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Introduction to Service Tax

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Service Tax Laws

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Definition of Service and its Taxability

What is Service?

Section 65B (44) Definition of “Service” means :

- any activity
- carried out by a person for another
- for consideration
- and includes a declared service.

but shall not include –

- ✓ any 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

(ii) such transfer which is deemed to be sale within the meaning of clause (29A) of article 366 of the Constitution;

- ✓ a transaction in money or actionable claim
- ✓ any service provided by an employee to an employer in the course of or in relation to his employment.
- ✓ fees taken in any court or tribunal set up under a law for the time being in force

Explanation 1.— nothing contained in this clause shall apply to,—

- ✓ the functions performed by the M.P.’s, MLA’s, 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
- ✓ the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- ✓ 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 2.-

- ✓ 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 3

- ✓ an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;
- ✓ 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 4

- ✓ 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;

Taxability of Services

The charge of service tax @12% on value of all services 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.

Relevant Definitions in Finance Act, 1994

Section 65B

- (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;
- (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) **"Agriculture 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 or State 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;
- (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; 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; **(36 of 2003.)**
- (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 or other waterway on any inland water, as defined in clause (b) of section 2 of the Inland Vessels Act, 1917; **(82 of 1985.), (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 charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not 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; **(41 of 2006.)**
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 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 and the rules made thereunder; **(59 of 1988.)**

(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 such 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 or in clause (4) of section 3 of the Indian Ports Act, 1908; **(38 of 1963.), (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) 2[or the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955)] 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"** Discussed at pag no.1
- (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 movable 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 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.'. **(1 of 1944.)**

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.

In all, there are seventeen heads of services that have been specified in the negative list.

S. No	Service Category	Remarks
(a)	Service by Govt. or a Local Authority	All services 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 RBI	
(c)	Services by a foreign diplomatic mission located in India	
(d)	Services relating to agriculture by way of – (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or 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)	Education Related Service	Services by way of – ✓ pre-school education and education up to higher secondary school or equivalent; ✓ education as a part of a curriculum for obtaining a qualification recognized by law; ✓ education as a part of an approved vocational education course.
(m)	Services by way of renting of residential dwelling for use as residence;	
(n)	Loan & Advance	Services by way of – ✓ extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount; ✓ inter-se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;
(o)	Transportation of Passengers	Service of transportation of passengers, with or without accompanied belongings, by – ✓ a stage carriage; ✓ railways in a class other than – (A) first class; or (B) an air conditioned coach; ✓ metro, monorail or tramway; ✓ inland waterways; ✓ public transport in a vessel of less than fifteen tonne net, other than predominantly for tourism purpose; and ✓ metered cabs, radio taxis or auto rickshaws;
(p)	Transportation of goods	Services by way of transportation of goods – ✓ by road except the services of – (A) a goods transportation agency; or (B) a courier agency; ✓ by an aircraft or a vessel from a place outside India to the first customs station of landing in India; or ✓ by inland waterways;
(q)	Funeral, burial, crematorium or mortuary services including transportation of the deceased.	

Declared Services

Section 66E of Finance Act, 1994

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 Architecture constituted under the Architects Act, 1972; or (20 of 1972.) 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; (II) the expression "construction" includes additions, alterations, replacements or remodelling 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.

Exemptions under Mega Notification

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 paramedics;
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 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 Kreedha 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 <i>Explanation</i> 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 (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;- (a) covered under clauses (a) 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 (b) cinematograph films for exhibition in a cinema theatre;
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;
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 transport in a goods carriage of,- (i) agricultural produce; (ii) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees; (iii) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty; (iv) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; (v) chemical fertilizer and oilcakes; (vi) newspaper or magazines registered with the Registrar of Newspapers; (vii) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or (viii) defence or military equipments;”;

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 Swarnajayanti 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;
26A	Services of life insurance business provided under following schemes – (a) Janashree Bima Yojana (JBY); or (b) Aam Aadmi Bima Yojana (AABY)
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 distributor or a selling agent; (f) selling agent or a distributor 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 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.

Definitions for terms used in Mega Notification. - 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 midday 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 i 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 or medicines in India, or a place established as an independent entity or a part of an establishment or 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;
- (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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- 1 A '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.
 - 2 A '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.

Notified Abatements for Determining the Taxable Value

Notification 26/2012-ST dt.20-6-2012

S. No	Description of taxable service	Taxable Value	Conditions
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.

- (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,

Point of Taxation in Service Tax Law

What is Point of Taxation ?

The point in time when a service shall be deemed to have been provided.(Rule 2(e)]

In other Words

The point which determines when the service provided or agreed to be provided for levy Service Tax

Definition

“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 there under;

“Continuous Supply of Service” means any service which is provided, 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 subject to any condition;

Determination of Point of Taxation

Rule 3

S.No.	Situation	Point of Taxation
1	When Invoice Issued timely	Date of Invoice
2	When Invoice issued after specified time (Rule 4A)	Date of completion of services
3	When the payment is received before completion of service or issuance of invoice	Date of Payment (To the extent payment recd)
4	In Continuous Supply of service (CSOS) where the invoice is not issued within specified time	Date of Completion of an Event in terms of contract where the recipient is liable to pay to S.P.
5	In Continuous Supply of service (CSOS) where the invoice is issued within specified time	Date of invoice
6	Any Advance Received for provision of Service	Date of receipt of each such advance

Date of Payment

Rule 2A

Date of payment” shall be earlier of dates on which
✓ Payment is entered in the books of accounts ✓ Credited to the Bank Account
<u>Exception:</u> That <u>date of payment</u> shall be <u>date of credit in bank</u> account when- ❖ Change in effective rate of tax or, ❖ Service is taxed for the first time during the period between entry in books of accounts and credit in the bank account and ❖ Payment is credited after 4 working days from above said period and ❖ Payment is made by way of instrument which is credited to bank account

Rule 4: Point of Taxation in case of change in Effective Rate of Tax

Where Taxable Service has been provided before the change in effective rate of tax

Scenario	Issue of Invoice	Receipt of payment	Point of Taxation
Taxable Service provided <u>before</u> change in effective rate of tax	After the change in effective rate of tax	After the change in effective rate of tax	Date of payment or date of invoice, whichever is earlier
	Before change in effective rate of tax	After change in effective rate of tax	Date of invoice
	After change in effective rate of tax	Before change in effective rate of tax	Date of payment

Rule 4: Point of Taxation in case of change in Effective Rate of Tax

Where Taxable Service has been provided after the change in effective rate of tax

Scenario	Issue of Invoice	Receipt of payment	Point of Taxation
Taxable Service provided <u>after</u> change in effective rate of tax	Before change in effective rate	After change in effective rate of tax	Date of payment
	Before change in effective rate of tax	Before change in effective rate of tax	Date of payment or date of invoice, whichever is earlier
	After change in effective rate of tax	Before change in effective rate of tax	Date of Invoice

Rule 5: Payment of Tax in cases of new services

No Service Tax -

1. If invoice has been issued and payment received prior to service became taxable.
2. If Payment is received before service became taxable and invoice issued with 14 days from the date of service is taxed for the first time.

Rule 7: Point of Taxation under Reverse Charge

Service Provider - As discussed in previous Slides

Service Recipient – POT - Date on which Payment is made.

If payment is not made within six months of the date of invoice then POT shall be the date of invoice (Rule3).

In case of Associated Enterprises- Where Service Provider is Located outside India

Earlier of:

1. Date of debit in the books of account of the person receiving the service; or
2. Date of making the payment

Rule 8: Point of Taxation in Case of Copyrights, etc.

Royalties , Copyrights, Trademarks, Designs Or Patents

Point of taxation

Earlier of:

- >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

Rule 8A: Determination of POT

Where Point of taxation cannot be determined as per above rules

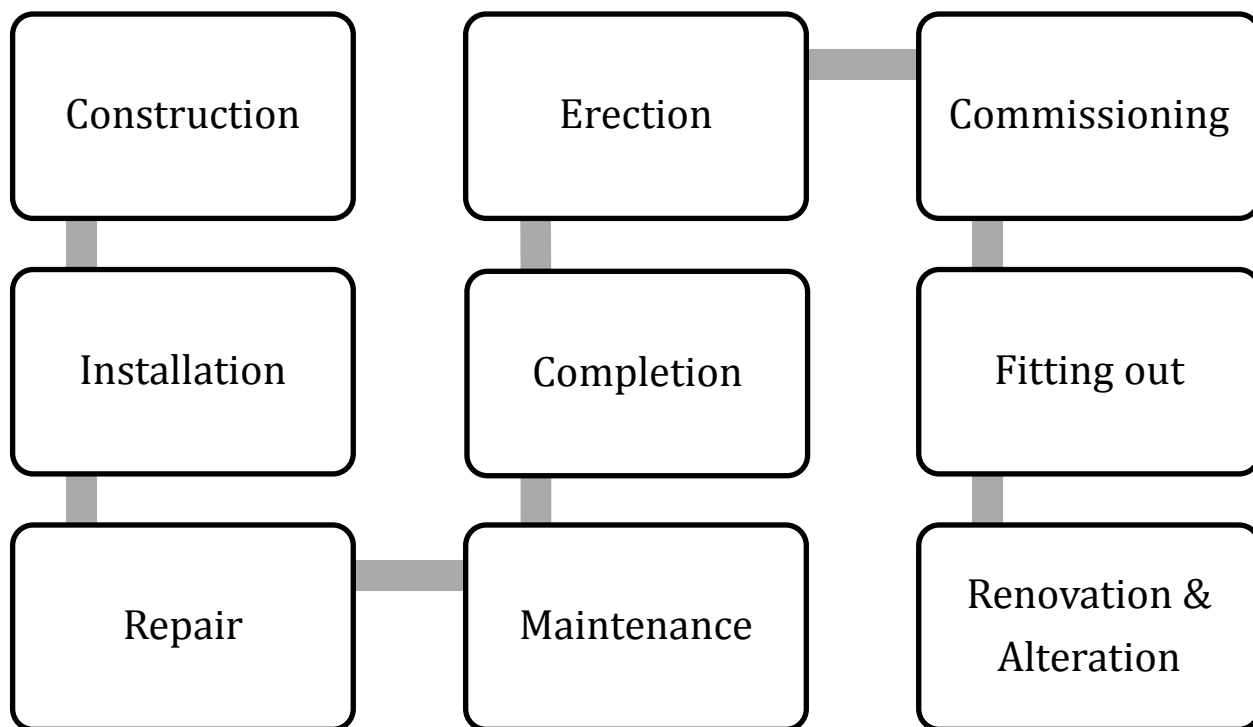
C.E.O. Determine the POT to best of his judgment

After considering the documents/records

Service Tax on Works Contract

What is Works Contract

- For execution of a contract
- Transfer of property in goods on which sale tax is leviable and;
- such contract is for the purpose of carrying out



In Relation of :

- any **movable or immovable** property or
- for carrying out any other similar activity or
- a part thereof in relation to such property;

Valuation of Service Portion in the Execution of a Works Contract

Rule 2A of Service Tax Determination of Value Rules, 2006

Option - I	Option – II
Gross amount Charged	Total Amount Charged
Less:	X
(i) Value of property in goods transferred	Specified Taxable Percentage
(ii) VAT	

Rule 2A : Option – I

Gross Amount charged (GAC) for Works Contract xxxxx

Less:

(i) Value of property transferred in goods	<u>xxx</u>
Taxable Value	<u>xxxx</u>

Note:

- (i) VAT or Sales Tax shall be excluded from GAC.
- (ii) Value of transfer of property in goods shall be the value taken for VAT purposes.

Value of Works Contract Shall include:

- (i) Labour charges
- (ii) Payment to sub-contractor for labour and services;
- (iii) Planning, designing and architect's fees;
- (iv) Hire charges for machinery and tools
- (v) Cost of Consumables such as water, electricity, fuel
- (vi) Cost of establishment of the contractor relatable to supply of labour and services;
- (vii) Other similar expenses; and
- (viii) Profit earned by the service provider relatable to supply of labour and services;

Rule 2A Option – II

Where Value Cannot be ascertained as per Option-I then value shall be worked out as under:

S. No.	Nature of contract	Taxable Value
1.	Execution of Original Works	40%
2.	Execution of contract for maintenance, repair, reconditioning or servicing of any goods	70%
3.	Other works contracts not covered by 1 & 2 above (including completion and finishing services such as glazing, plastering, installation of electrical fittings of an immovable property).	60%

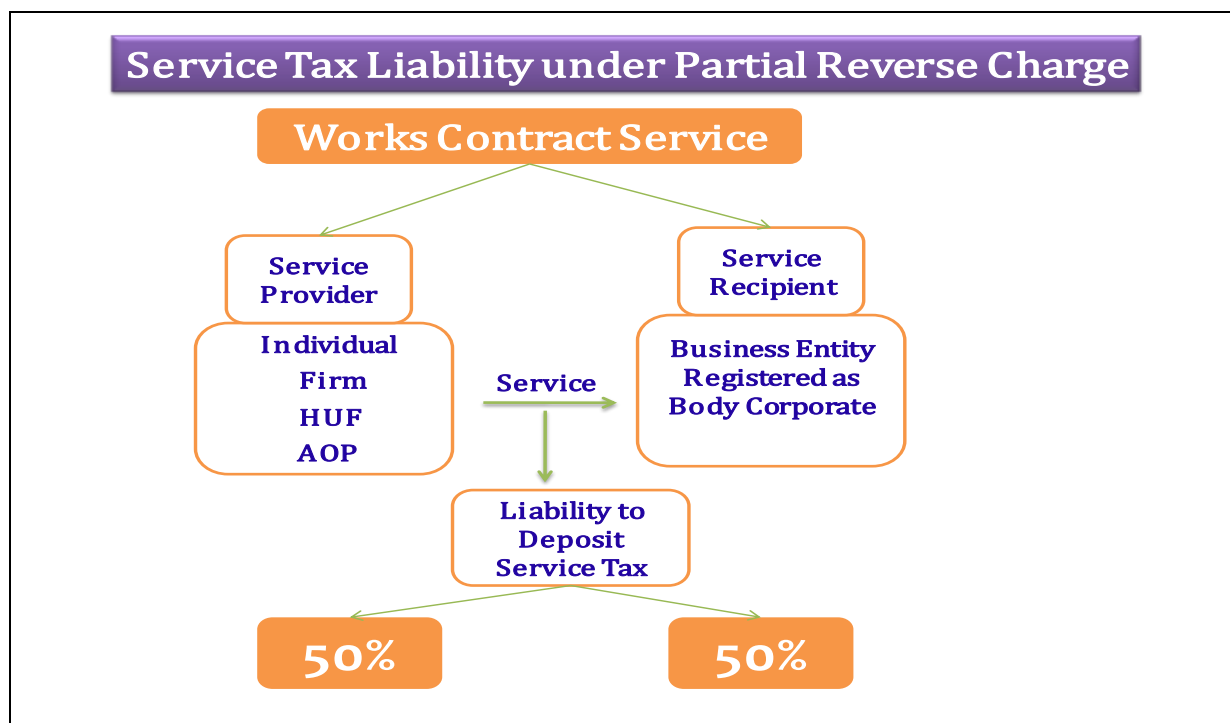
Explanation to Rule 2A

1. Original works means

- (i) All new constructions;
- (ii) All types of additions and alterations to abandoned or damaged structures to make them workable;
- (iii) Erection, commissioning or installation of plant, machinery or equipment whether pre-fabricated or otherwise.

2. Total amount means the gross amount charged plus the value of any material supplied under the same contract or any other contract. Where supply is free of cost, value shall be determined on FMV.

3. No input tax credit of excise duty paid on goods, property transferred in execution of works contract. However taxes paid on capital goods and input services will be available.



Taxation of Running Works Contracts

When there is **change in rate of tax** – then POT shall be as per Rule 4

Work or part of work complete before 1-7-2012	Invoice issued before 1-7-2012	Payment after 1-7-2012	POT – Invoice date
	Invoice issued after 1-7-2012	Payment after 1-7-2012	POT – Invoice date
	Invoice issued after 1-7-2012	Payment before 1-7-2012	POT- Payment date

Circular No. 162/13 /2012 –ST Dt. 6-7-2012

It is 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.

When there is No change in rate of tax – then POT shall be as per Rule 3

Work or part of work complete before 1-7-2012	Invoice issued within specified time	POT – Invoice date
	Invoice not issued within specified time	POT – date of completion of event or part of work on which recipient is liable to make payment to service provider.

Rule 7- Overriding rule

In case of liability of payment is on service recipient under Reverse charge - POT is date of payment. If payment not made within 6 months of date of invoice – POT shall be date of invoice.

Reverse Charge Mechanism

[Notification 30/2012-ST dated 20-6-2012 and Section 68 (**Applicable from 1-7-2012**)]

Section 68(2) of the Finance Act, 1994 has been suitably amended by the Finance Act 2012 whereby a proviso has been added to the said section authorising Central Government to notify the services and extent of service tax payable by service receiver/provider.

Services on which service recipient is Liable to pay ENTIRE SERVICE TAX-

S.No	Description of Service
1	Insurance agent providing service to Insurance co.
2	Goods transport agency providing service to any person 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 there under; (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; <u>Note:</u> 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 this purpose.
3	Sponsorship service provided to any body corporate or Partnership firm
4	Arbitral tribunal service provided to business entity
5	Legal service provided by Individual advocate or firm of advocates to business entity(having turnover of more than Rs. 10 lacs in the preceding financial year) “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.
5A	Service Provided by a Director to Company (w.e.f. 7-8-2012)
6	Support service by Government or local authority to business entities excluding,- (i) Renting of immovable property; (ii) 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; (iii) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iv) Transport of goods or passengers. "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;
7	Any taxable Service provided by any person located in non-taxable territory and received by the person located in taxable territory for the purpose of business.

Partial Reverse Charge/ Joint Charge

With effect from 1.7.2012 a new mechanism of partial reverse charge is prescribed wherein both the service provider and service receiver will be considered as persons liable to pay service tax on notified taxable services in the prescribed ratio. Presently this mechanism is made applicable for following 3 services:

S. No	Description of Service	Provider of service	Recipient of service
		% of service tax payable	
1	Renting of a motor vehicle designed to carry passengers on non abated value (i.e. no abatement taken by the service provider from the value of taxable service while charging service tax in his bills. It is worth to mention here that for such service 60% abatement is available to the service provider under N. No. 26/2012 dated 20-6-12)	60%	40%
	Renting of a motor vehicle designed to carry passengers on abated value	nil	100%
2	Supply of manpower for any purpose or Security Services “ supply of manpower ” means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control. “ 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;” (Reverse Charge on Security Service applicable w.e.f 7-8-2012)	25%	75%
3	Service portion in execution of works contract. “ 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 movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.	50%	50%

Note:

1. Partial Reverse charge is applicable from 01.07.2012.
2. Partial Reverse charge is applicable where the service provider is either an individual or HUF or a firm or AOP and the recipient is a business entity registered as body corporate.
3. Where the service recipient is the person liable to pay service tax, as mentioned above then all the provisions relating to registration, payment etc shall apply to such person. He has to get itself registered under service tax with jurisdictional Central Excise department. For registration, application is to be made in the Form ST-1 to the concerned superintendent of

Central Excise. Each unit /office from where the service is provided/received is to obtain registration within 30 days.

4. Further service recipient is not eligible to claim general exemption limit of Rs. 10 lakhs. Thus the service recipient has to pay service tax under reverse charge from the beginning itself.
5. Where the liability tax under reverse charge or partial reverse charge is on service recipient, then the point of taxation shall be the date of payment.
6. Service recipient has to deposit service tax by 5th of the following month in which he has made payment to the service provider. It has also to file service tax return on half yearly basis. Even the Nil return is required to be filed.
7. The CENVAT credit of tax paid by the service recipient would be available on the basis on the tax payment challan, subject to conditions specified in the said Rules.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.

CENVAT Credit

[CENVAT Credit Rules, 2004]

CENVAT Credit is available on following items:

- ✓ Capital Goods;
- ✓ Inputs; and
- ✓ Input Services

Capital Goods [Rule. 2(a)]

(A) Following goods:

- Chapter 82, 84, 85, 90 of First Schedule of Tariff Act.
- Pollution Control Equipments
- Components, spares and accessories of the above goods
- Moulds and dies, jigs and fixtures
- Refractories and refractory materials
- Tubes and pipes and fittings thereof
- Storage Tank
- *motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis but including dumpers and tippers.*

Used :

- in the factory of the manufacturer of the final products
- outside the factory of manufacturer for generation of electricity for captive use within the factory
- for providing output service

Not include

any equipment or appliance used in an office

(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 (Finance Act, 2012)*

Inputs [Rule 2(k)]

All goods used in the factory by the manufacturer of final product

- for generation of electricity or
- steam for captive use or
- for providing output service

Includes

Accessories, cleared along with Final Product	Goods used for providing free warranty
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Excludes

- ✓ light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol
- ✓ goods used for works contract of a building or a civil structure or a part thereof;
- ✓ laying of foundation or making of structures for support of capital goods **except** service portion in the execution of a works contract
- ✓ motor vehicles
- ✓ Goods used for exempted services and goods
- ✓ have no relationship whatsoever with the manufacture of a final product

Inputs Service [Rule 2(l)]

- ✓ Used by a provider for providing output service
- ✓ Used by manufacturer in or in relation to manufacture and clearance of final product upto the place of removal.

Includes Service

Modernization, Renovation, Repairs of Factory, Premises, Office Relating To Factory or Premise of Output Service Provider,	Advertisement / Sales Promotion, Market Research,	Procurement of Inputs, Inward Transportation, Outward Transportation & Storage Upto The Place of Removal	Accounting, Auditing, Financing,
Recruitment And Quality Control, Coaching And Training,	Computer Networking,	Credit Rating, Share Registry,	Security, Business Exhibition
Legal Service,	Inward Transportation of Inputs or Capital Goods And Outward Transportation Upto the Place of Removal.		

Continue on next page...

But excludes-

- ✓ Works Contract service and construction service used for construction of building or civil structure / laying of foundation or making of structures for support of capital goods. However if these services are used for provision of specified service only i.e. works contract service and construction service then it is not excluded.
- ✓ Renting of a Motor Vehicle, in so far as they relate to a motor vehicle which is not a capital goods.
- ✓ Service of **General Insurance, Servicing, Repair and Maintenance**, related to Motor Vehicle which is not a capital goods, **except** when such services *are 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*
- ✓ Services which are 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.**

Exempted Service [Rule 2(e)]

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.

Procedural Aspect of Service Tax Law

Registration

Who is required to get registered	- Any provider of taxable service whose aggregate value of taxable service in a financial year exceeds 9 lacs rupees. - Input Service Distributor. - Service recipient who is liable to pay service tax under Reverse charge
Application in Form ST-1	- Within 30 days of levy of service tax/ commencement of provision of service. - Online application (www.aces.gov.in) in Form ST-1 to Superintended of Central Excise. - A print of above Form along with following documents to be submitted to the department. 1. Self certified copy of PAN, (where allotment is pending, copy of the application for PAN may be given) 2. Copy of MOA/AOA in case of Companies 3. Copy of Board Resolution in case of companies 4. Copy of lease deed/ Rental agreement of the premises 5. Partnership deed in case of partnership firm 6. Self attested copy of address proof of partner/ proprietor/ director or authorized signatory.
Registration Certificate will be granted in Form ST-2	

General Exemption from Service Tax

1. Small Service Provider Exemption a. Where taxable value of services provided in preceding financial year is not exceed Rs.10 lakhs than service tax exemption upto Rs. 10Lakhs is available on first aggregate value of taxable services. Aggregate value- <i>total of the taxable services charged in the first consecutive invoices issued/ required to be issued during the financial year shall be considers instead of payment received.</i> b. Small Service Provider Exemption not available in where; - Liability to pay services tax is of service recipient - Person providing service under Brand name or Trade name of others. 2. Export of Services 3. Taxable services received by a SEZ unit for the authored operation.
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Rate of Service Tax (w.e.f. 1-4-2012)

Category	Rate of Service Tax
General Rate of Service Tax (N. No. 8/2009 rescinded by 2/2012)	@12% + Cess = 12.36%
Service in relation to purchase and sale of foreign currency including money changing;	0.12% upto Rs.1 Lac (min Rs.30) 0.06% from +1 Lac upto Rs.10 Lacs + Rs.120. 0.012% on exceeding Rs.10 Lacs + Rs.660. (Subject to Maximum Rs. 6000)
Reversal of cenvat credit under rule 6(3)(i).	6% of value of the exempted goods and exempted services.
Service of promotion, marketing, organizing lottery;	If Guarantee prize is more than 80% - Rs. 7000 on every Rs.10 Lac. If Guarantee prize is Less than 80% - Rs.11000 on every Rs.10 Lac.
Life Insurance Service	3% for the first year premiums; 1.5% for the subsequent years; Availment of full cenvat credit is being allowed.
Air Travel Service	Ad Valorem rate of @12% after abatement of 60%. (No CENVAT credit of input & Cap. Goods)

Payment of Service Tax

Category	Due Date
Individuals, Proprietary Firms & Partnership Firms	By the 5th Day from the end of the quarter
Other assesseees	By the 5th Day from the end of the month
Note: (1) In case service tax is to be paid through E-Payment than due date will be 6th of next month/ quarter as the case may be. (2) For the value received in the month of March or quarter ending on March the Service Tax has to be paid by the 31st day of March (3) From 1-4-2010 E- Payment of service tax is mandatory for the assessee who have paid service tax of Rs.10 Lacs and above (Cash+CENVAT) during last financial Year or Current Financial Year. (4) Service Tax should be immediately deposited <i>if collected from any person in excess</i> , whether it was required or not required to be collected. (5) From 1-4-2012 excess service tax deposited can be adjusted without any monitory Limit.	

Service Tax Returns & Due Date of filing

Category	Due Date
Output Service Provider & Input Service Distributor	Return to be files in ST-3 Form - by 25th April (in case half year ending on 31st March) and - by 25th October (in case half year ending on 30th September)
Return of CENVAT	- by the end of the month following the particular quarter or half year in Form ST-3
Revise Return	- Within 90 days from the date of filing of the original return. - CENVAT credit return can be revised - within 60 days from the date of filing of the original return.

Issuance of Invoice

Provider of banking and other financial services	45 days from the date of completion of taxable service or receipt of any payment
Any other case	30 days from the date of completion of taxable service or receipt of any payment (At present 14 days)
No invoice required to be issued to such extent	Where the amount received in excess upto Rs. 1000/- then the amount mentioned in the original invoice.

Interest

Category	Interest on Delayed Payment of Service Tax (Sec. 75)	Interest on amount collected in excess (Sec. 73B)
Value of taxable service Provided in Fin.Year exceeds Rs.60 lakhs.	Simple interest @ 18% p.a. for the period by which such crediting of the tax or any part thereof is delayed.	Interest @ 18% p.a. from the first day of the month succeeding the month in which the service tax ought to have been paid.
Value of taxable service Provided in Fin.Year does not exceed Rs.60 lakhs.	The above rate reduced to 15% p.a.	The above rate reduced to 15% p.a.

Late fee / Penalty

Late fees in Delay in Filing of Return (Rule 7C: Service tax Rules)	<u>Delay</u>		<u>Late fees</u>
	First 15 Days		Rs.500/-
	More than 15 days but less than 30 days		Rs.1000/-
	More than 30days		Rs.1000+ Rs.100/- per day beyond 30 days
	Late fee cannot exceed Rs. 20,000/- as given below.		
Penalty for Failure to pay Service Tax (Sec.76)	Rs.100/- for every day during which such failure continues, or 1% of such tax, per month, whichever is higher. Maximum penalty - 50% of S. Tax payable.		
Penalty for contravention of Rules and provisions of Act for which no penalty is specified elsewhere. (Sec.77)	S.No.	Consequences	Penalty
	1.	Failure to take registration	Rs.10,000/-
	2.	Fails to keep, maintain or retain books of account and other documents.	Rs.10,000/-
	3.	Fails to furnish information called by an office, produce documents or appear in summon to give evidence or to produce document in enquiry.	Rs.10,000/- or Rs.200/- for every day, which ever is higher.
	4.	Fails to pay the tax electronically	Rs.10,000/

	5.	Issues invoice with incorrect or incomplete details or fails to account for.	Rs.10,000/
	6.	Contravenes any of the provisions	Rs.10,000/
Penalty for suppressing, etc value of taxable services. (Sec.78)	Penalty shall be equal to the amount of service tax. Note: - Penalty reduced to 50% of Service Tax if complete transactions are recorded in books. - Penalty -25% where it is paid with Service Tax & interest within 30 days of order. - period of 30 days extended to 90 days for small service provider (60 lacs) - No penalty u/s 76 if penalty payable under this section.		
Penalty not to be Imposed Sec.80	✓ If assess can prove that there was a reasonable cause then penalty shall not be levied u/s 76, u/s 77 or u/s 78. ✓ Such relaxation is not available in the case of interest.		

Forms

Form ST-1	Application for Service Tax Registration
Form ST-2	Certificate of Service Tax Registration
Form ST-3	Return of Service Tax
Form ST-3A	Memorandum for Provisional Deposit of Service Tax
Form ST-4	Service Tax Appeal before Commissioner (Appeals)
Form ST-5	Service Tax Appeal before Appellate Tribunal u/s 86
Form ST-6	For Memorandum of Cross-Objections to the Appellate Tribunal
Form ST-7	Service Tax Appeal before Appellate Tribunal u/s 86(2) or u/s 86(2A)
GAR-7	For Payment of Service Tax (Mandatory from 01/04/2007) (New)
Form TR-6	For Payment of Service Tax (old) (Challan)

Voluntary Compliance Engagement Scheme (VECS)

Who are Eligible	Stop filers, Non Filers, Non registrants and who not disclosed full ST liability in return
Who is not Eligible	Against whom any (Service Tax) inquiry/proceeding pending on 1-3-2013
What is the procedure	- Make a declaration in Form VCES – 1 - Received Acknowledgement of declaration in form VCES – 2 - On full payment of taxes, the designated authority will issue acknowledgement of discharge in VCES – 3
Payment of Tax	The defaulter is required to pay 50% of tax dues by 31st, December, 2013 and rest 50% by 30th June, 2014.
Benefit of Availing the Scheme	Immunity from – interest, penalty, any other proceedings under Service Tax.

Place of Provision of Services Rules, 2012

The important key for implementation of this rule is to identify the taxing jurisdiction for a service.

Rules	Place of Provision of service
3. Generally	Location of the service receiver; ✓ in case the location of service receiver is not available then place of provision shall be the location of service provider.
4. Performance based Services	In following cases place of provision shall be location where the services are actually performed; (a) services provided in respect of goods that are required to be made physically available by the service receiver to the service provider, in order to provide the service; ✓ 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; (b) services provided in conjunction with the supply of goods under another contract by the service provider; (c) Services provided entirely or predominantly, in the ordinary course of business, in the physical presence of an individual, represented either as the service receiver or a person acting on behalf of the receiver.
5. Relating to Immovable Property	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 coordination of construction work, including architects or interior decorators, shall be the <i>place where the immovable property is located or intended to be located</i> .
6. 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 <i>the place where the event is actually held</i> .
7. 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 <i>the location in the taxable territory where the greatest proportion of the service is provided</i> .
8. Services where provider and receiver are located in Taxable Territory	Where the location of the service provider as well as that of the service receiver is in the taxable territory, place of provision shall be <i>the location of the service receiver</i> .
9. Specified Services	The place of provision of following services shall be the <i>location of the service Provider</i> (a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders; (b) Telecommunication services provided to subscribers; (c) Online information and database access or retrieval services; (d) Intermediary services; (e) Service consisting of hiring of means of transport, upto a period of one month.
10. 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. ✓ The place of provision of services of goods transportation agency shall be the location of the person liable to pay tax.
11. Passenger Transportation Services	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. Services Provided on Board a Conveyance	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.