Section 66B- Charging Section

i. The service should have been provided or agreed to be provided.
ii. Provided for consideration.
iii. One person to another person.
iv. Service should have been provided in taxable territory.
v. Service must not been specified in Negative list.
vi. Service tax rate @ 12% plus 2% plus 1%.
vii. Service tax collected as may be specified.

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Section 65B (44) - Definition of Service

1. Service means any activity carried out by a person
   - Activity may be active or passive

(ii) The activity shall be carried out by a person for another person
   -There should be provider of activity and
   - Receiver of activity
   - Self-service outside the preview of service tax

2 Exceptions:-

i. An establishment of person located in taxable territory and another establishment of such person located in non-taxable territory are treated as distinct person.

ii. An unincorporated association or body of persons and members thereof are also treated as distinct persons.

Implication of exception:-Service become taxable.

2. Activity must be carried out for a consideration

a.) Consideration May be monetary or non-monetary.

For non-monetary consideration the value of such consideration is to be determined in accordance with Service Tax (Determination of Value) Rules, 2006

b.) Activities without consideration outside the scope of Service like gift , donations, charities, etc.

c.) Consideration may be paid by any person and not necessarily receiver of service.

d.) An activity done without express or implied contractual reciprocity of consideration would not be an activity for consideration

3. Declared service- as per section 66E

Exclusions

(i) **Sale/Deemed sale/Transaction only in Money**

(A) Sale or gift: Mere transfer in title of goods or immovable property by way of sale, gift or in any other manner for a consideration, does not constitute service.

- (1) **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.

- (B) **Deemed sales**: Refers to those transaction which will be deemed as sales even if, as per normal definition, these can't be held as sales.

Six Catagories

- *Transfer, otherwise than in pursuance of a contract, an property in any goods for cash, deferred payment or other valuable considerations.*
- *Transfer of Property in goods (whether as goods or in some other form) involved in execution of work contract.*
- *Delivery of goods on hire-purchase or any system of payment by installments.*
- *Transfer of 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, where such supply of service, is for cash, deferred payment or other valuable consideration.*
- **Deemed sales are outside the preview of " Service" but activities related to deemed sales are qualify as service.**

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(C) A mere transaction in money or actionable claim will not constitute service

e.g. principal amount deposit or withdraw from bank,

conversion of Rs. 1000 note into coins.

- Activities relating to use of money or its conversion into another form/currency/denomination for consideration included in service.

(ii) **Service by an employee in the course of Employment**

Functions performed by MPs, MLAs, person hold constitutional post are not included in "Service"

However-

- Service provided outside employment for a consideration would be covered under the definition of 'Service'.
- Service provided on Contract basis.

(iii) **Fees** taken in any **court or tribunal** established under any law for the time being in force is outside the coverage of service tax.

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