delhi (in the taxable territory, hence liable to tax).

5.13 Rule 13- Power to notify services or circumstances

5.13.1 What is the implication of this Rule?

This Rule states as follows:-

"In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service."

The rule is an enabling power to correct any injustice being met due to the applicability of rules in a foreign territory in a manner which is inconsistent with these rules leading to double taxation. Due to the cross border nature of many services it is also possible in certain situations to set up businesses in a non-taxable territory while the effective enjoyment, or in other words consumption, may be in taxable territory. This rule is also meant as an anti-avoidance measure where the intent of the law is sought to be defeated through ingenious practices unknown to the ordinary ways of conducting business.

5.14 Rule 14- Order of application of Rules

5.14.1 What is the implication of this Rule?

Rule 14 provides that where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.

This Rule covers situations where the nature of a service, or the business activities of the service provider, may be such that two or more rules may appear equally applicable.

Following illustrations will make the implications of this Rule clear:-

Illustration 1

An architect based in Mumbai provides his service to an Indian Hotel Chain (which has business establishment in New Delhi) for its newly acquired property in Dubai. If Rule 5 (Property rule) were to be applied, the place of provision would be the location of the property i.e. Dubai (outside the taxable territory). With this result, the service would not be taxable in India.

Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi. Place of provision being in the taxable territory, the service would be taxable in India.

By application of Rule 14, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.

Illustration 2

For the Ms Universe Contest planned to be held in South Africa, the Indian pageant (say, located in Mumbai) avails the services of Indian beauticians, fashion designers, videographers, and photographers. The service providers travel as part of the Indian pageant's entourage to South Africa. Some of these services are in the nature of personalized services, for which the place of provision would normally be the location where performed (Performance rule-Rule 4), while for others, under the main rule (Receiver location) the place of provision would be the location of receiver.

Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi. Place of provision being in the taxable territory, the service would be taxable in India.

By application of Rule 15, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.

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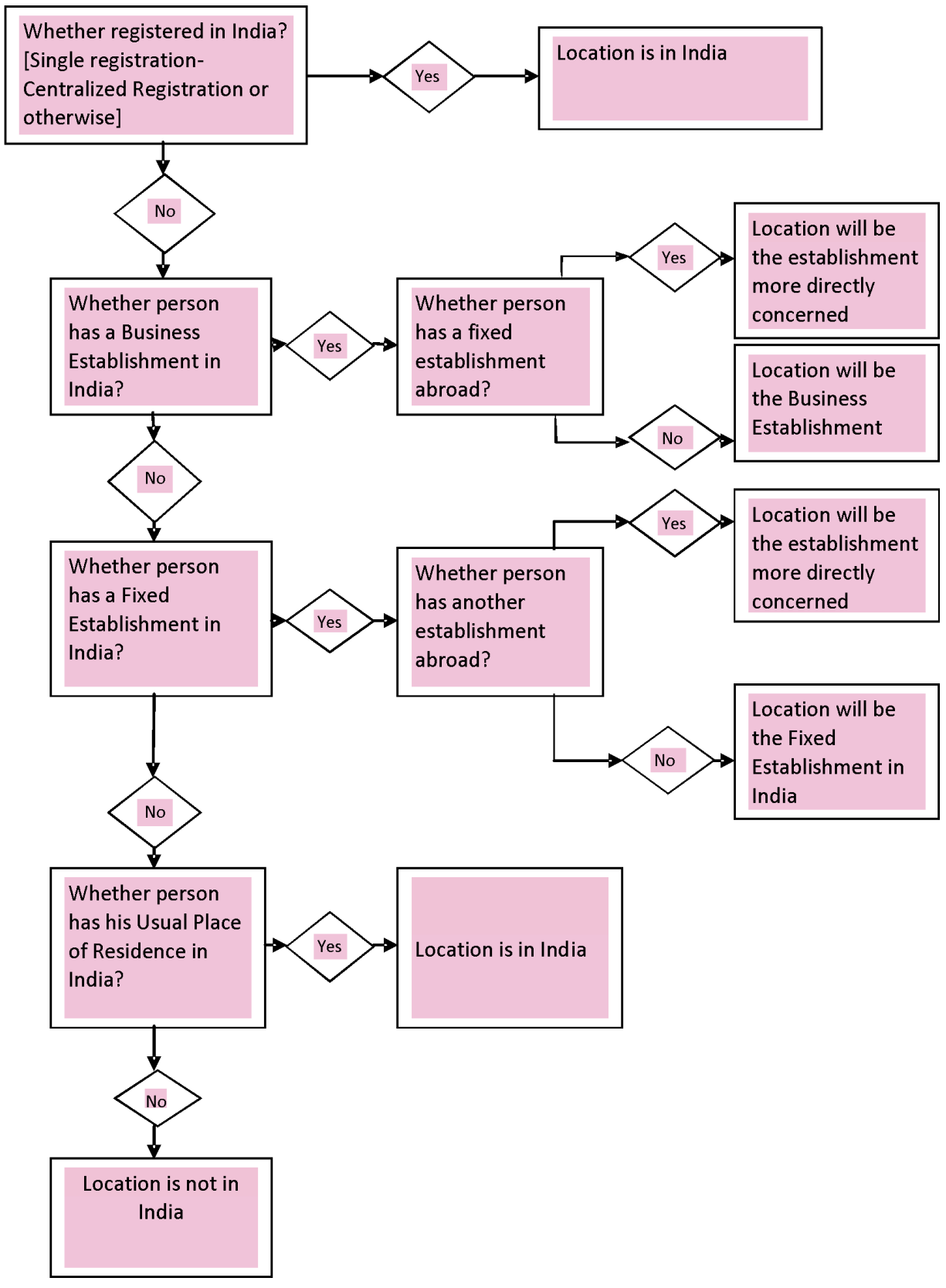
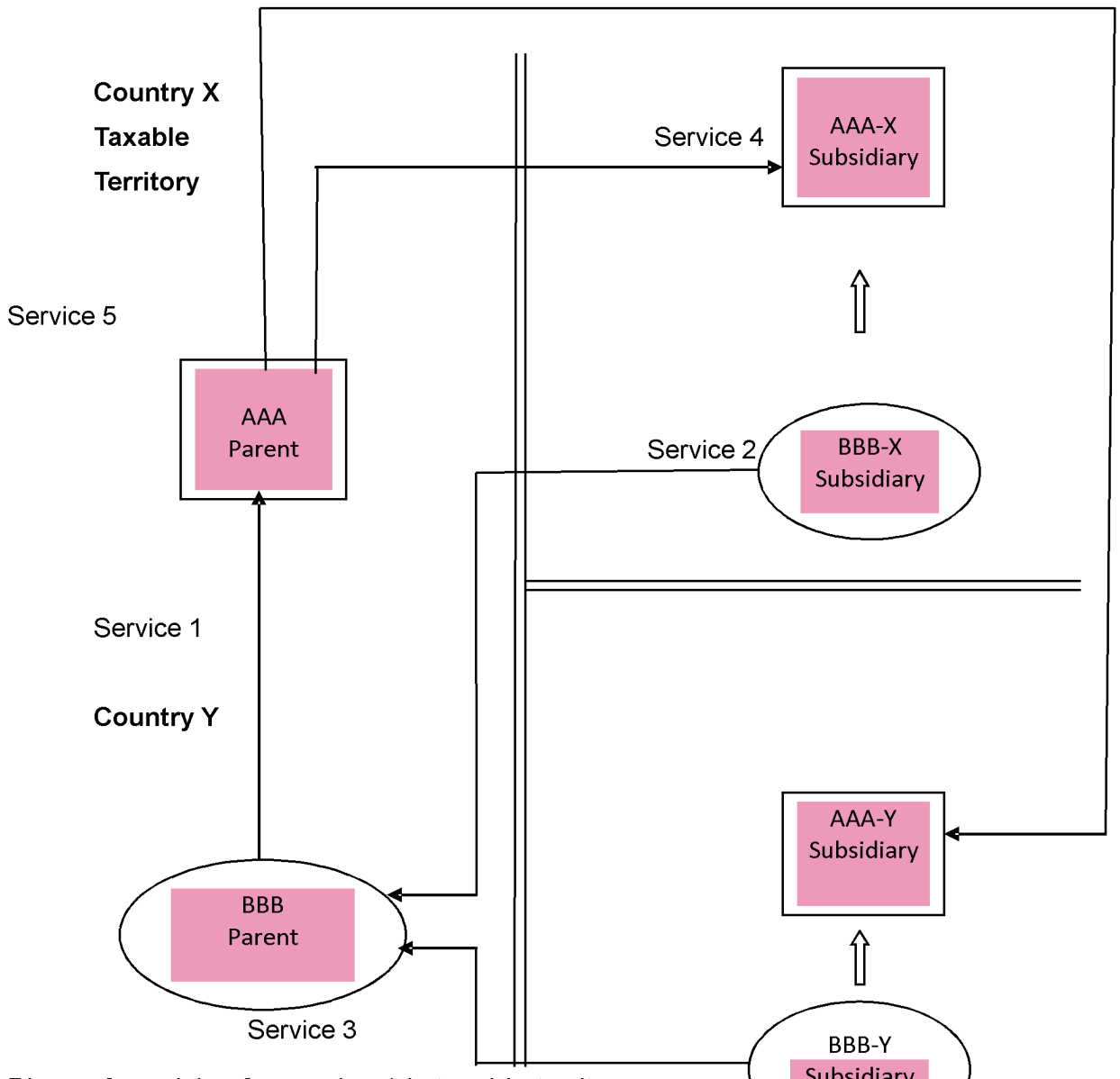
FLOW DIAGRAM F1 (Refer para 5.2.4)

HOW TO DETERMINE LOCATION?



FLOW DIAGRAM F 2 (Refer para 5.3.4)

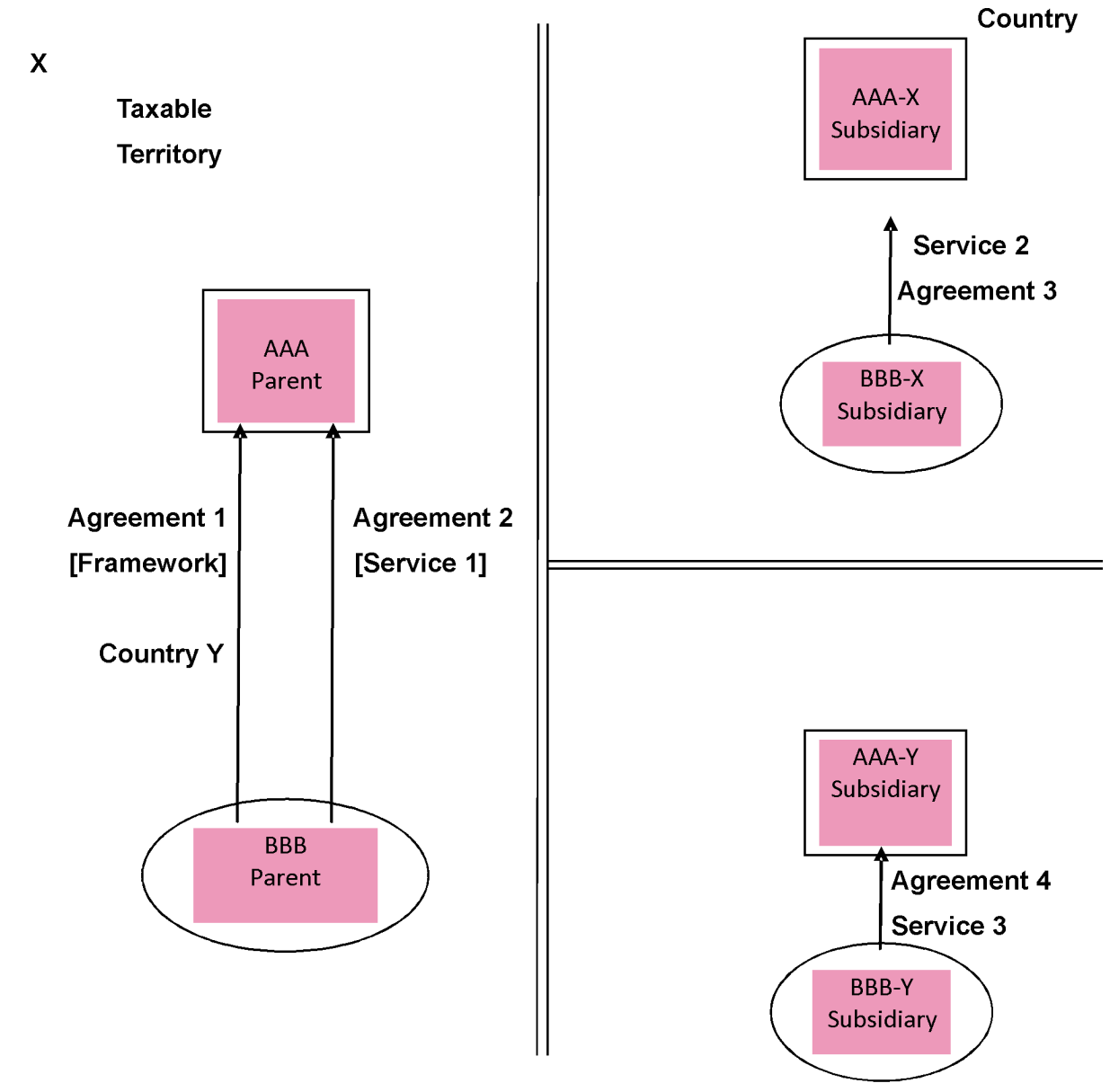
PROVISION OF SERVICES UNDER ~~A 'GLOBAL AGREE~~MENT'- Scenario 1



Place of provision for service 1 is taxable territory
Place of provision for service 2 is taxable territory
Place of provision for service 3 is taxable territory
Place of provision for service 4 is country X
Place of provision for service 5 is country Y.

FLOW DIAGRAM F 3 (Refer para 5.3.4)

PROVISION OF SERVICES ~~UNDER 'FRAMEWORK A~~GREEMENT'- Scenario 2



Agreement 1 is not transactional, has no consideration, and does not create a provision of service. Agreement 1 stipulates the terms and conditions which are activated only when the parties (i.e. group subsidiaries on either side enter into separate and independent business agreements, in accordance with the terms specified in the framework agreement.

Under Agreement 2, service 1 is provided by BBB Ltd to AAALtd, and the place of provision of this service, under the main rule, is the location of the receiver i.e. within the taxable territory. Under Agreement 3, service 2 is provided by BBB-X to AAA-X, and the place of provision of this service, under the main rule, is country X i.e. outside the taxable territory. Under Agreement 4, service 3 is provided by BBB-Y to AAA-Y, and the place of provision of this service, again under the main rule, is country Yi.e. outside the taxable territory.

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Guidance Note 6 – Declared Services

In the definition of 'service'contained in clause (44) of section 65B of the Act it has also been stated that service includes a declared service. The phrase 'declared service' is also defined in the said section as an activity carried out by a person for another for consideration and specified in section 66E of the Act. The following nine activities have been specified in section 66E:

1. renting of immovable property;
2. construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority;
3. temporary transfer or permitting the use or enjoyment of any intellectual property right;
4. development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software;
5. agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
6. transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;
7. activities in relation to delivery of goods on hire purchase or any system of payment by instalments**;**
8. service portion in execution of a works contract;
9. service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity.

The above activities when carried out by a person for another for consideration would amount to provision of service. Most of these services are presently also being taxed except in so far as Sl. No.5 is concerned. It is clarified that they are amply covered by the definition of service but have been declared with a view to remove any ambiguity for the purpose of uniform application of law all over the country.

6.1 Renting of Immovable Property

Renting has been defined in section 65B as "allowing, permitting or granting access, entry, occupation, usageor any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property'

6.1.1 Is renting of all kinds of immovable properties taxable?

No. Renting of certain kinds of immovable properties is specified in the negative list. These are –

- ☐ renting of vacant land, with or without a structure incidental to its use, relating to agriculture. (Sl. no. (d) (iv) of Exhibit A1)

- ☐ renting of residential dwelling for use as residence (Sl. No. (m) of Exhibit A1)
- ☐ renting out of any property by the Reserve Bank of India
- ☐ renting out of any property by a Government or a local authority to a non-business entity.

Renting of all other immovable properties would be taxable unless covered by an exemption (refer 6.1.2).

6.1.2 Are there any exemptions in respect of renting of immovable property?

Yes. These are:–

- ☐ Threshold level exemption up to Rs. 10 lakh.
- ☐ Renting of precincts of a religious place meant for general public.
- ☐ Renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a room below rupees one thousand per day or equivalent.
- ☐ Renting to an exempt educational institution

6.1.3 Would permitting usage of a property for a temporary purpose like conduct of a marriage or any other social function be taxable?

Yes. As per definition allowing or permitting usage of immovable property, without transferring possession of such property, is also renting of immoveable property.

6.1.4 Would activities referred to in column 1 of a table below be chargeable to service tax?

S. No.	Journey	Taxability
1.	Renting of property to an educational body	Exempted if provided to an educational institution for the purpose of education which is exempt from the levy of service tax; to others will be taxable.
2.	Renting of vacant land for animal husbandry or floriculture	Not chargeable to service tax as it is covered in the negative list entry relating to agriculture
3.	Permitting use of immoveable property for placing vending/dispensing machines	Chargeable to service tax as permitting usage of space is covered in the definition of renting
4.	Allowing erection of a communication tower on a building for consideration.	Chargeable to service tax as permitting usage of space is covered in the definition of renting
5.	Renting of land or building for entertainment or sports	Chargeable to service tax as there is no specific exemption.
6.	Renting of theatres by owners to film distributors (including under a profit-sharing arrangement)	Chargeable to service tax as the arrangement amounts to renting of immovable property.

6.1.5 Whether hotels/restaurants/convention centres letting out their halls, rooms etc. for social, official or business or cultural functions fall within the scope of this declared list service?

Halls, rooms etc. let out by hotels/restaurants for a consideration for organizing social, official or business or cultural functions are covered within the scope of renting of immovable property and would be taxable if other elements of taxability are present.

6.2 Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority.

This service is already taxable as part of construction of residential complex service under clause (zzzh) of sub-section 105 of section 65 of the Act and as part of service in relation to commercial or industrial construction under clause (zzq) of sub-section 105 of section 65 of the Act. This entry covers the services provided by builders or developers or any other person, where building complexes, civil structure or part thereof are offered for sale but the payment for such building or complex or part thereof is received before the issuance of completion certificate by a competent authority.

6.2.1 What would be the liability to pay service tax on flats/houses agreed to be given by builder/developer to the land owner towards the land /development rights and to other buyers. If payable, how would the services be valued?

Here two important transactions are identifiable: (a) sale of land by the landowner which is not a taxable service; and (b) construction service provided by the builder/developer. The builder/developer receives consideration for the construction service provided by him, from two categories of service receivers: (a) from landowner: in the form of land/development rights; and (b) from other buyers: normally in cash.

Construction service provided by the builder/developer is taxable in case any part of the payment/development rights of the land was received by the builder/ developer before the issuance of completion certificate and the service tax would be required to be paid by builder/ developers even for the flats given to the land owner.

It may be pointed out that in a recent judgement passed by the Mumbai High Court in the case of Maharashtra Chamber of Housing Industry and Others vs. Union of India [012-TIOL-78-HC-Mum-ST] has upheld the Constitutional validity of levy of service tax, under clauses (zzzh) and (zzzzu) of section 65, on similar construction services provided by a builder.Arelevant portion of the judgement is reproduced below-

"29. The charge of tax under Section 66 of the Finance Act is on the taxable services defined in clause (105) of Section 65. The charge of tax is on the rendering of a taxable service. The taxable event is the rendering of a service which falls within the description set out in sub-clauses (zzq), (zzzh) and (zzzzu). The object of the tax is a levy on services which are made taxable. The fact that a taxable service is rendered in relation to an activity which occurs on land does not render the charging provision as imposing a tax on land and

buildings. The charge continues to be a charge on taxable services. The charge is not a charge on land or buildings as a unit. The tax is not on the general ownership of land. The tax is not a tax which is directly imposed on land and buildings. The fact that land is subject to an activity involving construction of a building or a complex does not determine the legislative competence of Parliament. The fact that the activity in question is an activity which is rendered on land does not make the tax a taxon land. The charge is on rendering a taxable service and the fact that the service is rendered in relation to land does not alter the nature or character of the levy. The legislature has expanded the notion of taxable service by incorporating within the ambit of clause (zzq) and clause (zzzh) services rendered by a builder to the buyer in the course of an intended sale whether before, during or after construction. There is a legislative assessment underlying the imposition of the tax which is that during the course of a construction related activity, a service is rendered by the builder to the buyer. Whether that assessment can be challenged in assailing constitutional validity is a separate issue which would be considered a little later. At this stage, what merits emphasis is that the charge which has been imposed by the legislature is on the activity involving the provision of a service by a builder to the buyer in the course of the execution of a contract involving the intended sale of immovable property.

30. Parliament, in bringing about the amendment in question has made a legislative assessment to the effect that a service is rendered by builders to buyers during the course of construction activities. In our view, that legislative assessment does not impinge upon the constitutional validity of the tax once, the true nature and character of the tax is held not to fall within the scope of Entry 49 of List II. So long as the tax does not fall within any head of legislative power reserved to the States, the tax must of necessity fall within the legislative competence of Parliament. This is a settled principle of law, since the residuary power to legislate on a field of legislation which does not fall within the exclusive domain of the States is vested in Parliament under Article 248 read with Entry 97 of List I."

Value, in the case of flats given to first category of service receiver will be the value of the land when the same is transferred and the point of taxation will also be determined accordingly.

6.2.2 What would be the service tax liability in the following model - land is owned by a society, comprising members of the society with each member entitled to his share by way of an apartment. Society /individual flat owners give 'No Objection Certificate' (NOC) or permission to the builder/developer, for re-construction. The builder/ developer makes new flats with same or different carpet area for original owners of flats and additionally may also be involved in one or more of the following: (i) construct some additional flats for sale to others; (ii) arrange for rental accommodation or rent payments for society members/original owners for stay during the period of re-construction; (iii) pay an additional amount to the original owners of flats in the society.

Under this model, the builder/developer receives consideration for the construction service provided by him, from two categories of service receivers. First category is the society/ members of the society, who transfer development rights over the land (including the permission for additional number of flats), to the builder/developer. The second category of service receivers consist of buyers of flats other than the society/members. Generally, they pay by cash.

Re-construction undertaken by a building society by directly engaging a builder/developer will be chargeable to service tax as works contract service for all the flats built now.

6.2.3 When a certain number of flats are given by the builder/developer to a land owner in a collaborative agreement to construct, in lieu of the land or development rights transferred, will such transferee be required to pay service tax on further sale of flats to customers?

Yes. The service tax will be required to be paid by such transferee if any consideration is received by him from any person before the receipt of completion certificate.

6.2.4 What would be the service tax liability on conversion of any hitherto untaxed construction of complex or part thereof into a building or civil structure to be used for commerce or industry, after lapse of a period of time?

Mere change in use of the building does not involve any taxable service. If the renovation activity is done on such a complex on contract basis the same would be a works contract as defined in clause (54) of section 65B service portion, which would also be taxable if other ingredients of taxability are present.

6.2.5 What would be the service tax liability on Build- Operate - Transfer (BOT) Projects?

Many variants of this model are being followed in different regions of the country, depending on the nature of the project. Build-Own-Operate-Transfer (BOOT) is a popular variant. Generally under BOT model, Government, concessionaire (who may be a developer/builder himself or may be independent) and the users are the parties. Risk taking and sharing ability of the parties concerned is the essence of a BOT project. Government by an agreement transfers the 'right to use' and/or 'right to develop' for a period specified, usually thirty years or near about, to the concessionaire.

Transactions involving provision of service take place usually at three different levels: firstly, between Government and the concessionaire; secondly, between concessionaire and the contractor and thirdly, between concessionaire and users.

At the first level, Government transfers the right to use and/or develop the land, to the concessionaire, for a specific period, for construction of a building for furtherance of business or commerce (partly or wholly). Consideration for this taxable service may be in the nature of upfront lease amount or annual charges paid by the concessionaire to the Government. Such services provided by the "Government' would be in the negative list entry contained in clause (a) of section 66D unless these services qualify as 'support services provided to business entities' under exception sub-clause (iv) to clause (a) of section 66D. 'Support services have been defined in clause (49) of section 65B as 'infrastructural, operational, administrative, logistic marketing or any other support of any kind comprising functions that entities carry out in the ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of movable or immovable property, security, testing and analysis'. If the nature of concession is such that it amounts to 'renting of immovable property service' then the same would be taxable. The tax is required to be paid by the government as there is no reverse charge for services relating to renting of immovable property.

In this model, though the concessionaire is undertaking construction of a building to be used wholly or partly for furtherance of business or commerce, he will not be treated as a service provider since such construction has been undertaken by him on his own account and he remains the owner of the building during the concession period. However, if an independent contractor is engaged by a concessionaire for undertaking construction for him, then service tax is payable on the construction service provided by the contractor to the concessionaire.

At the third level, the concessionaire enters into agreement with several users for commercially exploiting the building developed/constructed by him, during the lease period. For example, the user may be paying a rent or premium on the sub-lease for temporary use of immovable property or part thereof, to the concessionaire. At this third level, concessionaire is the service provider and user of the building is the service receiver. Service tax would be leviable on the taxable services provided by the concessionaire to the users if the ingredients of taxability are present.

There could be many variants of the BOT model explained above and implications of tax may differ. For example, at times it is possible that the concessionaire may outsource the management or commercial exploitation of the building developed/constructed by him to another person and may receive a pre-determined amount as commission. Such commission would be a consideration for taxable service and liable to service tax.

6.2.6 If the builder instead of receiving consideration for the sale of an apartment receives a fixed deposit, which it converts after the completion of the building into sales consideration, will it amount to receiving any amount before the completion of service.

This may be a colorable device wherein the consideration for provision of construction service is disguised as fixed deposit, which is unlikely to be returned. In any case the interest earned by the builder on such fixed deposits will be a significant amount received prior to the completion of the immovable property. As clarified at serial no. 5 of the table in point no 2.3.2 interest in such cases would be considered as part of the gross amount charged for the provision of service and the service of construction will be taxable.

6.2.7 In certain States requirement of completion certificate are waived of for certain specified types of buildings. How would leviability of service tax be determined in such cases?

In terms of Explanation to clause (b) of section 66E in such cases the completion certificate issued by an architect or a chartered engineer or a licensed surveyor of the respective local body or development or planning authority would be treated as completion certificate for the purposes of determining chargeability of service tax.

6.2.8 If the person who has entered into a contract with the builder for a flat for which payments are to be made in 12 installments depending on the stage of construction and the person transfers his interest in the flat to a buyer after paying 7 installments, would such transfer be an activity chargeable to service tax?

Such transfer does not fall in this declared service entry as the said person is not providing any construction service. In any case transfer of such an interest would be transfer of a benefit

to arise out of land which as per the definition of immoveable property given in the General Clauses Act, 1897 is part of immoveable property. Such transfer would therefore be outside the ambit of 'service' being a transfer of title in immoveable property. Needless to say that service tax would be chargeble on the seven installments paid by the first allottee and also on subsequent installments paid by the transferee.

6.3 Temporary transfer or permitting the use or enjoyment of any intellectual property right

6.3.1What is the scope of the term 'intellectual property right'?

'Intellectual property right'has not been defined in the Act. The phrase has to be understood as in normal trade parlance as per which intellectual property right includes the following:-

- ☐ Copyright
- ☐ Patents
- ☐ Trademarks
- ☐ Designs
- ☐ Any other similar right to an intangible property

6.3.2 Is the IPR required to be registered in India? Would the temporary transfer of a patent registered in a country outside India also be covered under this entry?

Since there is no condition regarding the law under which an intellectual right should be registered, temporary transfer of a patent registered outside India would also be covered in this entry. However, it will become taxable only if the place of provision of service of temporary transfer of intellectual property right is in taxable territory.

6.4 Development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software

The term 'information technology software'has been defined in section 65B of the Act as 'any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment'.

6.4.1 Would sale of pre-packaged or canned software be included in this entry?

No. It is a settled position of law that pre-packaged or canned software which is put on a media is in the nature of goods [Supreme Court judgment in case of Tata Consultancy Services vs State of Andhra Pradesh [2002(178) ELT22(SC) refers]. Sale of pre-packaged or canned software is, therefore, in the nature of sale of goods and is not covered in this entry.

6.4.2 Is on site development of software covered under this entry?

Yes. On site development of software is covered under the category of development of information technology software.

6.4.3 Would providing advice, consultancy and assistance on matters relating to information technology software be chargeable to service tax?

These services may not be covered under the declared list entry relating to information technology software. However, such activities when carried out by a person for another for consideration would fall within the definition of service and hence chargeable to service tax if other requirements of taxability are satisfied.

6.4.4 Would providing a license to use pre-packaged software be a taxable service?

The following position of law needs to be appreciated to determine whether a license to use pre packaged software would be goods-

- ☐ As held by the Hon'ble Supreme Court in the case of Tata Consultancy Services vs. State of Andhra Pradesh [2002(178) ELT22(SC)]] pre-packaged software or canned software or shrink wrapped software put on a media like is goods. Relevant portion of para 24 of the judgment is reproduced below-

  "A software programme may consist of various commands which enable the computer to perform a designated task. The copyright in that programme may remain with the originator of the programme. But the moment copies are made and marketed, it becomes goods, which are susceptible to sales tax. Even intellectual property, once it is put on to a media, whether it be in the form of books or canvas (in case of painting) or computer discs or cassettes, and marketed would become "goods". We see no difference between a sale of a software programme on a CD/floppy disc from a sale of music on a cassette/CD or a sale of a film on a video cassette/CD. In all such cases, the intellectual property has been incorporated on a media for purposes of transfer. Sale is not just of the media which by itself has very little value. The software and the media cannot be split up. What the buyer purchases and pays for is not the disc or the CD. As in the case of paintings or books or music or films the buyer is purchasing the intellectual property and not the media i.e. the paper or cassette or disc or CD. Thus a transaction sale of computer software is clearly a sale of "goods" within the meaning of the term as defined in the said Act. The term "all materials, articles and commodities" includes both tangible and intangible/incorporeal property which is capable of abstraction, consumption and use and which can be transmitted, transferred, delivered, stored, possessed etc. The software programmes have all these attributes."

- ☐ Therefore, in case a pre-packaged or canned software or shrink wrapped software is sold then the transaction would be in the nature of sale of goods and no service tax would be leviable.

- ☐ The judgement of the Supreme Court in Tata Consultancy Service case is applicable in case the pre-packaged software is put on a media before sale. In such a case the transaction will go out of the ambit of definition of service as it would be an activity involving only a transfer of title in goods.

- ☐ As per the definition of 'service' as contained in clause (44) of section 65(B) only those transactions are outside the ambit of service which constitute only a transfer

of title in goods or such transfers which are deemed to be a sale within the meaning of Clause 29(A) of article 366 of the Constitution. The relevant category of deemed sale is transfer of right to use goods contained in sub-clause (d) of clause (29A) of the Constitution.

- ☐ 'Transfer of right to use goods' is deemed to be a sale under Article 366(29A) of the Constitution of India and transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods is a declared service under clause (f) of section 66E.
- ☐ Transfer of right to use goods is a well-recognized constitutional and legal concept. Every transfer of goods on lease, license or hiring basis does not result in transfer of right to use goods. For understanding the concept of transfer of right to use please refer to point no 6.6.1.
- ☐ Alicense to use software which does not involve the transfer of 'right to use'would neither be a transfer of title in goods nor a deemed sale of goods. Such an activity would fall in the ambit of definition of 'service' and also in the declared service category specified in clause (f) of section 66E.
- ☐ Therefore, if a pre-packaged or canned software is not sold but is transferred under a license to use such software, the terms and conditions of the license to use such software would have to be seen to come to the conclusion as to whether the license to use packaged software involves transfer of 'right to use' such software in the sense the phrase has been used in sub-clause (d) of article 366(29A) of the Constitution. (See point no 5.6.1).
- ☐ In case a license to use pre-packaged software imposes restrictions on the usage of such licenses, which interfere with the free enjoyment of the software, then such license would not result in transfer of right to use the software within the meaning of Clause 29(A) of Article 366 of the Constitution. Every condition imposed in this regard will not make it liable to service tax. The condition should be such as restraints the right to free enjoyment on the same lines as a person who has otherwise purchased goods is able to have. Any restriction of this kind on transfer of software so licensed would tantamount to such a restraint.
- ☐ Whether the license to use software is in the paper form or in electronic form makes no material difference to the transaction.
- ☐ However, the manner in which software is transferred makes material difference to the nature of transaction. If the software is put on the media like computer disks or even embedded on a computer before the sale the same would be treated as goods. If software or any programme contained is delivered online or is down loaded on the internet the same would not be treated as goods as software as the judgment of the Supreme Court in Tata Consultancy Service case is applicable only in case the pre-packaged software is put on a media before sale.
- ☐ Delivery of content online would also not amount to a transaction in goods as the content has not been put on a media before sale. Delivery of content online for consideration would, therefore, amount to provision of service.

6.4.5 In case contract is given for customized development of software and the customized software so developed is delivered to the client on media like a CD then would the transaction fall in this declared entry or would it be covered by the TCS Judgement?

In such a case although the software is finally delivered in the form of goods, since the contract is essentially for design and development of software it would fall in the declared list entry. Such a transaction would be in the nature of composite transaction involving an element of provision of service, in as much as the contract is for design and development of software and also an element of transfer of title in goods, in as much as the property in CD containing the developed software is transferred to the client. However, the CD remains only a media to transmit or deliver the outcome of which is essentially and pre-dominantly a contract of service. Therefore, such a transaction would not be excluded from the ambit of the definition of 'service' as the transaction does not involve 'only' transfer of title in goods and dominant nature of the transaction is that of provision of service.

6.5 Activities in relation to delivery of goods on hire purchase or any system of payment by instalments

6.5.1 Is the delivery of goods on hire purchase of any system of payment by installments taxable?

No. The delivery of goods on hire purchase or any system of payment on installment is not chargeable to service tax because as per Article 366(29A) of the Constitution of India such delivery of goods is deemed to be a sale of goods.(For guidance on this aspect please refer to point no. 2.7 of this Guide) However activities or services provided in relation to such delivery of goods are covered in this declared list entry.

6.5.2 What is the scope of the phrase 'delivery of goods on hire-purchase or any system of payment by installments'?

Section 2 of the Hire Purchase Act, 1972 defines a "hire purchase agreement' as 'an agreement under which goods are let out on hire and under which the hirer has the option to purchase them in accordance with the terms of the agreement and includes an agreement under which-

(i) possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical installments, and

(ii) the property in the goods is to pass to such person on the payment of the last of such installments, and

(iii) such person has a right to terminate the agreement at any time before the property so passes.'

As per the Sales of Goods Act by Mulla (Seventh Edition. Page 14) delivery is 'voluntary dispossession in favour of another' and that 'in all cases the essence of delivery is that the deliverer, by some apt and manifest act, puts the deliveree in the same position of control over thing, either directly or through a custodian, which he held himself immediately before the act'.

The nature of such arrangements has been explained by the Supreme Court in the case of Association of Leasing & Financial Service Companies Vs Union Of India [2010 (20) S.T.R. 417 (S.C.)]. The relevant extract in para 20 of the said judgment is reproduced below:

"20. According to Sale of Goods Act by Mulla [6th Edition] a common method of selling goods is by means of an agreement commonly known as a hire-purchase agreement which is more aptly described as a hiring agreement coupled with an option to purchase, i.e., to say that the owner lets out the chattel on hire and undertakes to sell it to the hirer on his making certain number of payments."

Key ingredients of the deemed sale category of 'delivery of goods on hire-purchase or any system of payment by installments', therefore are-

- ☐ Transfer of possession (and not just of custody)
- ☐ The hirer has the option or obligation to purchase the goods in accordance with the terms of the agreement.

6.5.3 What is the difference between a normal hiring agreement and a hire-purchase agreement?

In a mere hiring agreement the hirer has no option to purchase the goods hired and the risks and rewards incidental to ownership of goods remain with the owner and are not transferred to the hirer. In a hire-purchase agreement the hirer has an option or an obligation to purchase goods.

6.5.4 Are 'finance leases', 'operating leases'and 'capital leases'covered as 'delivery of goods on hire purchase or any system of payment of installments'?

Such leases would be covered only if the terms and conditions of such leases have the ingredients as explained above. Normally in an 'operating lease' the lease is for a term shorter than property's useful life and the lessor is typically responsible for taxes and other expenses on the property. The lessee does not have an option to purchase the property at the end of the period of lease. Such arrangements do not qualify as 'delivery of goods on hire purchase or any system of payment of installments'.

On the other hand 'financial leases' or 'capital leases' strongly resemble security arrangements and are entered into for financing the asset. The lessee pays maintenance costs and taxes and has the option of purchasing the lease end. Such arrangements resemble a hire-purchase agreement and would fall under the said 'deemed sale'category. The essence of this deemed sale category is that the arrangement under which the goods are 'delivered' should be in the nature of a financing arrangement wherein the lessee pays maintenance costs and taxes and has the option of purchasing the asset so delivered at lease end.

It may, however, be pointed out that in case an 'operating lease' has elements of transfer of 'right to use' then the same would be covered in the other 'deemed sale' category pertaining to 'transfer of right to use any goods'

6.5.5 If delivery of goods on hire purchase or any system of payment on installment is deemed to be sale of goods what are the activities in relation to such delivery which are covered in the declared service?

It has been held by Supreme court in the case of Association Of Leasing & Financial Service Companies Vs Union Of India[2010 (20) S.T.R. 417 (S.C.)] that in equipment leasing/hire-purchase agreements there are two different and distinct transactions, viz., the financing transaction and the equipment leasing/hire-purchase transaction and that the financing transaction, consideration for which was represented by way of interest or other charges like lease management fee, processing fee, documentation charges and administrative fees, which is chargeable to service tax. Therefore, such financial services that accompany a hire-purchase agreement fall in the ambit of this entry of declared services.

6.5.6 Is service tax leviable on the entire quantum of interest and other charges received in relation to a hire purchase?

No. In terms of the exemption notification relating to such activities, service tax is leviable only on 10% of the amount representing interest plus other charges explicitly charged as mentioned above.

6.6 Transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods

6.6.1 What is the meaning and scope of the phrase 'transfer of right to use such goods'

Transfer of right to use goods is a well recognized constitutional and legal concept. Every transfer of goods on lease, license or hiring basis does not result in transfer of right to use goods. **'Transfer of right of goods' involves transfer of possession and effective control over such goods** in terms of the judgment of the Supreme Court in the case of State of Andhra Pradesh vs RashtriyaIspat Nigam Ltd [Judgment dated 6/2/2002 in Civil Appeal no. 31 of 1991]. Transfer of custody along with permission to use or enjoy such goods, per se, does not lead to transfer of possession and effective control.

The test laid down by the Supreme Court in the case of Bharat Sanchar Nigam Limited vs Union of India [2006(2)STR161(SC)] to determine whether a transaction involves transfer of right to use goods, which has been followed by the Supreme Court and various High Courts, is as follows:

- ☐ There must be goods available for delivery;
- ☐ There must be a consensus ad idem as to the identity of the goods;
- ☐ The transferee should have legal right to use the goods – consequently all legal consequences of such use including any permissions or licenses required therefore should be available to the transferee;
- ☐ For the period during which the transferee has such legal right , it has to be the exclusion to the transferor – this is the necessary concomitant of the plain language

of the statute, viz., a 'transfer of the right to use' and not merely a license to use the goods;

- ☐ Having transferred, the owner cannot again transfer the same right to others.

Whether a transaction amounts to transfer of right or not cannot be determined with reference to a particular word or clause in the agreement. The agreement has to be read as a whole, to determine the nature of the transaction.

6.6.2 Whether the transactions listed in column 1 of the table below involve transfer of right to use goods?

S.No.	Nature of transaction	Whether transaction involves transfer of right to use
1	A car is given in hire by a person to a company along with a driver on payment of charges on per month/mileage basis	Right to use is not transferred as the car owner retains the permissions and licenses relating to the cab. Therefore possession and effective control remains with the owner (Delhi High Court Judgment in the case of International Travel House in Sales TaxAppeal no 10/2009 refers). The service is, therefore covered in the declared list entry.
2	Supply of equipment like excavators, wheel loaders, dump trucks, cranes, etc for use in a particular project where the person to whom such equipment is supplied is subject to such terms and conditions in the contract relating to the manner of use of such equipment, return of such equipment after a specified time, maintenance and upkeep of such equipment.	The transaction will not involve transfer of right to use such equipment as in terms of the agreement the possession and effective control over such equipment has not been transferred even though the custody may have been transferred along with permission to use such equipment. The receiver is not free to use such equipment in any manner as he likes and conditions have been imposed on use and control of such equipment.
3.	Hiring of bank lockers	The transaction does not involve the right to use goods as possession of the lockers is not transferred to the hirer even though the contents of the locker would be in the possession of the hirer.(refer to Andhra Pradesh High Court Judgment in the case of State Bank of India Vs State of Andhra Pradesh)
4.	Hiring out of vehicles where it is the responsibility of the owner to abide by all the laws relating to motor vehicles	No transfer of right to use goods as effective control and possession is not transferred (Allahabad High Court judgement in Ahuja Goods Agency vs State of UP [(1997)106STC540] refers)
5	Hiring of audio visual equipment where risk is of the owner	No transfer of right to use goods as effective control and possession is not transferred

Note: The list in the table above is only illustrative to demonstrate how courts have interpreted terms and conditions of various types of contracts to see if a transaction involve transfer of right to use goods. The nature of each transaction has to be examined in totality keeping in view all the terms and conditions of an agreement relating to such transaction.

6.7 Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act

In terms of this entry the following activities if carried out by a person for another for consideration would be treated as provision of service.

- ☐ Agreeing to the obligation to refrain from an act.
- ☐ Agreeing to the obligation to tolerate an act or a situation.
- ☐ Agreeing to the obligation to do an act.

6.7.1 Would non-compete agreements be considered a provision of service?

Yes. By virtue of a non-compete agreement one party agrees, for consideration, not to compete with the other in any specified products, services, geographical location or in any other manner. Such action on the part of one person is also an activity for consideration and will be covered by the declared services.

6.8 Service portion in execution of a works contract

Works contract has been defined in section 65B of the Act as a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immoveable property or for carrying out any other similar activity or a part thereof in relation to such property.

Typically every works contract involves an element of sale of goods and provision of service. In terms of Article 366 (29A) of the Constitution of India transfer of property in goods involved in execution of works contract is deemed to be a sale of such goods. It is a well settled position of law, declared by the Supreme Court in BSNL‘s case [2006(2) STR 161 (SC)], that a works contract can be segregated into a contract of sale of goods and contract of provision of service. This declared list entry has been incorporated to capture this position of law in simple terms.

It may be pointed out that prior to insertion of clause (29A) in article 366 of the Constitution defining certain categories of transactions as ‘deemed sale’’of goods the position of law, as declared by the Supreme Court in Gannon Dunkerley’s case (AIR1958SC560) was that a works contract was essentially a contract of service and no sales tax could be levied on goods transferred in the course of execution of works contract. It is only after the constitutional amendment that VAT or sales tax is leviable on such goods. The remaining portion of the contract remains a contract for provision of service.

Further, with a view to bring certainty and simplicity, the manner of determining the value of service portion in works contracts has been given in rule 2Aof the Valuation Rules. For details on valuation please refer to point no. 8.2 of this Guide.

6.8.1 Would labour contracts in relation to a building or structure be treated as a works contract?

No. Labour Contracts do not fall in the definition of works contract. It is necessary that there should be transfer of property in goods involved in the execution of such contract which is leviable to tax as sale of goods. Pure labour contracts are therefore not works contracts and would be leviable to service tax like any other service and on full value.

6.8.2 Would contracts for repair or maintenance of motor vehicles be treated as 'works contracts'? If so, how would the value be determined for ascertaining the value portion of service involved in execution of such a works contract?

Yes. Contracts for repair or maintenance of moveable properties are also works contracts if property in goods is transferred in the course of execution of such a contract. Service tax has to be paid in the service portion of such a contract.

6.8.3 Would contracts for construction of a pipe line or conduit be covered under works contract?

Yes. As pipeline or conduits are structures on land contracts for construction of such structure would be covered under works contract.

6.8.4 Would contracts for erection commissioning or installation of plant, machinery, equipment or structures, whether prefabricated or otherwise, be treated as a works contract?

Such contracts would be treated as works contracts if transfer of property in goods is involved in such a contract.

6.8.5. Would contracts for painting of a building, repair of a building, renovation of a building, wall tiling, flooring be covered under 'works contract'?

Yes, if such contracts involve provision of materials as well.

6.8.6 Is the definition of 'works contract' in clause (54) of section 65B in line with the definition of 'works contract' in various State VAT laws?

The definition of 'works contract' in clause (54) of section 65B covers such contracts which involve transfer of property in goods and are for carrying out the activities specified in the said clause (54) in respect of both moveable and immoveable properties. This is broadly in consonance with the definition of 'works contract' in most of the State VAT laws. However, each State has defined 'works contracts' differently while dealing with works contract as a category of deemed sales. There could, therefore, be variations from State to State. For service tax purposes the definition in clause (54) of section 65B would alone be applicable.

6.8.7 What is the way to segregate service portion in execution of a works contract from the total contract or what is the manner of determination of value of service portion involved in execution of a works contract?

For detailed discussion on this topic please refer to Guidance Note 8, in particular point no 8.2.

6.9 Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity

6.9.1 What are the activities covered in this declared list entry?

The following activities are illustration of activities covered in this entry-

- ☐ Supply of food or drinks in a restaurant;
- ☐ Supply of foods and drinks by an outdoor caterer.

In terms of article 366(29A) of the Constitution of India supply of any goods, being food or any other article of human consumption or any drink (whether or not intoxicating) in any manner as part of a service for cash, deferred payment or other valuable consideration is deemed to be a sale of such goods. Such a service therefore cannot be treated as service to the extent of the value of goods so supplied. The remaining portion however constitutes a service. It is a well settled position of law, declared by the Supreme Court in BSNL's case [2006(2)STR161(SC)], that such a contract involving service along with supply of such goods can be dissected into a contract of sale of goods and contract of provision of service. This declared list entry is has been incorporated to capture this position of law in simple terms.

6.9.2 Are services provided by any kind of restaurant, big or small, covered in this entry?

Yes. Although services provided by any kind of restaurant are covered in this entry, the emphasis is to levy tax on services provided by only such restaurants where the service portion in the total supply is substantial and discernible. Thus the following category of restaurants are exempted –

- ☐ Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and which has a license to serve alcoholic beverage.
- ☐ Below the threshold exemption

6.9.3. How is the value of service portion to be determined?

For detailed discussion on this topic please refer to Guidance Paper 8 and in particular point no 8.4.

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Guidance Note 7 – Exemptions

Under the present system there are 88 exemption notifications. The need for exemptions is not obviated with the introduction of negative list. While some existing exemptions have been built into the negative list, others, wherever necessary, have been retained as exemptions. In addition some new exemptions are also proposed to be introduced. For ease of reference and simplicity most of the exemptions are now a part of one single mega exemption notification 25/2012-ST dated 20/6/12 (list of such exemptions is placed as **Exhibit A3**). The exemptions requiring some clarification are explained below:

7.1 Are services provided to all international organizations exempt from service tax?

No. Services to only specified international organisations are exempt. 'Specified international organisation' has been defined in the notification and means an international organization declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 to which the provisions of the Schedule to the said Act apply. Illustrative list of specified international organisations are as follows:

1. International Civil Aviation Organisation
2. World Health Organisation
3. International Labor Organisation
4. Food and Agriculture Organisation of the United Nations
5. UN Educational, Scientific and Cultural Organisation (UNESCO)
6. International Monetary Fund (IMF)
7. International Bank for Reconstruction and Development
8. Universal Postal Union
9. International Telecommunication Union
10. World Meteorological Organisation
11. Permanent Central Opium Board
12. International Hydrographic Bureau
13. Commissioner for Indus Waters, Government of Pakistan and his advisers and assistants
14. Asian African Legal Consultative Committee
15. Commonwealth Asia Pacific Youth Development Centre, Chandigarh
16. Delegation of Commission of European Community
17. Customs Co-operation Council
18. Asia Pacific Telecommunity
19. International Centre of Public Enterprises in Developing Countries, Ljubljana (Yugoslavia)

20. International Centre for Genetic Engineering and Biotechnology
21. Asian Development Bank
22. South Asian Association for Regional Co-operation
23. International Jute Organisation, Dhaka, Bangladesh

Note: As the list is subjected to addition (or even deletion), the officers are advised to verify the eligibility of the concerned organizations as and when required.

7.2 Health Care Services (Details at Sr. No 2 of Exhibit A3)

7.2.1 Are all health care services exempt?

No. only services in recognized systems of medicines in India are exempt. In terms of the Clause (h) of section 2 of the Clinical Establishments Act, 2010, the following systems of medicines are recognized systems of medicines:

- ☐ Allopathy
- ☐ Yoga
- ☐ Naturopathy
- ☐ Ayurveda
- ☐ Homeopathy
- ☐ Siddha
- ☐ Unani
- ☐ Any other system of medicine that may be recognized by central government

7.2.2 Who all are covered as paramedic?

Paramedics are trained health care professionals, for example nursing staff, physiotherapists, technicians, lab assistants etc. Services by them in a clinical establishment would be in the capacity of employee and not provided in independent capacity and will thus be considered as services by such clinical establishment. Similar services in independent capacity are also exempted.

7.3 Services provided to or by a governmental authority

7.3.1 Are various corporations formed under Central Acts or State Acts or various government companies registered under the Companies Act, 1956 or autonomous institutions set up by special acts covered under the definition of 'governmental authority'?

No. In terms of its definition in mega notification 25/2012-ST, following conditions should be satisfied for a board, body or an authority to be eligible for exemptions as a governmental authority:

- ☐ set up by an act of the Parliament or a State Legislature;

- ☐ established with 90% or more participation by way of equity or control by Government; and
- ☐ carries out any of the functions entrusted to a municipality under article 243W of the Constitution.

7.3.2 What are the functions entrusted to a municipality under article 243W of the Constitution?

Article 243W of the Constitution is as under:

'Subject to the provisions of this Constitution, the Legislature of a State may, by law,endow—

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.'

Matters listed in twelfth schedule are:

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.

15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

7.3.3 Are all services provided by a governmental authority exempt from service tax?

No. All services are not exempt. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution are exempt. All other services are subjected to service tax if they are not otherwise exempt.

7.3.4 Are all services provided to a governmental authority exempt from service tax?

No. Agovernmental authority enjoys same benefits as the Government or a local authority in respect of receipt of services. The following services when provided to a governmental authority are exempt:

a) Specified services as listed in Sr. no. 12 of Exhibit A3 relating to construction.

b) Services in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation.

c) Services received from a service provider located in a non- taxable territory by such authorities in relation to any purpose other than commerce, industry or any other business or profession.

7.4 Charities (Details at Sr. No. 4 of Exhibit A3)

7.4.1 I am a registered charity. How do I know that activities provided by me are charitable activities?

You are doing charitable activities if you are registered with income tax authorities for this purpose under section 12AA the Income Tax Act, 1961 and carry out one or more of the specified charitable activities. Following are the specified charitable activities:-

a) public health by way of –

(I) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(II) public awareness of preventive health, family planning or prevention of HIV infection;

b) advancement of religion or spirituality;

c) advancement of educational programmes or skill development relating to,-

(I) abandoned, orphaned or homeless children;

(II) physically or mentally abused and traumatized persons;

(III) prisoners; or

(IV) persons over the age of 65 years residing in a rural area;

d) preservation of environment including watershed, forests and wildlife; or

e) advancement of any other object of general public utility up to a value of twenty five lakh rupees in a financial year subject to the condition that total value of such activities had not exceeded twenty five lakh rupees during the preceding financial year.

7.4.2 What is the tax liability of a registered charity on their activities?

If a registered charity is doing any activity falling in negative list of services or is otherwise exempt, it is not required to pay service tax on that activity. In case, where its activity is covered explicitly in any of the specified charitable activities at 'a' to 'd' of the answer to 7.4.1, it is exempt from service tax without any value limit. For charitable activities mentioned at 'e', it is exempt up to a value of twenty five lakh rupees in a financial year if the total value of such services had not exceeded twenty five lakh rupees during the preceding financial year. However, this later exemption is available only if the activities are meant for general public. General public is defined in the notification as 'body of people at large sufficiently defined by some common quality of public or impersonal nature'.

7.5 Religious places/ceremonies (Details at Sr. No. 5 of Exhibit A3)

7.5.1 Is renting of precincts of a religious place taxable?

Yes. However, exemption is available only if the place is meant for general public. General public is also defined in the mega notification 25/2012-ST as 'body of people at large sufficiently defined by some common quality of public or impersonal nature'.

7.5.2 Am I liable to pay service tax for conducting religious ceremonies for my client?

No. Conduct of religious ceremonies is exempt under Sr. no. 4 of mega exemption. Religious ceremonies are life-cycle rituals including special religious poojas conducted in terms of religious texts by a person so authorized by such religious texts. Occasions like birth, marriage, and death involve elaborate religious ceremonies.

7.6 Advocates or arbitral tribunals (Details at Sr. No.6 of Exhibit A3)

7.6.1 What is the tax liability of advocates, or arbitral tribunal in respect of services provided by them?

Advocates can provide services either as individuals or as firms. Legal services provided by advocates or partnership firms of advocates are exempt from service tax when provided to

the following:

- ☐ an advocate or partnership firm of advocates providing legal services (same class of persons)
- ☐ any person other than a business entity
- ☐ a business entity with a turnover up to rupees ten lakh in the preceding financial year

However, in respect of services provided to business entities, with a turnover exceeding rupees ten lakh in the preceding financial year, tax is required to be paid on reverse charge by the business entities. Business entity is defined in section 65B of the Finance Act, 1994 as 'any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession'. Thus it includes sole proprietors as well. The business entity can, however, take input tax credit of such tax paid in terms of Cenvat Credit Rules, 2004, if otherwise eligible. The provisions relating to arbitral tribunal are also on similar lines.

7.6.2 I am serving as a member of an arbitral tribunal comprising many arbitrators and receiving an amount from the arbitral tribunal. Am I providing a service and required to pay service tax on such amount received?

Arbitral tribunal comprising more than one arbitrator will constitute an entity by itself. Thus services of individual arbitrator when represented on such an arbitral tribunal will also constitute service by one person to another. However such service is exempt under sr. no. 6(c) of the mega notification.

7.7 Recreational coaching or training (Details at Sr. No. 8 of Exhibit A3)

7.7.1What is the scope of exemption to coaching or training in recreational activities?

There is exemption from service tax to training or coaching in recreational activities relating to arts, culture or sports. The benefit is available to coaching or training relating to all forms of dance, music, painting, sculpture making, theatre and sports etc.

7.8 Sports (Details at Sr. No 10 of Exhibit A3)

7.8.1 What is the tax liability on services provided to a recognized sports body?

Services provided to a recognized sports body by an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from service tax. Similarly services by a recognized sports body to another are also exempt. Services by individuals such as selectors, commentators, curators, technical experts are taxable. Recognized sports body has been defined in the mega notification itself.

7.8.2 Are the services of an individual as a player, umpire in a premier league taxable?

The service of a player to a franchisee which is not a recognized sports body is taxable. However, services of an individual as umpire, referee when provided directly to a recognized sports body shall be exempt.

7.9 Construction (Details at Sr No 12 to 14 of Exhibit A3)

7.9.1 Which are the construction services exempted when provided to the Government, a local authority or a governmental authority?

Exemption is available to the services by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of:

A. a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession

B. a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under Ancient Monuments and Archaeological Sites and Remains Act, 1958

C. a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment

D. canal, dam or other irrigation works

E. pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal

F. a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the of a religious building

7.9.2 What is the significance of words predominantly for use other than for commerce, industry, or any other business or profession?

The exemption is available for a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession. The significance of the word predominantly is that benefit of exemption will not be denied if the building is also incidentally used for some other purposes if it is used primarily for commerce, industry, or any other business or profession.

7.9.3 I am a contractor in number of projects for constructing roads. What is my tax liability on construction of roads under different types of projects?

Construction of roads for use by general public is exempt from service tax. Construction of roads which are not for general public use e.g. construction of roads in a factory, residential complex would be taxable.

7.9.4 I am engaged in construction of hospitals and educational institutes. Am I required to pay service tax?

If you are constructing such structures for the government, a local authority or a governmental authority, you are not required to pay service tax. If you are constructing for others, you are required to pay tax.

7.9.5 What is the service tax liability on construction of a religious building?

Service tax is exempt on construction of a building owned by an entity registered under section 12 AA of the Income tax Act, 1961 and meant predominantly for religious use by general public.

7.9.6 I am constructing a residential complex for my client. The houses are predominantly meant for self-use or the use of the employees. Am I required to pay service tax?

If your client is other than the Government, a local authority or a governmental authority, you are required to pay service tax. However, exemption is available for services provided to the Government, a local authority or a governmental authority by way of construction of a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act.

7.9.7 What is the service tax liability on construction of two - floor house constructed through a contractor? My contractor is demanding service tax. Is he right in doing so?

Service tax is payable on construction of a residential complex having more than one single residential unit. Single residential unit is defined in the notification and means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family. If each of the floors of your house is a single residential unit in terms of the definition, the contractor is rightly demanding service tax. If the title of each of floors is capable of being transferred to another person by mutation in land/ municipal records, both the floors may be considered as separate single residential units.

7.9.8 Are repair, maintenance of airports, ports and railways liable to tax?

Yes. They are liable to service tax and the same will be available as input tax credit to railways, port or airport authority, if other conditions are met.

7.9.9 I am setting up a wheat flour mill. The supplier of machines is demanding service tax on erection and installation of machineries and equipments in the flour mill. Is he right in demanding service tax?

There is no service tax liability on erection or installation of machineries or equipments for units processing agricultural produce as food stuff excluding alcoholic beverages. You are processing wheat which is made from processing an agricultural produce. Similarly erection or installation of machineries or equipment for dal mills, rice mills, milk dairies or cotton ginning mills would be exempt.

7.10 Copyright (Details at Sr No 15 of Exhibit A3)

7.10.1 Will a music company having the copyright for any sound recording be taxable for his activity of distributing music?

Temporary transfer of a copyright relating to original literary, dramatic, musical, artistic work or cinematographic film falling under clause (a) and (b) of sub-section (1) of section 13 of the

Indian Copyright Act, 1957 is exempt. Amusic company would be required to pay service tax as the copyright relating to sound recording falls under clause (c) of sub-section (1) of section 13 of the Indian Copyright Act, 1957.

7.10.2 I am a composer of a song having the copyright for my song. When I allow the recording of the song on payment of some royalty by a music company for further distribution, am I required to pay service tax on the royalty amount received from a music company?

No, as the copyright relating to original work of composing song falls under clause (a) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 which is exempt from service tax. Similarly an author having copy right of a book written by him would not be required to pay service tax on royalty amount received from the publisher for publishing the book. Aperson having the copyright of a cinematographic film would also not be required to pay service tax on the amount received from the film exhibitors for exhibiting the cinematographic film in cinema theatres.

7.10.3 What would be the liability of service tax on various arrangements entered into for screening of cinematographic films by producers/distributors/exhibitors?

A detailed circular has been issued by the Board dealing with various arrangements in the context of existing present system of taxation based on positive list of services vide Circular No.148 / 17 / 2011 – ST, dated 13.12.2011. The said circular may be referred for the guidance. However, no service tax is payable on temporary transfer of copyright in relation to cinematographic films as the same is exempt under the mega-notification 25/2012.

7.11 Miscellaneous

7.11.1 I am an artist. How do I know that my activity is subjected to service tax?

The activities by a performing artist in folk or classical art forms of music, dance, or theatre are not subjected to service tax. All other activities by an artist in other art forms e.g. western music or dance, modern theatres, performance of actors in films or television serials would be taxable. Similarly activities of artists in still art forms e.g. painting, sculpture making etc. are taxable.

7.11.2 Are the services of an artist as brand ambassador taxable? Who are brand ambassadors?

Yes, services provided by an artist as brand ambassador is taxable. Brand ambassador is defined in the mega notification and means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person.

7.11.3 What is the significance of declared tariff?

Declared tariff is defined in the mega notification. It includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit. Its relevance is in determining the liability to pay service tax on renting of a hotel,

inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes as exemption is available where declared tariff of a unit of accommodation is below rupees one thousand per day or equivalent. However, the tax will be liable to be paid on the amount actually charged i.e. declared tariff minus any discount offered.

Thus if the declared tariff is Rs 1100/-, but actual room rent charged is Rs 800/-, tax will be required to be paid on Rs 800/-.

When the declared tariff is revised as per the tourist season, the liability to pay tax shall be only on the declared tariff for the accommodation where the published/printed tariff is above Rupees 1000/-. However, the revision in tariff should be made uniformly applicable to all customers and declared when such change takes place.

7.11.4 I am running a hotel having the facility of central air-conditioning. There are number of restaurants in the hotel. Am I liable to pay service tax on to serving of food or beverages in these restaurants?

Serving of food or beverages in a centrally air-conditioned premise will be taxed if its restaurant has a license to serve alcoholic beverages. However, those restaurants which do not have license to serve alcoholic beverages will be exempt from service tax. Serving of food or beverages outside the restaurant, say near the swimming pool, will be taxed if service is from a restaurant having license to serve alcoholic beverages.

7.11.5 Is giving of a bus on hire to any person liable to tax?

Giving on hire a bus to a state transport undertaking is exempt from service tax. If the bus is given on hire to a person other than a state transport undertaking, it will be taxed.

6.11.6 I have a bus with a contract permit and operating the bus on a route. The passengers embark or disembark from the bus at any place falling on the route and pay separate fares either for the whole or for the stages of journey. Am I required to pay tax?

No. However, transport of passengers in a contract carriage for the transportation of passengers, for tourism, conducted tour, charter or hire is taxable.

7.11.7 I have taken on rent a piece of vacant land from its owner. The land will be used for providing the facility of vehicles parking on payment. What is my service tax liability?

You are not required to pay tax on providing the facility of vehicle parking to general public. However, if you are providing the facility of parking of vehicles to a car dealer, you are be required to pay tax as parking facility is not for general public. Moreover, land owner is liable to pay service tax on renting of his land to you.

7.11.8 What is the tax liability of a RWA on the charges collected from own members by way of reimbursement of charges or share of contribution for the common use of its members in a housing society or a residential complex.

Service of an unincorporated body or a non- profit entity registered under any law for the time being in force to its own members up to an amount of Rs 5,000 per member per month by

way of reimbursement of charges or share of contribution is exempt from service tax. Where RWAis working as a pure agent of its members for sourcing of goods or services from a third person, amount collected by RWA from its members may be excluded from the value of taxable service in terms of Rule 5(2) 0f Service Tax (Determination of Value) Rules, 2006 subject to compliance with the specified conditions.

7.11.9 I am a Resident Welfare Association (RWA). The members contribute an amount to RWA for holding camps to provide health care services to poor men and women. Am I required to pay tax on contribution received from members?

No. You are not required to pay service tax on the contribution received as you are carrying out any activity (holding camps to provide health care services) which is exempt from the levy of service tax. If contribution is for carrying out an activity which is taxable, you are required to pay service tax.

7.11.10 What is the tax liability on services by the intermediaries to entities those are liable to pay tax on their final output services? (Details at Sr. No 29 of Exhibit A3)

Services by following intermediaries are exempt from service tax:

A. sub-broker or an authorised person to a stock broker;
B. authorised person to a member of a commodity exchange;
C. mutual fund agent to a mutual fund or asset management company;
D. distributor to a mutual fund or asset management company;
E. selling or marketing agent of lottery tickets to a distributer or a selling agent;
F. selling agent or a distributer of SIM cards or recharge coupon vouchers;
G. business facilitator or a business correspondent to a banking company or an insurance company in a rural area; or
H. sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

7.11.11 Whether the exemption provided in the mega -exemption to services by way of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., is also available to the sub-contractors who provide input service to these main contractors in relation to such construction?

As per clause (1) of section 66Freference to a service by nature or description in the Act will not include reference to a service used for providing such service. Therefore, if any person is providing services, in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., such as architect service, consulting engineer service ., which are used by the contractor in relation to such construction, the benefit of the specified entries in the mega-exemption would not be available to such persons unless the activities carried out by the sub-contractor independently and by itself falls in the ambit of the exemption.

It has to be appreciated that the wordings used in the exemption are 'services by way of construction of roads etc' and not 'services in relation to construction of roads etc'. It is thus

apparent that just because the main contractor is providing the service by way of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., it would not automatically lead to the classification of services being provided by the sub-contractor to the contractor as an exempt service.

However, a sub-contractor providing services by way of works contract to the main contractor, providing exempt works contract services, has been exempted from service tax under the mega exemption if the main contractor is engaged in providing exempt services of works contracts. It may be noted that the exemption is available to sub-contractors engaged in works contracts and not to other outsourced services such as architect or consultants.

7.11.12 What is the tax liability of a person carrying out intermediate production process as job work for his clients?

Any process amounting to manufacture or production of goods is in the negative list. If process does not amount to manufacture or production of goods, and is further not covered in clause 30 of the mega notification, the same is liable to service tax.

7.11.13 Whether service tax is leviable on telephone services rendered by M/s. BSNL through Village Panchayat Telephone (VPT) with local call facility, as M/s. BSNL is a public sector unit and telephones run by it cannot be treated as 'departmentally run telephones'?

As per Sl. No. 32 of the mega-exemption Notification in addition to exemption to 'departmentally run telephones'there is exemption for 'Guaranteed Public Telephone operating only for local calls'also. Village Public Telephones (VPTs) with facility of local calls (without 9 dialing facility or STD facility) run by BSNL would fall under the category of 'Guaranteed Public Telephone operating only for local calls'.

7.11.14 I am in the business of running a chain of restaurants. I intend to sell my business. Am I required to pay service tax?

Services by way of transfer of a going concern, as a whole or an independent part thereof, are exempt from service tax. Therefore, you are not required to pay service tax on such sale of your business. Sale of assets of a business that has closed will be outside the definition of "service"

7.11.15 What does the term 'transfer of a going concern' mean?

Transfer of a going concern means transfer of a running business which is capable of being carried on by the purchaser as an independent business, but shall not cover mere or predominant transfer of an activity comprising a service. Such sale of business as a whole will comprise comprehensive sale of immovable property, goods and transfer of unexecuted orders, employees, goodwill etc. Since the transfer in title is not merely a transfer in title of either the immovable property or goods or even both it may amount to service and has thus been exempted.

7.11.16 Footwear Association of India is organizing a business exhibition in Germany for footwear manufacturers of India. Is Footwear association of India required to pay service tax on services to footwear manufacturers?

No. The activity is exempt from service tax.

7.11.17 I am resident in Jammu and Kashmir and planning to construct a property in Delhi. I have got the architectural drawings made from an architect who is also resident in Jammu and Kashmir.Am I liable to pay service tax on architect services?

No. Even though the property is located in Delhi- in a taxable territory- your architect is exempt from service tax as both the service provider and the service receiver is in a non-taxable territory.

7.11.18 I am an individual receiving services from a service provider located in non-taxable territory. Am I required to pay service tax?

If you are using these services in relation to any purpose other than commerce, industry or any other business or profession, you are required to pay tax under reverse charge, unless you are otherwise exempt. If use is for any other purpose, you are exempt from service tax.

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Guidance Note 8 – Valuation

With the introduction of system of taxation of services based on the negative list there has been no fundamental change in the manner of valuation of service for the purpose of payment of service tax. The broad scheme remains the same barring some marginal changes carried out to align the scheme of valuation of taxable services and the Service Tax (Determination of Value) Rules, 2006 with the new system of taxation. Broadly these changes in the Valuation Rules are as follows:-

- ☐ As compared to the existing two schemes for valuation of works contract services – one under the rule 2Aof the Valuation Rules and second under the Works Contract (Composition Scheme for Payment of Service Tax) Rules 2007 has been replaced with a unified scheme under the new rule 2Aof Service Tax (Determination of Value) Rules, 2006.

- ☐ A new Rule 2C has been inserted for determining the value of service involved in supply of food or any other article of human consumption or any drinks in a restaurant or as outdoor catering. The existing scheme of determination of value of such services through prescribed abatements in various exemption notifications has been done away with.

- ☐ There are certain changes in rule 6 of the Service Tax (Determination of Value) Rules, 2006.

- ☐ All notifications that prescribed the abatements for working out the taxable value from the gross amount charged have been merged into one single exemption notification i.e., notification no. 26/2012- ST dated 20/6/12.

The broad scheme of valuation and provisions of Valuation Rules have been explained through a set of examples, questions and answers below.

8.1. Broad Scheme of Valuation.

8.1.1 How is value of service relevant for the purpose of payment of service tax?

In terms of the charging provisions contained in Section 66B, service tax is levied @ 12% on the value of taxable services. Therefore, value of service provided is relevant for determining the amount of service tax payable when a taxable service is provided by a person to another.

8.1.2 What is the value on which service tax is to be paid?

The manner of value of service is provided in Section 67. As per sub-section (1) of Section 67 wherever Service Tax is chargeable on any taxable service with regard to its value then its value shall-

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

8.1.3 If the gross amount charged is inclusive of service tax payable then would service tax be chargeable on the gross amount?

No. As per sub-section (2) of section 67 where the gross amount chargeable by the service provider is inclusive of service tax payable then the value of such taxable service shall be such amount as, with the addition of such tax payable , is equal to the gross amount charged. For example if the gross amount charged for provision of service is Rs.1500 then the value of taxable service would be Rs.1339.29 (1500 x 100/112) as after including the tax payable at Rs.1339.29 @ 12% (which works out to Rs.160.71) the total amount (1339.29 + 160.71) comes to Rs.1500.

8.1.4 Is it necessary that gross amount charged should have been received by the service provider prior to provision of service?

No. As per sub-section (3) of Section 67 the gross amount charged includes any amount received towards the taxable service before during or after the provision of such service.

8.1.5 What is the meaning of 'consideration' referred to in sub clause (1) Section 67?

The concept of consideration comes from the very root of the definition of service contained in clause (44) of section 65B as per which service has been defined as an activity carried out by a person for another 'for consideration'.

For detailed discussion on consideration please refer to Point 2.2 of this Guide. The consideration could be monetary or non-monetary.

8.1.6 If provision of service is for the consideration for money then what will be the manner of determining the value of taxable service?

In terms of clause (i) of sub-section (1) of Section 67 in case provision of service is for consideration in money, then the value of taxable service shall be the gross amount charged by the service provider for such service provided or agreed to be provided by him.

8.1.7 What is the meaning of 'gross amount charged'?

'Gross amount charged' has been defined in Explanation (c) of Section 67 to include payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

8.1.8 What is the manner of determining the value of non-monetary consideration?

As per clause (ii) of sub-section (1) of section 67 of the Act where the consideration received is not wholly or partly consisting of money the value of taxable service shall be the equivalent money value of such consideration. If the same is not ascertainable then the value of such consideration is determined under clause (iii) of section 67 read with rule 3 of the Service Tax (Determination of the value) Rules 2006 as follows:-

- ☐ On the basis of gross amount charged for similar service provided to other person in the ordinary course of trade;
- ☐ Where value cannot be so determined, the equivalent money value of such consideration, not less than the cost of provision of service.

8.1.9. As per clause (iii) of sub-section (1) of Section 67 in cases where provision of service is for a consideration which is not ascertainable then the value of taxable service shall be the amount as it may be determined in the prescribed manner. What are the situations where consideration is not ascertainable and what is the manner for determining the value in such cases are prescribed?

There may be several situations wherein it may be difficult to determine the consideration received by service provider for provision of a service. Such situations can arise on account of several factors such as consideration of service being embedded in the total amount received as consideration for a composite activity involving elements of provisions of service and element of sale of goods or consideration for service being included in the gross amount charged for a particular transaction or consideration of service being wholly or partly in the nature of non-monetary consideration.

The manner has been prescribed under Service Tax (Determination of Value) Rules 2006. These rules inter-alia provide provisions in respect of the following situations:

- ☐ Determination of value of service portion involved in execution of works contract.
- ☐ Determination of value of service in relation to money changing.
- ☐ Determination of value of service portion involved in supply of food and any other article of human consumption or any drinks in a restaurant or as outdoor catering.
- ☐ Determination of value where such value is not ascertainable.

- ☐ The said rules also specify certain expenditures or costs that are incurred by the service provider which have to be included or excluded
- ☐ The said rules also specify certain commissions or costs that are received by the service provider that have to be included or excluded while arriving at the taxable value.

In addition to the Service Tax (Determination of Value) Rules 2006, certain sub-rules in rule 6 of the Service Tax Rules, 1994 also provide simplified compounded mechanism for determination of value of taxable services in specified situations.

These specified aspects of determination of value under the Service Tax (Determination of Value) Rules 2006 and the Service Tax Rules, 1994 have been dealt individually with in point nos. 8.2 to 8.7 below.

8.1.10 In addition to the two set of rules explained in point no 8.1.9 above, that have a bearing on the valuation of services, are there any exemption notifications that exempt certain portion of the gross amount charged from levy of service tax or in other words provide for abatements to arrive at the value of taxable services?

Yes. Earlier there were a number of exemption notifications that prescribed the abatements for various categories of services. As another measure of simplification now all such abatements for specified category of services have been merged into a single notification no 26/2102 – ST dated 20/6/12 which has been dealt with in point no. 8.8 below.

8.2 Valuation of service portion in execution of a works contract

Works contract has been defined in clause (54) of section 65B of the Act. Typically every works contract involves an element of sale of goods and provision of service. It is a well settled position of law, declared by the Supreme Court in BSNL's case [2006(2) STR 161 (SC)], that a works contract can be segregated into a contract of sale of goods and contract of provision of service. With a view to bring certainty and simplicity the manner of determining the value of service portion in works contracts has been provided in Rule 2A of the Service Tax (Determination of Value) Rules, 2006. In order to align this rule with the new system of taxation of services based on the negative list the old Rule 2A has been replaced by a new rule by the Service Tax (Determination of Value) Second Amendment Rules, 2012. The new provisions have been explained in this note

8.2.1 What is the manner of determination of value of service portion in execution of a works contract from the total contract?

The manner for determining the value of service portion of a works contract from the total works contract is given in Rule 2A of the Service Tax (Determination of Value) Rules, 2006. As per sub-rule (i) of the said Rule 2A the value of the service portion in the execution of a

works contract is 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.

Gross amount includes	Gross amount does not include
Labour charges for execution of the works	Value of transfer of property in goods involved in the execution of the said works contract. Note: As per Explanation (c) to the said sub-rule (i), where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract.
Amount paid to a sub-contractor for labour and services	
Charges for planning, designing and architect's fees	
Charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract	
Cost of consumables such as water, electricity, fuel, used in the execution of the works contract	
Cost of establishment of the contractor relatable to supply of labour and services and other similar expenses relatable to supply of labour and services	Value Added Tax (VAT) or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract
Profit earned by the service provider relatable to supply of labour and services	

8.2.2. Is there any simplified scheme for determining the value of service portion in a works contract?

Yes. The scheme is contained in the clause (ii) of rule 2Aof the Service Tax (Determination of Value) Rules, 2006.

As per this scheme the value of the service portion, where value has not been determined in the manner as provided in clause (i) of rule 2A (explained in point 8.2.1 above), shall be determined in the manner explained in the table below -

Where works contract is for…	Value of the service portion shall be…
(A) execution of original works	**forty percent** of the **total amount charged** for the works contract
(B) maintenance or repair or reconditioning or restoration or servicing of any goods	**seventy per cent** of the **total amount charged** including such gross amount
(C) in case of other works contracts, not included in serial nos. (A) and (B) above, including contracts for maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings.	sixty percent of the **total amount charged** for the works contract

Important – As per the Explanation (II) to clause (ii) of rule 2Aof the said Rules **'total amount'** referred to in the second column of the table above would be the sum total of gross amount charged for the works contract and the fair market value of all goods and services supplied in

or in relation to the execution of works contract, under the same contract or any other contract, less (i) the amount charged for such goods or services provided by the service receiver; and (ii) the value added tax or sales tax, if any, levied to the extent they form part of the gross amount or the total amount, as the case may be.

8.2.3 How is the fair market value of goods or services, so supplied, be determined to arrive at the total amount charged for a works contract?

As per the proviso to Explanation (II) to clause (ii) of rule 2A of the Valuation Rules the fair market value of the goods or services so supplied shall be determined in accordance with the generally accepted accounting principles.

8.2.4. What are ''original works'?

As per Explanation (I) to clause (ii) of rule 2Aof the Valuation Rules 'Original works' means :

- ☐ all new constructions;
- ☐ all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- ☐ erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

8.2.5 Can the manner of determination of 'total amount charged' be explained by way of a suitable example?

The manner of arriving at the 'total amount charged' is explained with the help of the following example pertaining to works contract for execution of 'original works'.

S. No.	NOTATION	AMOUNT (in Rs.)
1	Gross amount received excluding taxes	95,00,000
2	Fair market value of goods supplied by the service receiver excluding taxes	10,00,000
3	Amount charged by service receiver for 2	5,00,000
4	Total amount charged (1+2-3)	1,00,00,000
5	Value of service portion(40% of 4 in case of original works)	40,00,000

Note: When the service provider pays partially or fully for the materials supplied by the service receiver, gross amount charged would inevitably go higher by that much amount.

8.3 Determination of value of service in relation to money changing

In services of money changing including sale and purchase of foreign currency the problem of valuation arises on account of the fact that as per normal trade practice in such services the consideration is inbuilt in the difference between the selling/buying rates and the Reserve Bank of India (RBI) reference rate for that currency at that time. Accordingly a separate Rule 2B provides for the manner of determination of value of service in relation to money changing.

8.3.1 Would sale and purchase of foreign currency or money changing not be excluded from the definition of service as being transaction only in money?

No. As per Explanation 2 to clause (44) of Section 65B, which defines 'service', activity of conversion of one currency into another for which a separate consideration is charged would not get tantamount to a transaction only in money. In transactions of sale and purchase of foreign currency or money changing since a separate consideration is charged these would not be excluded from the definition of 'service'.

8.3.2 What is the manner of determination of value of service in relation to money changing including sale and purchase of foreign currency?

If a currency is exchanged from or to Indian Rupees then, as per Rule 2B of the Valuation Rules, the value of taxable service shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the RBI reference rate for that currency. For example if US$ 1000 are sold by a customer @ Rs55 per US$ and RBI reference rate for US$ is Rs.55.73 then the taxable value shall be Rs.730 (1000 x 0.73).

8.3.3 How would the value be determined if the RBI reference rate for a currency is not available?

As per the first proviso to Rule 2B in case RBI reference rate for a currency is not available the value shall be 1% of the gross amount of Indian Rupees provided or received by the person changing the money.

8.3.4 How would the value of taxable service be determined if foreign currency is exchanged for another foreign currency?

These situations are dealt with in second proviso to Rule 2B as per which in such situations the value of taxable service shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting one of the currencies into Indian Rupees on that day at the reference rate provided by RBI.

8.4 Valuation of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering.

In terms of article 366(29A) of the Constitution of India supply of any goods, being food or any other article of human consumption or any drink (whether or not intoxicating) in any manner as part of a service for cash, deferred payment or other valuable consideration is deemed to be a sale of such goods. Such a service therefore cannot be treated as service to the extent of the value of goods so supplied. The remaining portion however constitutes a service. It is a well settled position of law, declared by the Supreme Court in BSNL's case [2006(2)STR161(SC)], that such a contract involving service along with supply of such goods can be dissected into a contract of sale of goods and contract of provision of service. Since normally such an activity is in the nature of composite activity, difficulty arises in determining the value of the service portion. In order to ensure transparency and standardization in the manner of determination of the value of such service provided in a restaurant or as outdoor catering a new rule 2C has been inserted in the Service Tax (Determination of Value) Rules,

2006 by the amendment rules of 2012. This manner of valuation is explained in the points below.

8.4.1 Are services provided by any kind of restaurant, big or small, covered by the manner of valuation provided in Rule 2C of the Valuation Rules?

Yes. Although services provided by any kind of restaurant would be valued in the manner provided in Rule 2C, it may be borne in mind that the following category of restaurants are exempted –

- ☐ Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and which has a license to serve alcoholic beverage.
- ☐ Below the threshold exemption

8.4.2. How is the value of service portion to be determined in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering?

The manner of determination of service portion in such an activity is very simple and is given in Rule 2C of the the Service Tax (Determination of Value) Rules, 2006. In terms of the said rule value of the service portion shall be determined in the following manner-

Value of service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner…..	**Shall be ….. percent of the total amount charged:**
In a restaurant	40
As part of outdoor catering	60

Important - As per Explanation 1 to the said Rule 2C 'Total amount'(referred to in the second column of the table above) means the sum total of gross amount charged and the fair market value of all goods and services supplied by the service receiver in or in relation to the supply of food or any other article of human consumption or any drink (whether or not intoxicating), under the same contract or any other contract, less (i) the amount charged for such goods or services provided by the service receiver; and (ii) the value added tax or sales tax, if any, levied to the extent they form part of the gross amount or the total amount, as the case may be.

The clarification given in point no 8.2.5 above would, mutatis mutandis, apply to valuation in this case also.

8.4.3. What are the restrictions, if any, on availment of Cenvat credit by such service providers?

In terms of the Explanation2 to Rule 2C of the Valuation Rules any goods meant for human consumption classifiable under chapters 1 – 22 of Central Excise Tariff are not 'inputs' for provision of such service. Cenvat Credit is, therefore, not available on these items. Availability of Cenvat credit on other inputs, input services and capital goods would be subject to the provisions of the Cenvat Credit Rules, 2004 including the provisions relating to reversal of credits contained in rule 6 of the said rules. It may be noted the sale of food in the restaurant would amount to clearance of exempt goods and thus the provisions of Rule 6 of Cenvat Credit Rules will be applicable.

8.4.4 Would Rule 2C of the Valuation Rules also apply to determination of value of service portion in cases of supply of food or any other article of human consumption or any drink, in a premises, including hotel, convention center, club, pandal, shamiana or any place specially arranged for organizing a function?

No. Rule 2C applies only in cases of restaurants and outdoor catering. For valuation of service portion where such supplies are made in any other premises like hotel, convention center, club, pandal, shamiana or any place specially arranged for organizing a function an abatement of 30% has been provided for in exemption notification no 26/2012-ST dated 20/6/12. For details please refer to serial no. 4 of the table in point no 8.8 below.

8.5 Inclusion or exclusion from value of certain expenditure or costs borne by the service provider.

Rule 5 of Service Tax (Determination of Value) Rules, 2012 lays down the details of expenditure and cost borne by the service provider which have to be included or excluded while determining the value of taxable service.

8.5.1 What is the expenditure or costs that are to be included in the value of taxable services as per rule 5 of the Valuation Rules?

As per Rule 5 any expenditure or cost that are incurred by the service provider in the course of providing taxable services are treated as consideration for taxable service provided or agreed to be provided and shall be included in the value for the purpose of charging Service Tax on the said service.

However, Explanation to sub-rule (1) of Rule 5 clarifies that for the value of telecommunication services shall be the gross amount paid by the person to whom the service is actually provided (i.e. the subscriber).

8.5.2 Which costs or expenditure is to be excluded from the value of taxable service as per Rule 5?

As per sub rule (2) of Rule 5 the expenditure or cost incurred by the service provider as a pure agent of the recipient of the service shall be excluded from the value of taxable service if all the following conditions are satisfied:

- ☐ the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;

- ☐ the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
- ☐ the recipient of service is liable to make payment to the third party;
- ☐ the recipient of service authorises the service provider to make payment on his behalf;
- ☐ the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;
- ☐ the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
- ☐ the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- ☐ the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

8.5.3 What is the meaning of pure agent?

Pure agent has been defined in Explanation to sub-rule 2 of Rule (5) of the Valuation Rules as a person who-

- ☐ enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
- ☐ neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;
- ☐ does not use such goods or services so procured; and
- ☐ receives only the actual amount incurred to procure such goods or services.

8.6 Cases in which commission, costs etc. received by the service provider will be included or excluded.

Rule 6 of the Valuation Rules deals with specific situation where certain commission or costs received by the service provider would be included as part of the taxable service.

INCLUSIONS

- ☐ the commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker;
- ☐ the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;

- ☐ the amount of premium charged by the insurer from the policy holder;
- ☐ the commission received by the air travel agent from the airline;
- ☐ the commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;
- ☐ the reimbursement received by the authorised service station, from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer;
- ☐ the commission or any amount received by the rail travel agent from the Railways or the customer;
- ☐ the remuneration or commission, by whatever name called, paid to such agent by the client engaging such agent for the services provided by a clearing and forwarding agent to a client rendering services of clearing and forwarding operations in any manner;
- ☐ 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; and
- ☐ the amount realized as demurrage or by any other name whatever called for the provision of service beyond the period originally contracted or in any other manner relatable to the provision of service.

EXCLUSIONS

- ☐ initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;
- ☐ the airfare collected by air travel agent in respect of service provided by him;
- ☐ the rail fare collected by [rail travel agent] in respect of service provided by him;
- ☐ interest on delayed payment of any consideration for the provision of services or sale of property, whether moveable or immoveable;
- ☐ the taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger;
- ☐ accidental damages due to unforeseen action not relatable to the provision of service;
- ☐ subsidies or grants disbursed by the Government, not in the nature of directly influencing the value of service.

(italics indicate the additions made in the Service Tax (Determination of Value) Second Amendment, Rules, 2012)

8.6.1. Does the interest for delayed payment for provision of a service includable in the taxable value?

No. In terms of clause (iv) of Sub-rule 2 of Rule 6 delayed payments of any consideration for provision of service is excluded from the value of taxable service.

8.6.2. What is the scope of the exclusion entry related to accidental damages due to unforeseen actions not relatable to the provisions of service?

This inclusion has been inserted vide the Serviced Tax (Determination of Value) Second Amendment Rules, 2012. In terms of this exclusion accidental damages are not to be included in the value of service provided the following two conditions are specified:

- The damages are due to unforeseen actions.
- The damages are not related to provisions of service.

Examples-

- Insurance Companies provide insurance services to the clients for which the premium is charged. The premium charged is a consideration for the insurance service provided. However, in case due to an unforeseen action ,like an accident etc., a compensation is paid by the insurance company to the client then the money would not be included as part of value of taxable service as it is not relatable to the provisions of service but is only in the nature of consequence of provisions of insurance service.
- In case a landlord who has rented out his office building to a tenant receives compensation from the tenant for the damage caused to the building by an unforeseen action then such compensation would not form part of the value of taxable service related to tenant of his building as an unforeseen damage caused by the tenant is not relatable to provision of service of renting of the office building.

8.6.3. What is the scope of the exclusion entry relating to subsidies and grants disbursed by the Government, not in the nature or directly influencing the value of service?

This exclusion entry has also been inserted by the Service Tax (Determination of Value) Second Amendment Rules, 2012. Asubsidy influences the price directly when the price goes down proportionately to the amount of subsidy. In terms of this exclusion any subsidy or grant disbursed by the Government cannot form part of the value of taxable service unless such subsidy or grant directly influences the value of such service.

8.7. Compounding schemes for determination of value under the Service Tax Rules, 1994.

In addition to the Service Tax (Determination of Value) Rules, 2006 various sub-rules Rule (6) of the Service Tax 1994 also provides for simplified compounding mechanism for determining the amount of service tax payable. These sub-rules either specify the service tax payable as a certain percentage of the gross amount of a specified sum received by the service provider or also provide for manner of determination of value of taxable service for other specified

services. This facility is normally available as an option to the person responsible to pay service tax. These compounding schemes are tabulated below:

Sub-rule of rule 6	Specified service	Compounding scheme	Conditions
(7)	Services provided by an air travel agent	Pay an amount calculated at the rate of 0.6% of the basic fare (i.e. that part of the fare on which commission is normally paid to the travel agent by the airlines) in the case of domestic bookings, and at the rate of 1.2% of the basic fare in the case of international bookings, of passage for travel by air, during any calendar month or quarter	Option, once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances
(7A)	An insurer carrying on life insurance business	Option to pay tax (i) on the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service; (ii)in all other cases 3% of the gross amount of premium charged in the first year and 1.5% of the premium charged in the subsequent years.	Option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance
(7B)	Service of purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer	Option to pay an amount calculated at the following rate (a) 0.12 per cent. of the gross amount of currency exchanged for an amount upto rupees 100,000, subject to the minimum amount of rupees 30; and (b) rupees 120 and 0.06 per cent. of the gross amount of currency exchanged for an amount of rupees exceeding rupees 100,000 and upto rupees 10,00,000; and (c) rupees 660 and 0.012 per cent. of the gross amount of currency exchanged for an amount of rupees exceeding 10,00,000, subject to maximum amount of rupees 6000	The person providing the service shall exercise such option for a financial year and such option shall not be withdrawn during the remaining part of that financial year.
(7C)	Services by distributor or selling agent of promotion, marketing, organising or in any other manner assisting in organising lottery,	Option to pay- (i)Rs. 7000/- on every Rs. 10 Lakh (or part of Rs. 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw (If guaranteed prize payout is more than 80%) (ii)Rs. 11000/- on every Rs. 10 Lakh (or part of Rs. 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw (If guaranteed prize payout is less than 80%)	1. In case of online lottery, the aggregate face value of lottery tickets for the purpose of this sub-rule shall be taken as the aggregate value of tickets sold 2. The distributor or selling agent shall exercise such option within a period of one month of the beginning of each financial year and such option shall not be withdrawn during the remaining part of the financial year.

8.8 Notified abatements for determining the taxable value.

All abatements available to services of specified categories have now been merged in one exemption notification no 26/2012-ST dated 20/6/12. In terms of the said notification, exemption is granted from so much of the service tax leviable, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (3) of the following Table, of the amount charged (or in some cases of specified amount) by such service provider for providing the said taxable service, unless specified otherwise, subject to the relevant conditions specified in the corresponding entry in column (4) of the said Table:

Table

Sl.No.	Description of taxable service	%	Conditions
(1)	(2)	(3)	(4)
1	Services in relation to financial leasing including hire purchase	10	Nil.
2	Transport of goods by rail	30	Nil.
3	Transport of passengers, with or without accompanied belongings by rail	30	Nil.
4	Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises	70	CENVAT credit on any goods classifiable under chapter 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) has not been taken under the provisions of the CENVAT Credit Rules, 2004.
5	Transport of passengers by air, with or without accompanied belongings	40	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	60	Same as above.
7	Services of goods transport agency in relation to transportation of goods.	25	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
8	Services provided in relation to chit	70	Same as above.
9	Renting of any motor vehicle designed to carry passengers	40	Same as above.
10	Transport of goods in a vessel	50	Same as above.

Sl.No.	Description of taxableservice	%	Conditions
(1)	(2)	(3)	(4)
11	Services by a tour operator in relation to,- (i) a package tour	25	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour.
	(ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person	10	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation. (iii) This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.
	(iii) services other than those specified in (i) and (ii) above	40	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii)The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.
12.	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority	25	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii)The value of land is included in the amount charged from the service recipient.

8.8.1 Once the specified description of services has been done away with in the negative list regime how would the scope of services specified by way of description in the said notification be determined?

The services specified in the said notification, which have been tabulated in the table above, have been so specified in self-explanatory terms. In addition certain terms that have been used in the said notification are already defined in section 65B of the Act (like goods transport agency, vessel, port etc) and others have been defined in the said notification itself (like chit, package tour, tour operator and financial leasing).

8.8.2 Would the gross amount charged for financial leasing services, including equipment leasing and hire purchase, also include the interest amount charged for such financial services?

The gross amount charged for this service will be sum total of the following-

- ☐ 10% of the amount forming or representing interest; and
- ☐ Other charges such as lease management fees, processing fees, documentation charges and administrative fees.

8.9 Person responsible for determining the value of taxable service

8.9.1 Who is the person responsible for determining the value of taxable service?

Since Service Tax has to be paid by the persons responsible to pay Service Tax on the basis of self-assessment for value of taxable service has to be determined by the person responsible for payment of Service Tax in accordance with the provisions of Section 67 of the Act and rules made there under.

8.9.2 Can the value determined by the person responsible to pay service tax be rejected by the Department?

Yes. In terms of the provisions of Section 73 of the Finance Act 1994 and Rule 4 of Service Tax (Determination of value) Rules 2006 the value works out by the service provider or any other person responsible for payment of service tax can be rejected by Central Excise Officer if he has specified that the value so determined is not in accordance with the provisions of the act or the Valuation Rules. In such a situation the Central Excise Officer shall issue a Show Cause Notice to the serviced provider or any other person responsible for payment of Service Tax to Show Cause as to why the value of such taxable service for the purpose of charging service tax should not be fixed on the amount specified in the notice. After giving reasonable options and heard, the Central Excise Officer shall determining the value of such taxable service for the purpose of charging service tax in accordance with the provisions of the Finance Act 1994 and the Valuation Goods.

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Guidance Note 9 – Rules of Interpretation

Despite doing away with the service-specific descriptions, there will be some descriptions where some differential treatment will be available to a service or a class of services. Section 66F lays down the principles of interpretation of specified descriptions of services and bundled services. These are explained in paras below –

9.1 Principles for interpretation of specified descriptions of services

Although the negative list approach largely obviates the need for descriptions of services, such descriptions continue to exist in the following areas –

- ☐ In the negative list of services.
- ☐ In the declared list of services.
- ☐ In exemption notifications.
- ☐ In the Place of Provision of Service Rules, 2012
- ☐ In a few other rules and notifications e.g. Cenvat Credit Rules, 2004.

There are two principles laid down which are contained in clauses (1) and (2) of section 66F of the Act.

9.1.1 What is the scope of the clause (1) of section 66F: 'Unless otherwise specified, reference to a service (hereinafter referred to as the "main service") shall not include reference to a service which is used for providing the main service'

This rule can be best understood with a few illustrations which are given below –

- ☐ 'Provision of access to any road or bridge on payment of toll' is a specified entry in the negative list in section 66D of the Act. Any service provided in relation to collection of tolls or for security of a toll road would be in the nature of service used for providing such specified service and will not be entitled to the benefit of the negative list entry.

- ☐ Transportation of goods on an inland waterway is a specified entry in the negative list in section 66D of the Act. Services provided by an agent to book such transportation of goods on inland waterways or to facilitate such transportation would not be entitled to the negative list entry.

9.1.2 What is the scope of clause (1) of section 66F: 'where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description'.

This rule can also be best understood with some illustrations which are given below –

- ☐ The services provided by a real estate agent are in the nature of intermediary services relating to immovable property. As per the Place of Provision of Service Rule, 2012, the place of provision of services provided in relation to immovable property is the location of the immovable property. However in terms of the rule 5 pertaining to

services provided by an intermediary the place of provision of service is where the intermediary is located. Since Rule 5 provides a specific description of 'estate agent', the same shall prevail.

- Pandal and Shamiana is an existing service and will remain a subject of taxation. Likewise service provided by way of catering is a taxable service and entitled to abatement. There is abatement when the two are provided in combination. Since the combination is more a specific entry than the two provided individually, there is no need to apply the later rule of bundled services, where the character could be judged by the service which provides it the essential character.

9.2 Taxability of 'bundled services'.

'Bundled service' means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. An example of 'bundled service'would be air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different.

Two rules have been prescribed for determining the taxability of such services in clause (3) of section 66F of the Act. These rules, which are explained below, are subject to the provisions of the rule contained in sub section (2) of section 66F, viz a specific description will be preferred over a general description as explained in para 9.1.2 above.

9.2.1 Services which are naturally bundled in the ordinary course of business

The rule is – 'If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character'

Illustrations -

- A hotel provides a 4-D/3-N package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.
- A 5 star hotel is booked for a conference of 100 delegates on a lump sum package with the following facilities:
  - Accommodation for the delegates
  - Breakfast for the delegates,
  - Tea and coffee during conference
  - Access to fitness room for the delegates
  - Availability of conference room
  - Business centre

As is evident a bouquet of services is being provided, many of them chargeable to different effective rates of tax. None of the individual constituents are able to provide the essential character of the service. However, if the service is described as convention service it is able to capture the entire essence of the package. Thus the service may be judged as convention service and chargeable to full rate. However it will be fully justifiable for the hotel to charge individually for the services as long as there is no attempt to offload the value of one service on to another service that is chargeable at a concessional rate.

9.2.2 Services which are not naturally bundled in the ordinary course of business

The rule is – 'If various elements of a bundled service are not naturally bundled in the ordinary course of business, it shall be treated as provision of a service which attracts the highest amount of service tax.'

Illustrations -

- A house is given on rent one floor of which is to be used as residence and the other for housing a printing press. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Therefore, if a single rent deed is executed it will be treated as a service comprising entirely of such service which attracts highest liability of service tax. In this case renting for use as residence is a negative list service while renting for non-residence use is chargeable to tax. Since the latter category attracts highest liability of service tax amongst the two services bundled together, the entire bundle would be treated as renting of commercial property.

9.2.3 Significance of the condition that the rule relating to 'bundled service' is subject to the provisions of sub-section (2) of section 66F.

Sub-section (2) of section 66 lays down **:** 'where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description' (refer para 9.1.2 above). This rule predominates over the rule laid down in sub-section (3) relating to 'bundled services'. In other words, if a bundled service falls under a service specified by way of a description then such service would be covered by the description so specified. The illustration, relating to a bundled service wherein a pandal and shamiana is provided in combination with catering service, given in the second bullet in para 9.1.2 above explains the operation of this rule.

9.2.4 Manner of determining if the services are bundled in the ordinary course of business

Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below –

- The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a package could be treated as naturally bundled in the ordinary course of business.

- Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.

- The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

- Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are -

  - There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.

  - The elements are normally advertised as a package.

  - The different elements are not available separately.

  - The different elements are integral to one overall supply – if one or more is removed, the nature of the supply would be affected.

No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.

9.2.5 Manner of determination of taxability of 'composite transactions' wherein an element of provision of service is combined with an element of sale of goods

Please refer to **point no 2.6.3 of this Guidance Note.**

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Guidance Note 10 – Miscellaneous

10.1 Partial Reverse Charge

With effect from 1.7.2012 a new scheme of taxation is being brought into effect whereby the liability of payment of service tax shall be both on the service provider and the service recipient. Usually such liability is affixed either on the service provider or the service recipient, but in specified services and in specified conditions, such liability shall be on both the service provider and the service recipient.

The enabling provision has been provided by insertion of proviso to section 68 in the Finance Act, 2012 as per which Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of Chapter V shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider. Under this clause the Central government has issued notification no. 30/ 2012 dated 20.6.2012 notifying the description of specified services when provided in the manner so specified where part of the service tax has to be paid by the service receiver. The extent to which tax liability has to be discharged by the service receiver has also been specified in the said notification.

The manner of operation of the reverse charge mechanism has been explained in this point.

10.1.1 What are the services on which such partial reverse change mechanism shall be applicable?

In terms of serial nos. 7(b), 8 and 9 of the table in notification no. 30/2012 dated 20.6.12, the new partial reverse charge mechanism is applicable to services provided or agreed to be provided by way of

(a) renting of a motor vehicle designed to carry passengers on non-abated value to any person who is not engaged in a similar business, or

(b) supply of manpower for any purpose, or

(c) service portion in execution of a works contract;

by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as a body corporate located in the taxable territory. Thus the nature of the service and the status of both the service provider and service receiver are important to determine the applicability of partial reverse charge provisions.

10.1.2 What does a service provider need to indicate on the invoice when he is liable to pay only a part of the liability under the partial reverse charge mechanism?

The service provider shall issue an invoice complying with Rule 4Aof the Service Tax Rules 1994. Thus the invoice shall indicate the name, address and the registration number of the service provider; the name and address of the person receiving taxable service; the description

and value of taxable service provided or agreed to be provided; and the service tax payable thereon. As per clause (iv) of sub-rule (1) of the said rule 4A''the service tax payable thereon' has to be indicated. The service tax payable would include service tax payable by the service provider.

10.1.3 If the service provider is exempted being a SSI (turnover less than Rs 10 lakhs), how will the reverse charge mechanism work?

The liability of the service provider and service recipient are different and independent of each other. Thus in case the service provider is availing exemption owing to turnover being less than Rs 10 lakhs, he shall not be obliged to pay any tax. However, the service recipient shall have to pay service tax which he is obliged to pay under the partial reverse charge mechanism.

10.1.4 Will the credit of such tax paid be available to the service recipient?

Normally, the credit of the entire tax paid on the service received by the service receiver would be available to the service recipient subject to the provisions of the CENVAT Credit Rules 2004. The credit of tax paid by the service provider would be available on the basis of the invoice subject to the conditions specified in the CENVAT Credit Rules 2004. The credit of tax paid by the service recipient under partial reverse charge would be available on the basis on the tax payment challan, again subject to conditions specified in the said Rules.

10.1.5 What shall be the point of taxation for the service recipient? When will he need to pay the service tax in respect of his liability?

Both the service provider and service recipient are governed by the Point of Taxation Rules 2011 in respect of the service provided or received by him. Usually it is the invoice or date of receipt of payment which is the point of taxation for the service provider. However for the service recipient, in terms of rule 7 of the said rules, point of taxation is when he pays for the service. Thus in the case where the invoice is issued in say July 2012 and the service recipient pays for the same in August 2012 the point of taxation for the service provider will be the date of issue of invoice in July 2012. The point of taxation for the service recipient shall be the date of payment in August 2012. The service provider would be required to pay tax (to the extent liability is affixed on him) by 5th/6th August, 2012 or 5th/6th October 2012 depending upon the admissibility of benefit under the proviso to rule 6 of the Service Tax Rules 1994. The service recipient would need to pay tax (to the extent liability is affixed on him) by 5th/6th September 2012.

10.1.6 How is the service recipient required to calculate his tax liability under partial reverse charge mechanism? How will the service recipient know which abatement or valuation option has been exercised by the service provider?

The service recipient would need to discharge liability only on the payments made by him. Thus the assessable value would be calculated on such payments done (Free of Cost material supplied and out of pocket expenses reimbursed or incurred on behalf of the service provider need to be included in the assessable value in terms of Valuation Rules). The invoice raised by the service provider would normally indicate the abatement taken or method of valuation used for arriving at the taxable value. However since the liability of the service provider and

service recipient are different and independent of each other, the service recipient can independently avail or forgo an abatement or choose a valuation option depending upon the ease, data available and economics.

10.1.7 Is the reverse charge applicable on services provided and complete before 1.7.2012 though payments were made after 1.7.2012?

For any service whose point of taxation has been determined and whole liability affixed before 1.7.2012 the new provisions will not apply. Merely because payments are being made after 1.7.2012 will not add any additional liability on the service receiver in respect of such services.

10.2 Export of Services

10.2.1 What does the export of a service mean under the new system?

Export of services shall now be governed by new provisions in the Service Tax Rules 1994, namely rule 6A. The essential requisites before a service can be designated as export service are:

- ☐ It must be a service as defined under sub-section 44 of section 65B
- ☐ by a service provider located in the taxable territory
- ☐ to a service receiver located outside India
- ☐ the service is not a service specified in the negative list
- ☐ the place of provision of the service is outside India
- ☐ the payment for such service is received by the service provider in convertible foreign exchange
- ☐ the service provider and service receiver are not merely establishments of a distinct person by virtue of item (b) of Explanation 2 of clause 44 of section 65B of the Act

The answer to all questions above must be yes to avail the status of export of service.

10.2.2 Can there be an export between an establishment of a person in taxable territory and another establishment of same person in a non-taxable territory?

No. Even though such persons have been specified as distinct persons under the explanation to clause (44) of section 65B, the transaction between such establishments have not been recognized as exports under the above stated rule.

10.3 ISD: Input Service Distributor

The facility of registering as an input service distributor exists to allow businesses to operate at their convenience and allow centralized procurement of services and the distribution of credit to units where such services are used. The provisions have been slightly altered in Budget 2012 to align the practice with the intent stated above.

10.3.1 Credit of which services can be distributed?

Credit of only "input services" can be distributed. Hence a service procured needs to be assessed whether it is an "input service" at any of the units of the ISD. Only if it qualifies as an "input service" it can be distributed. Further the credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services cannot be distributed.

10.3.2 How do I calculate the credit to be distributed?

While the status of the service as "input service" is ascertained, the units where it is used is also ascertained. The credit of a service used exclusively in one unit can be distributed only to that unit. If it is used in more than one unit, the credit can be distributed proportionate to the turnover of the units. The total turnover shall be determined in the same manner as determined under rule 5 and shall be determined for the month previous to the month during which the CENVAT credit is distributed. In case if any of its unit pays tax or duty on quarterly basis as provided in rule 6 of Service Tax Rules, 1994 or rule 8 of Central Excise Rules, 2002 then the relevant period shall be the quarter previous to the quarter during which the CENVATcredit is distributed. The turnover so calculated would be ex-duty i.e not inclusive of the taxes and duties on the goods and services supplied.

e.g. a company manufactures fans in 2 units and other appliances in 2 other units. Advertisement services for fans would qualify as an input service for the units manufacturing fans and hence could be distributed to such units based on the turnover of the previous month of the 2 units.

10.3.3 How do I distribute credit in a new unit when there is no turnover?

In case of an assessee who does not have any total turnover in the said period as in the case of a new company, the ISD shall distribute any credit only after the end of such relevant period wherein the total turnover of its units are available. In case of a new unit wherein any credit is exclusively used, the credit can be distributed in total to such unit.

10.3.4 Will such credit which is distributed need to be reversed on account of any exempted turnover?

Credit so distributed is availed on the strength of a challan issued by the ISD. It shall be subject to rule 6 of CENVAT Credit Rules 2004 and depending upon the option exercised under the rule 6 due reversals will be required to be effected by the unit to which the credit has been distributed.

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Exhibit A1 : Negative List of Services.

(a) Services by Government or a local authority excluding the following services to the extent they are not covered elsewhere:

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers; or

(iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities.

(b) Services by the Reserve bank of India.

(c) Services by a foreign diplomatic mission located in India.

(d) Services relating to agriculture or agricultural produce by way of –

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;

(ii) supply of farm labour;

(iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter essential characteristics of agricultural produce but make it only marketable for the primary market;

(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

(v) loading, unloading, packing, storage or warehousing of agricultural produce;

(vi) agricultural extension services;

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.

(e) Trading of goods.

(f) Any process amounting to manufacture or production of goods.

(g) Selling of space or time slots for advertisements other than advertisements broadcast by radio or television.

(h) Service by way of access to a road or a bridge on payment of toll charges.

(i) Betting, gambling or lottery.

(j) Admission to entertainment events or access to amusement facilities.

(k) Transmission or distribution of electricity by an electricity transmission or distribution utility.

(l) Services by way of –

(i) pre-school education and education up to higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognized by law;

(iii) education as a part of an approved vocational education course.

(m) Services by way of renting of residential dwelling for use as residence;

(n) Services by way of –

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;

(ii) inter-se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;

(o) Service of transportation of passengers, with or without accompanied belongings, by –

(i) a stage carriage;

(ii) railways in a class other than –

(A) first class; or

(B) an air conditioned coach;

(iii) metro, monorail or tramway;

(iv) inland waterways;

(v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

(vi) metered cabs, radio taxis or auto rickshaws;

(p) Services by way of transportation of goods –

(i) by road except the services of –

(A) a goods transportation agency; or

(B) a courier agency;

(ii) by an aircraft or a vessel from a place outside India up to the customs station of clearance in India; or

(iii) byinland waterways;

(q) Funeral, burial, crematorium or mortuary services including transportation of the deceased.

Exhibit A2 : Place of Provision of Services Rules, 2012

Notification No. 28/2012 - Service Tax dated 20/6/12

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 66C and clause (hhh) of sub-section (2) of section 94 of the Finance Act, 1994 and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue, number 9/2005-ST, dated the 3rd March, 2005 published in the Gazette of India Extraordinary, Part II, …vide number G.S.R. 151 (E) dated the 3rd March, 2005 and the notification of the Government of India in the Ministry of Finance, Department of Revenue, number 11/2006-ST dated the 19th May, 2006 published in the Gazette of India Extraordinary, Part II, Section 3, Sub-Section (i) vide number G.S.R. 227 (E) dated the 19th May, 2006.., except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules for the purpose of determination of the place of provision of services, namely:-

1. **Short title, extent and commencement.-** (1) These rules may be called the Place of Provision of Services Rules, 2012.

   (2) They shall come into force on 1st day of July, 2012.

2. **Definitions.-** In these rules, unless the context otherwise requires,-

   (a) "Act" means the Finance Act, 1994 (32 of 1994);

   (b) "account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;

   (c) "banking company" has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);

   (d) "continuous journey" means a journey for which a single or more than one ticket or invoice is issued at the same time, either by one service provider or through one agent acting on behalf of more than one service provider, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued;

   (e) "financial institution" has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act,1934 (2 of 1934);

   (f) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) between two or more persons, but does not include a person who provides the main service on his account.;

   (g) "leg of journey" means a part of the journey that begins where passengers embark or disembark the conveyance, or where it is stopped to allow for its servicing or refueling, and ends where it is next stopped for any of those purposes;

(h) "location of the service provider" means-

(a). where the service provider has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;

(b). where the service provider is not covered under sub-clause (a):

(i) the location of his business establishment; or

(ii) where the services are provided from a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or

(iii) where services are provided from more than one establishment, whether business or fixed, the establishment most directly concerned with the provision of the service; and

(iv) in the absence of such places, the usual place of residence of the service provider.

(i) "location of the service receiver" means:-

(a). where the recipient of service has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;

(b). where the recipient of service is not covered under sub-clause (a):

(i) the location of his business establishment; or

(ii) where services are used at a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or

(iii) where services are used at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service; and

(iv) in the absence of such places, the usual place of residence of the recipient of service.

Explanation:-. For the purposes of clauses (h) and (i), "usual place of residence" in case of a body corporate means the place where it is incorporated or otherwise legally constituted.

Explanation 2:-. For the purpose of clause (i), in the case of telecommunication service, the usual place of residence shall be the billing address.

(j) "means of transport" means any conveyance designed to transport goods or persons from one place to another;

(k) "non-banking financial company" means-

(i) a financial institution which is a company; or

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or

(iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette specify;

(l) "online information and database access or retrieval services" means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;

(m) "person liable to pay tax" shall mean the person liable to pay service tax under section 68 of the Act or under sub-clause (d) of sub-rule (1) of rule (2) of the Service Tax Rules, 1994;

(n) "provided" includes the expression "to be provided";

(o) "received" includes the expression "to be received";

(p) "registration" means the registration under rule 4 of the Service Tax Rules, 1994;

(q) "telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio tex services, video tex services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means but shall not include broadcasting services.

(r) words and expressions used in these rules and not defined, but defined in the Act, shall have the meanings respectively assigned to them in the Act.

3. Place of provision generally.- The place of provision of a service shall be the location of the recipient of service:

Provided that in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

4. Place of provision of performance based services.- The place of provision of following services shall be the location where the services are actually performed, namely:-

(a) services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service:

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:

Provided further that this sub-rule shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or reengineering for re-export, subject to conditions as may be specified in this regard.

(b) services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.

5. **Place of provision of services relating to immovable property.-**The place of provision of services provided directly in relation to an immovable property, including services provided in this regard by experts and estate agents, provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever, name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

6. **Place of provision of services relating to events.-** The place of provision of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held.

7. **Place of provision of services provided at more than one location.-**Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided.

8. **Place of provision of services where provider and recipient are located in taxable territory.-** Place of provision of a service, where the location of the provider of service as well as that of the recipient of service is in the taxable territory, shall be the location of the recipient of service.

9. **Place of provision of specified services.-** The place of provision of following services shall be the location of the service provider:-

(a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) Online information and database access or retrieval services;

(c) Intermediary services;

(d) Service consisting of hiring of means of transport, upto a period of one month.

10. **Place of provision of goods transportation services.-** The place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods:

Provided that the place of provision of services of goods transportation agency shall be the location of the person liable to pay tax.

11. **Place of provision of passenger transportation service.-** The place of provision in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

12. **Place of provision of services provided on board a conveyance.-** Place of provision of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

13. **Powers to notify description of services or circumstances for certain purposes.-** In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.

14. **Order of application of rules.-** Notwithstanding anything stated in any rule, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.

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Exhibit A3 : Exemptions under Mega Notification.

A. The following taxable services have been exempt from the whole of the service tax leviable thereon under section 66B of the said Act vide mega exemption notification no. 25/2012 – ST dated 20/6/12 namely:-

1. Services provided to the United Nations or a specified international organization;
2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;
3. Services by a veterinary clinic in relation to health care of animals or birds;
4. Services by an entity registered under section 12AAof the Income tax Act, 1961 (43 of 1961) by way of charitable activities;
5. Services by a person by way of-
   (a) renting of precincts of a religious place meant for general public; or
   (b) conduct of any religious ceremony;
6. Services provided by-
   (a) an arbitral tribunal to -
      (i) any person other than a business entity; or
      (ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;
   (b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-
      (i) an advocate or partnership firm of advocates providing legal services ;
      (ii) any person other than a business entity; or
      (iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or
   (c) a person represented on an arbitral tribunal to an arbitral tribunal;
7. Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India;
8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;
9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-
   (b) auxiliary educational services; or

(c) renting of immovable property;

10. Services provided to a recognised sports body by-

(a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;

(b) another recognised sports body;

11. Services by way of sponsorship of sporting events organised,-

(a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;

(b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;

(c) by Central Civil Services Cultural and Sports Board;

(d) as part of national games, by Indian Olympic Association; or

(e) under Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme;

12. Services provided to the Government, a local authority or a governmental authority by way of construction**,** erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;

13. Services provided by way of construction**,** erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

(c) a building owned by an entity registered under section 12 AAof the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;

(d) a pollution control or effluent treatment plant, except located as a part of a factory; or

(e) a structure meant for funeral, burial or cremation of deceased;

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(a) an airport, port or railways, including monorail or metro;

(b) a single residential unit otherwise than as a part of a residential complex;

(c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

(d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

(e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

15. Temporary transfer or permitting the use or enjoyment of a copyright covered under clauses (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films;

16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;

17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;

18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;

19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and (ii) a licence to serve alcoholic beverages;

20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods -

(a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;

(c) defence or military equipments;

(d) postal mail or mail bags;

(e) household effects;

(f) newspaper or magazines registered with the Registrar of Newspapers;

(g) railway equipments or materials;

(h) agricultural produce;

(i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or

(j) chemical fertilizer and oilcakes;

21. Services provided by a goods transport agency by way of transportation of -

(a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;

(b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or

(c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;

22. Services by way of giving on hire -

(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or

(b) to a goods transport agency, a means of transportation of goods;

23. Transport of passengers, with or without accompanied belongings, by -

(a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;

(b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or

(c) ropeway, cable car or aerial tramway;

24. Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;

25. Services provided to Government, a local authority or a governmental authority by way of -

(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or

(b) repair or maintenance of a vessel or an aircraft;

26. Services of general insurance business provided under following schemes -

    (a) Hut Insurance Scheme;

    (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);

    (c) Scheme for Insurance of Tribals;

    (d) Janata Personal Accident Policy and Gramin Accident Policy;

    (e) Group Personal Accident Policy for Self-Employed Women;

    (f) Agricultural Pumpset and Failed Well Insurance;

    (g) premia collected on export credit insurance;

    (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;

    (i) Jan Arogya Bima Policy;

    (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);

    (k) Pilot Scheme on Seed Crop Insurance;

    (l) Central Sector Scheme on Cattle Insurance;

    (m) Universal Health Insurance Scheme;

    (n) Rashtriya Swasthya Bima Yojana; or

    (o) Coconut Palm Insurance Scheme;

27. Services provided by an incubatee up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-

    (a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and

    (b) a period of three years has not been elapsed from the date of entering into an agreement as an incubatee;

28. Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -

    (a) as a trade union;

    (b) for the provision of carrying out any activity which is exempt from the levy of service tax; or

    (c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

29. Services by the following persons in respective capacities -

    (a) sub-broker or an authorised person to a stock broker;

    (b) authorised person to a member of a commodity exchange;

    (c) mutual fund agent to a mutual fund or asset management company;

    (d) distributor to a mutual fund or asset management company;

    (e) selling or marketing agent of lottery tickets to a distributer or a selling agent;

    (f) selling agent or a distributer of SIM cards or recharge coupon vouchers;

    (g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or

    (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

30. Carrying out an intermediate production process as job work in relation to -

    (a) agriculture, printing or textile processing;

    (b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act ,1985 (5 of 1986);

    (c) any goods on which appropriate duty is payable by the principal manufacturer; or

    (d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;

31. Services by an organiser to any person in respect of a business exhibition held outside India;

32. Services by way of making telephone calls from -

    (a) departmentally run public telephone;

    (b) guaranteed public telephone operating only for local calls; or

    (c) free telephone at airport and hospital where no bills are being issued;

33. Services by way of slaughtering of bovine animals;

34. Services received from a provider of service located in a non- taxable territory by-

    (a) Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;

(b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or

(c) a person located in a non-taxable territory;

35. Services of public libraries by way of lending of books, publications or any other knowledge- enhancing content or material;

36. Services by Employees'State Insurance Corporation to persons governed under the Employees'Insurance Act, 1948 (34 of 1948);

37. Services by way of transfer of a going concern, as a whole or an independent part thereof;

38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;

39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

B. Definitions. - For the purpose of the notification, unless the context otherwise requires, certain terms used in the notification have been defined in the notification itself –

(a) "advocate" has the meaning assigned to it in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961);

(b) "appropriate duty" means duty payable on manufacture or production under a Central Act or a State Act, but shall not include 'Nil'rate of duty or duty wholly exempt;

(c) "arbitral tribunal" has the meaning assigned to it in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 (26 of 1996);

(d) "authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;

(e) "authorised person" means any person who is appointed as such either by a stock broker (including trading member) or by a member of a commodity exchange and who provides access to trading platform of a stock exchange or a commodity exchange as an agent of such stock broker or member of a commodity exchange;

(f) "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;

(g) "banking company" has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act,1934(2 of 1934);

(h) "brand ambassador" means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person;

(i) "business facilitator or business correspondent" means an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by Reserve Bank of India;

(j) "clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

(k) "charitable activities" means activities relating to -

(i) public health by way of -

(a) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(b) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion or spirituality;

(iii) advancement of educational programmes or skill development relating to,-

(a) abandoned, orphaned or homeless children;

(b) physically or mentally abused and traumatized persons;

(c) prisoners; or

(d) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife; or

(v) advancement of any other object of general public utility up to a value of,-

(a) eighteen lakh and seventy five thousand rupees for the year 2012-13 subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during 2011-12;

(b) twenty five lakh rupees in any other financial year subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during the preceding financial year;

(l) "commodity exchange" means an association as defined in section 2 (j) and recognized under section 6 of the Forward Contracts (Regulation) Act,1952 (74 of 1952);

(m) "contract carriage" has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(n) "declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit;

(o) "distributor or selling agent" has the meaning assigned to them in clause (c) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), vide number G.S.R. 278(E), dated the 1st April, 2010 and shall include distributor or selling agent authorised by the lottery- organising State;

(p) "general insurance business" has the meaning assigned to it in clause (g) of section 3 of General Insurance Business (Nationalisation) Act, 1972 (57 of 1972);

(q) "general public" means the body of people at large sufficiently defined by some common quality of public or impersonal nature;

(r) "goods carriage" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(s) "governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;

(t) "health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;

(u) "incubatee" means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to develop and produce hi-tech and innovative products;

(v) "insurance company" means a company carrying on life insurance business or general insurance business;

(w) "legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law,in any manner and includes representational services before any court, tribunal or authority;

(x) "life insurance business" has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);

(y) "original works" means has the meaning assigned to it in Rule 2A of the Service Tax (Determination of Value) Rules, 2006;

(z) "principal manufacturer" means any person who gets goods manufactured or processed on his account from another person;

(za) "recognized sports body" means - (i) the Indian Olympic Association, (ii) Sports Authority of India, (iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations, (iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government, (v) the International Olympic Association or a federation recognised by the International Olympic Association or (vi) a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India;

(zb) "religious place" means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality;

(zc) "residential complex" means any complex comprising of a building or buildings, having more than one single residential unit;

(zd) "rural area" means the area comprised in a village as defined in land revenue records, excluding-the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or any area that may be notified as an urban area by the Central Government or a State Government;

(ze) "single residential unit" means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;

(zf) "specified international organization" means an international organization declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply;

(zg) "state transport undertaking" has the meaning assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(zh) "sub-broker" has the meaning assigned to it in sub-clause (gc) of clause 2 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992;

(zi) "trade union" has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act,1926(16 of 1926).

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