Basic Concepts

Authority:

The Government derives its power to levy taxes from the Constitution of India. Elaborate provisions have been made in the Constitution of India to regulate the power of taxation of both the Central Government and State Government. According to Article 265 of the Constitution of India " no tax of any nature can be levied or collected by the Central or State Government, except by the authority of law".

The Constitution in Schedule VII has enumerated the matters on which the Central Government and the State Government can make laws. Those are:

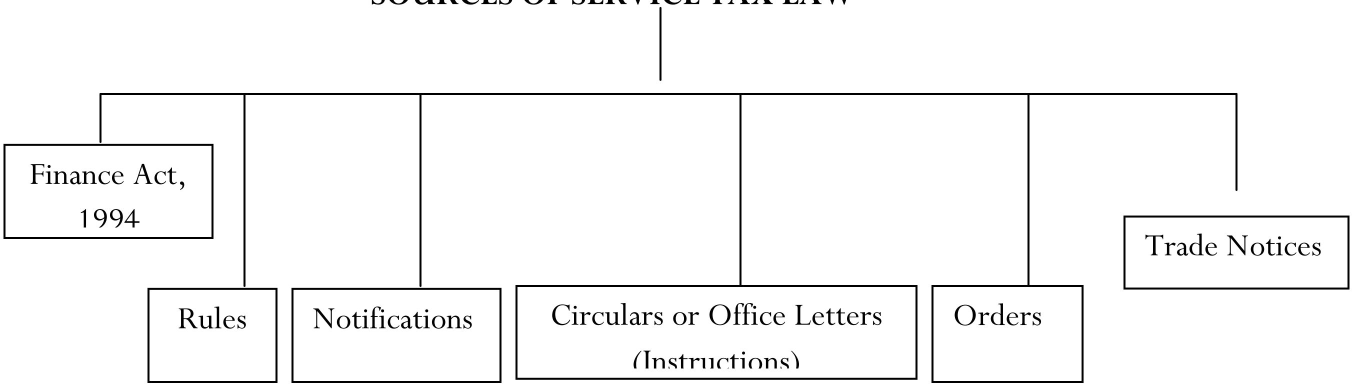
- List I- Union List > Matters on which only the Central Government has the Power of Legislation
- List II- State List > Matters on which only the State Government has the power of Legislation
- List III- Concurrent List > Matters on which both the Central Government and State Government have the power of Legislation.

Entry 97 of the Union List is the residuary entry and it empowers the Central Government to tax on matters, which are not enumerated in List II or List III.

[1]Service tax is governed by the entry 97 of the Constitution. There is no separate Act governing Service Tax.

[1] Entry 92C was introduced in VII schedule in the Union List Vide 92nd Amendment w.e.f 07/01/2004. By way this amendment new Article 268A was inserted in the Constitution which provides for levy and collection of tax on Services. However this entry was not made effective till date. Hence Service Tax levied under entry 97 only.

SOURCES OF SERVICE TAX LAW



Statutory Provisions (Finance Act, 1994):

The Statutory provisions relating to levy of Service Tax on Services was first introduced through Chapter V of the Finance Act, 1994. Till now this chapter is working as the Act for the levy of Service Tax. The provisions of levy of 'education cess' on the amount of service tax were made applicable through Chapter VI of the Finance Act (No.2) 2004. The Finance Act, 1994 came in to force from 01/07/1994. The provisions of the Act extend to the whole of the country except the State of Jammu and Kashmir.

Rules on Service Tax:

Finance Act, 1994 empowers the Central Government for making rules for effective carrying out of the provisions of the Act. Rules should be read with the Statutory provisions of the Act. Rules made for carrying out the provisions of the Act and rules cannot override the provisions of the Act.

Notifications:

Finance Act, 1994 empowers the Central Government to issue notifications. These notifications usually declare date of enforceability of service tax provisions, withdraw exemption from service tax or deal with any matter which the Central Government may think would facilitate the governance of the service tax matters.

Circulars or Office Letters:

Service tax is administered by CBEC[2]. CBEC issues circulars from time to time to explain the scope of taxable services and scheme of tax administration etc. These circulars have to be read with the Statutory provisions of the Act and notifications on service tax.

These circulars bring clarification on provisions of the Act and thus bring the legal intention behind them. These circulars should not be contrary to the provisions of the Act.

Orders:

Orders on service tax may be issued either by the CBEC or by the Central Government. Rule 3 of the Service Tax Rules, 1994, empowers the CBEC to appoint such Central Excise Officers as it thinks fit for exercising the powers under Chapter V of the Finance Act, 1994. Accordingly, orders have been issued by the CBEC, from time to time, to define jurisdiction of Central Excise Officers for the purposes of service tax.

Trade Notices:

Trade Notices are issued by the Central Excise/Service Tax Commissionerates. These Commissionerates receive various instructions from the Ministry of Finance or Central Board of Excise & Customs for effective implementation and administration of the various provisions of service tax law. The same are circulated among the field officers and the instructions which pertain to trade are communicated to them in the form of trade notices. Trade Associations are supplied with the copies of these trade notices.

Individual assesses may also apply for copies of trade notices. The trade notice disseminate the contents of the notifications and circulars/letters/orders, define their jurisdiction; identify the banks in which service tax can be deposited; give clarifications regarding service tax matters, etc.

[2] Central Board of Excise and Customs

Administration of Service Tax

Service Tax is administered by CBEC and the administration of service tax is as given below in the descending (decreasing) order:

1. Central Board of Excise and Customs
2. Chief Commissioners of Central Excise
3. Additional Commissioner
4. Deputy/Assistant Commissioner
5. Superintendent
6. Inspector

The work relating to service tax is also under the control of CBEC; however in 1997 a new post of Director General (Service Tax) was formed.

Approach to levy:

Service tax was initially levied on selective services. That service on which service tax levy was made is defined and no other services are taxable. This approach is referred as Selective approach. Under this approach tax was collected only on selected services.

(*The term 'service was not defined in precise terms'.)*

Budget 2012 has introduced new system of taxation of services. Under this approach all services are taxable except those mentioned in the negative list are taxable. (*The term 'service' was defined under the new system.)*

Scope of Levy:

Service tax is levied in respect of service provided or agreed to be provided in taxable territory by one person to another person and collected in the manner as may be prescribed.

Agreed to be provided is to cover situations where advance is received prior to the provision of service. In that case, service tax is payable on receipt of advance.

Levy and Collection of Service Tax

Levy of Service Tax:

Levy of service tax extends to whole of India except Jammu and Kashmir.

No service tax is leviable upon the services provided free of cost.

Service [sec 65B (44)]:

Any activity carried out by a person for another for consideration. It includes declared service.

Explanation to section 65B(44): The term service does not include:

- Activity of mere transfer of title in goods or immovable property is not service.
- A transfer, delivery or supply of goods which is deemed to be a sale[3] of goods within the meaning of clause (29A) of article 366 of the Constitution.
- A transaction only in money[4] or 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.
- Duties performed by MP, MLA, MLC, Members of Panchayats, Members of Municipalities and Members of other Local Authorities.
- Duties performed by persons holding constitutional post, Member or a Director in a body established by the Central Government or State Governments or Local Authority.

Note:

1. Goods include securities[5]. Forward contract, future contracts not taxable.

[3] Deemed sale include hire purchase, finance lease, goods involved in works contract supply of food by way of or as a part of service and transfer of right to use.

[4]. Transaction only money includes advancing or repayment of principal sum on loan, the principal amount of deposit or withdrawal from a bank account and conversion of ` 1,000 currency note into 1 rupee coins.

[5]. Security includes share, scrips, stock, bonds, debentures, debenture stock, derivative, units of mutual fund, government securities, rights or interest in securities etc.

2. Transfer of title means change in ownership. Mere transfer of custody or possession over goods or immovable property without transfer of ownership does not amount to transfer of title.

3. Buying or selling of mutual funds or debentures would not be service as the same would a transaction in securities. Entry or exit loads are in the nature of consideration for documentation, AMC etc. and hence liable to service tax.

4. Bank charges, LC charges, bank inspection charges, bank guarantee charges, check collection charges, conversion of money from one currency to another currency and credit card charges are not mere transaction in money.

5. Amount of foreign currency remitted to India from overseas is a mere transaction in money. Remittance charges levied for sending money to India is not subject to service tax.

6. Services provide outside the ambit of employment for a consideration would be service. However, amount paid for not joining competitive business would be liable to tax.

Activity:

'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.

Consideration:

Consideration means something in return. Consideration need not be in money form. 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.

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.

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

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.

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.

Service tax is levied on the value of consideration received which includes both monetary consideration and money value of non-monetary consideration.

To be a service an activity has to be carried out for a consideration.

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.

Note:

- *Fines and penalties which are legal consequences of a person's actions are not in the nature of consideration for an activity.*
- *Advance received and forfeited by the service provider on cancellation of agreement is part of consideration as it represents consideration for providing provision of services.*
- *Returnable security deposit is not part of consideration. If the deposit is colorable device which has an impact on the consideration for services (i.e. interest on the deposit substitutes for the consideration or interest has perceivable impact on consideration) then the interest would be part of gross amount received for the service.*
- *Excess payment received by the service provider is part of the consideration if the such amount is not returned.*
- *Demurrage charges are part of consideration.*

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.

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].

Taxability of Services [sec 66B]:

Section 66B of the act provides for taxability of services. To be a taxable service, the service should be –

- Provided or agreed to be provided by a person to another
- In the taxable territory[6]
- and it should not be specified in the negative list

India includes territorial waters, continental shelf, exclusive economic zone, 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.

Service Tax shall be levied @12% on the value of services. Education Cess @ 2% and Secondary and Higher Education Cess @1% shall be levied on the amount of Service Tax. The effective rate of Service Tax is @12.36% including education cess.

Note: Service Tax, Education Cess and Secondary and Higher Education Cess have to be shown separately in the Invoice.

In addition to negative list, there is a list of 39 services which have been exempted, vide mega exemption notification number 25/2012-ST dated 20th June 2012.

Exemption and Negative List

- Distinction between exemption and negative list is that service in negative list is service but not taxable at all.
- Exempted services are taxable but are exempted by Central Government by issue of a notification.
- Exemption can be changed easily but not Negative List.

PERSON LIABLE TO SERVICE TAX:

Service tax is payable when service is provided by one person to other. Thus, two persons are required to levy service tax.

[6] Taxable territory has been defined in section 65B as to the whole of territory of India other than the state of Jammu and Kashmir.

Person [Sec 65B(37)]

Person includes:

(i) an individual (ii) a Hindu undivided family (iii) a company (iv) a society (v) a LLP (vi) a firm (vii) an association of persons or body of individuals, whether incorporated or not (viii) Government[7] (ix) a local authority[8], or (x) every artificial judicial person.

A statutory body, corporation or an authority created by the parliament or state legislature is neither Government nor a local authority.

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.

Branch/office in India and branch/office of same business entity outside India will be treated as different persons. If the Indian branch provides some service to its head office/other branch outside India or vice versa it will be a taxable service.

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.

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[7] The phrase has not been defined in the Act. As per Sec 3(23) of General Clauses Act 1897 Government includes both Central and State Government.

[8] Local authority means Panchayat, Municipality, Municipal Committee, District Board, a Cantonment Board, Regional Council or District Council, Constituted under 6th schedule to the Constitution etc.

Small Service Provider

Central Government has exempted the taxable services of aggregate value not exceeding `10 lakh in any financial year from the whole of the service tax leviable thereon under section 66B of the Finance Act, 1994 in case the aggregate *value of taxable services rendered* by the service provider from one or more premises, does not exceed ₹`10 lakh in the preceding financial year. However, such exemption is not available to the taxable services provided by a person under a brand name or trade name, whether registered or not, of another person and to such value of taxable services in respect of which service tax is payable on reverse charge mechanism by a person. (Notification 33/2012 dated 20/06/2012)

Conditions:

- The provider of service has an option not avail exemption as per this notification and pay service tax on taxable services. This option once exercised, shall not be withdrawn during the remaining part of the Financial Year.
- The Service Provider shall not avail CENVAT credit of service tax paid on inputs services, Capital Goods while availing exemption as per this notification.
- The Service Provider shall avail CENVAT on input, input service on or after the date on which he started paying service tax and used for provisions of taxable services for which service tax is payable.
- 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.
- For the purpose of determining aggregate value not exceeding ten lakh rupees, the payment received towards the gross amount charged by such GTA for which the person liable for paying service tax is the person receiving the service as per section 68(2) shall not be taken into account.

Registration

Registration Section 69/Rule 4(1) of STR, 1994

A service provider can charge service tax only if he is registered with the Service Tax Department.

Every service provider in whose case, gross receipt has exceeded `₹9,00,000 shall apply for registration to the Service Tax Department in Form No ST-1 within 30 days from the date of crossing the limit of `₹9,00,000, however, he will charge service tax after crossing the limit of `₹10,00,000.

Department shall grant him a registration certificate in Form No ST-2 within 7 days from the date of receipt of application otherwise the service provider shall be deemed to be registered.

If a person is providing more than one taxable service, he may give only one application. He should mention in the application all the taxable services provided by him.

A person may apply for voluntary registration at any time and also a person may forgo (reject) the general exemption of ₹`10, 00,000.

As per section 77, any person who has failed to take registration shall be liable to a penalty which may extend to ₹`10,000.

Centralised Registration Rule 4(2) of STR, 1994

If a service provider is providing services from more than one premise, in such cases he can apply for separate registration for each of such premises. He may apply for a single registration called Centralized Registration provided he has either centralized accounting or centralized billing system.

In such cases one of the places shall be considered to be Head Office and all other premises shall be considered to be branches. A single registration certificate shall be issued. If the service provider does not have centralized accounting and also there is no centralized billing system, he will not be allowed to apply for centralized registration.

Amendment of Registration Certificate Rule 4(5A) of STR, 1994

A service provider may apply for amendment in registration in the following cases:

1. Change in place of business
2. Change in the name of business

3. Change in services rendered i.e. there may be addition / deletion
4. Any other similar change

If there is any such change, service provider should apply to the department within 30 days for effecting the change.

Cancellation of Registration Certificate **Rule 4(7), 4(8) of STR, 1994**

Every registered assessee, who ceases to provide the taxable service for which he is registered or if he dies, registration certificate shall be cancelled.

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 there under, and thereupon cancel the registration certificate.

Where a registered assessee transfers his business to another person, the transferee shall obtain a fresh certificate of registration.

Date of determination of rate of tax, value of taxable service and rate of exchange [Section 67A]

Section 67A provides that the rate of service tax, value of a taxable service and rate of exchange will be the one as in force or as applicable at the time when the taxable service has been provided or agreed to be provided.

For the purposes of this section, "**rate of exchange**" means the rate of exchange —
(i) determined by the Board, or
(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency.

Negative List

According to Section 65B (34) of Finance Act, 1994 "negative list" means the services which have been listed in section 66D. Following Seventeen services have been listed in Section 66D.

1) Services by Government or a local authority: All the services provided by the Government or Local Authority are not liable to service tax.

Exceptions: The following services provided by Government or Local Authority are liable to service tax:

- services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services(sale of mutual fund, collection of telephone bills etc) provided to a person other than Government;
- services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- transport of goods or passengers**(** Public transport /rail journey in 2^{nd} class, sleeper class, general class/transport of passengers by metro rail, tramway **are exempt**); or
- support services, other than services covered under clauses (i) to (iii) above, provided to business entities;

2) Services *by* the Reserve Bank of India: Services provided by banks to RBI would be taxable.

3) Services by a foreign diplomatic mission located in India

4) Services relating to agriculture or agricultural produce by way of—

- Agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
- Supply of farm labour;
- 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;*** (These processes are usually done by the Cultivator or Producer)

- Renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
- Loading, unloading, packing, storage or warehousing of agricultural produce;
- Agricultural extension services;
- Services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

5) Trading of goods- Forward Contracts in commodities, Commodity Futures are covered.

6) **Any process amounting to manufacture or production of goods-** This entry 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 State Acts.

7) Selling of space or time slots for advertisements other than advertisements broadcast by radio or television- Sale of space for advertisement in print media, Sale of space for advertisement in bill boards, public places (including stadiums), buildings, conveyances, ATM, Cell Phones, Internet, Aerial Advertising are **NOT taxable.**

8) Service by way of access to a road or a bridge on payment of toll charges- Services of toll collecting agency on behalf of an agency authorized to levy is **Taxable.**

9) Betting, gambling or lottery;

10) Admission to entertainment events[9] or access to amusement facilities- Auxiliary services provided by event manager are **Taxable.**

11) Transmission or distribution of electricity by an electricity transmission or distribution utility;

[9] ***Entertainment event*** means an event or a performance which is intended to provide recreation, past time, 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.

12) 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 recognised by any law for the time being in force;
- Education as a **part** of an approved vocational education course;

- Services by way of education as a part of a prescribed curriculum for obtaining a qualification **recognized by law of foreign country are Taxable.**
- 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.

13) Services by way of renting of residential dwelling[10] for use as residence-

14) Services by way of—

- extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount; (OD, Loan with collateral security,CD)
- inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers (Such transaction with the general public is **Taxable)**
- Administrative charges, service charges recovered in addition to interest or discount on loan or deposit are **Taxable.**
- Invoice discounting, Cheque discounting are **covered in Negative List.**
- Transaction entered by banks in instruments like repo and reverse repos **are covered in Negative List.**

[10] Residential dwelling as per normal parlance any residential accommodation but does not include hotel, motel, inn guest house, campsite, lodge, house boat or like places meant for temporary stay.

15) Service of transportation of passengers, with or without accompanied belongings, by—

- a stage carriage;
- Railways in a class other than—

  First class; or

  An air-conditioned 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.

16) Services by way of transportation of goods—

- By road **except** the services of -

  a goods transportation agency; or

  b. courier agency;
- By an aircraft or a vessel from a place outside India upto the customs station of clearance in India; or by inland waterways;

17) Funeral, burial, crematorium or mortuary services including transportation of the deceased.

NOTE:

"Goods Transport Agency Service" means any service provided or agreed to be provided, to any person, by a goods transport agency, in relation to transport of goods by road in a goods carriage.

"Goods Transport Agency" means any person who provides service in relation to transport of goods by road.

In relation to taxable service provided by a **goods transport agency**, Reverse Charge shall be applicable and service tax shall be paid by the consignor or consignee whosoever is liable to pay freight (transportation charges) and Reverse Charge shall be applicable where the consignor or consignee of goods is at least one of the persons mentioned below:

(a) Any factory registered under by the Factories Act, 1948;
(b) Any company registered under the Companies Act, 1956;
(c) Any corporation established under any law;
(d) Any society registered under the Societies Registration Act, 1860;
(e) Any co-operative society;
(f) Any dealer of excisable goods, who is registered under the Central Excise Act, 1944;
(g) Any body corporate established, under any law
(h) Any partnership firm registered.

If neither the consignor nor the consignee is one of the persons mentioned above, in that case service tax shall be paid by the Goods Transport Agency and Reverse Charge shall not be applicable.

Bundled Service

Bundled Service means a bundle of provision of services where in an element of provision of one service is combined with an element or elements of provisions of any other service or services.

Sec66F:

Unless otherwise specified, reference to a service shall not include reference to a service ***which is used for providing main service***. **(Sec 66F (1))** Ex: Security service to toll collection

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 **(Sec 66F (2)).**

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;

(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 **(Sec 66F (3)).**

Point Of Taxation

Point of taxation means the point in time when a service shall be deemed to have been provided. The point of taxation enables us to determine the rate of tax, value of taxable service, rate of exchange and due date for payment of service tax. For determination of point of taxation of a service, Point of Taxation Rules, 2011 were introduced with effect from 01.04.2011.

Rate of tax has to be determined as per sec 67A with effect from 28th May 2012 and not as per point of taxation rules.

Rule3(General Rule):

As per Rule 3, services shall be deemed to have been provided on the date of invoice issued by the service provider if the invoice has been issued within 30 days(45 for Banks and other Financial Institutions) from the date of completion of service. If invoice is not issued within 30days, services shall be deemed to have been provided on the date of completion of service.

If payment has been received before the date determined above, the date of providing the services shall be the date of receiving the payment and service tax should be paid accordingly.

Continuous supply of services:

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.

Continuous supply of service means any service provided or to be provided continuously or on recurrent basis, under a contract, for a period not exceeding three months with the obligation for payment periodically or from time to time or where the Central Government, by notification in the Official Gazette, prescribe the provision of particular service to be a continuous service, whether or not subject to any condition.

Where the provider of taxable service receives a payment up to ` ₹1000 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 the taxable service, shall be determined in accordance with the timing of invoice as mentioned above.

The principle of point of taxation can be better understood with the help of the following Tabular summary followed by an illustration:-

<table>
<tr><th>Case</th><th>In case where</th><th colspan="2">Point of taxation</th></tr>
<tr><td>I</td><td>Invoice is issued within <u>30* days</u> from the completion of service and payment is received after invoice</td><td colspan="2">Date of invoice</td></tr>
<tr><td>II</td><td>Invoice is issued within <u>30 *days</u> from the completion of service, but payment is received before invoice</td><td colspan="2">Date on which payment is received.</td></tr>
<tr><td>III</td><td>Invoice is not issued within <u>30* days</u> from the completion of service and payment is received after completion of service.</td><td colspan="2">Date of completion of service</td></tr>
<tr><td rowspan="3">IV</td><td rowspan="3">Invoice is not issued within <u>30* days</u> from the completion of service. However, part payment is received before the completion of service and remaining payment is received after the completion of service.</td><td>For the payment received</td><td>Point of taxation is</td></tr>
<tr><td>Before the date of completion of service</td><td>The date on which payment is received.</td></tr>
<tr><td>After the date of completion of service</td><td>The date of completion of service.</td></tr>
</table>

*** 45 days in case of in case of banking and other financial institutions including NBFCs.**

Determination of point of taxation in case of change in effective rate of tax [Rule 4]

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 manner laid down in the following table namely:-

In case a taxable service has been provided	Invoice has been issued	Payment received for the invoice	Point of taxation shall be
(i) **BEFORE** the change in effective rate of tax	**AFTER** the change in effective rate of tax	**AFTER** the change in effective rate of tax	(a) date of issuance of invoice or (b) date of receipt of payment whichever is earlier
	PRIOR to the change in effective rate of tax	**AFTER** the change in effective rate of tax	date of issuance of invoice
	AFTER the change in effective rate of tax	**PRIOR** to the change in effective rate of tax	date of receipt of payment
(ii) **AFTER** the change in effective rate of tax.	**PRIOR** to the change in effective rate of tax	**AFTER** the change in effective rate of tax	date of receipt of payment
	PRIOR to the change in effective rate of tax	**PRIOR** to the change in effective rate of tax	(a) date of issuance of invoice or (b) date of receipt of payment whichever is earlier
	AFTER the change in effective rate of tax	**PRIOR** to the change in effective rate of tax	date of issuance of invoice

"Change in effective rate of tax" shall include a change in the portion of value on which tax is payable in terms of notification issued in the Official Gazette under the provisions of the Act, or rules made thereunder;

Payment of tax in case of new services Rule 5:

Where service is provided for the first time, then, no tax shall be payable to the extent of invoice has been issued and payment received against invoice before such service became taxable.

No tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within 14 days of the date when the service is taxed for the first time.

Determination of point of taxation in case of specified services or persons Rule 7:

Notwithstanding anything contained in these rules, the Point of Taxation in respect of reverse charge, the date of payment is the Point of Taxation if the payment is made to service provider within 6 months.

If the payment is not made within a period of six months of the date of invoice, then invoice date (if issued within 30 days)or completion of service (invoice issued after 30days) whichever is earlier is the Point of Taxation.

When the service provider is outside India, date of credit in books of the accounts of the person receiving the service is taxable territory or date of payment, whichever is earlier is the Point of Taxation.

Determination of point of taxation in case of copyrights, etc. [Rule 8]

Rule 8 applies where in case of royalties and payments pertaining to copyrights, trademarks, designs or patents, 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.

In such a case, the service shall be treated as having been provided each time when:-

(a) a payment in respect of such use/benefit is received by the provider in respect thereof

or

(b) an invoice is issued by the provider

whichever is earlier.

Determination of point of taxation in other cases [Rule 8A]

Rule 8A is the residual rule to determine the point of taxation by way of best judgment to handle situations where the tax-payer is unable to furnish one or more of the details needed i.e. date of payment or date of invoice or both to determine point of taxation.

It provides as follows:-

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.

Invoice/Bill by Service Provider:

As per Rule 4A of STR, 1994, every person providing taxable service, not later than 30 days (45 days in case of bank) 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, signed by such person or a person authorized by him and such challan etc. 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, classification and value of taxable service provided or agree to be provided; and
(*iv*) The service tax payable thereon:

Education Cess and Secondary and the Higher Education Cess to be shown separately.

VALUATION

Sec67:

If the consideration for taxable is in terms of money, the value shall be the gross amount charged by the service provider for such service provided or to be provided by him.

If the consideration for a taxable service is not wholly or partly in terms of money, then the value of such service shall be such amount in money, with the addition of service tax charged, is equivalent to the consideration.

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.

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

Subject to the aforementioned provisions mentioned, the value of a taxable service shall be determined in such manner as may be prescribed.

Service Tax (Determination of Value)Rules, 2006:

Determination of value of service in relation to money changing [Rule 2B]

Rule 2B provides the manner of determination of the value of taxable service provided so far as the services so provided pertains to purchase or sale of foreign currency, including money changing.

The value of service shall be determined as follows:-

- **For a currency, when exchanged from, or to, Indian Rupees (INR)**

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to 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.

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.

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.

Manner of determination of value *when such value is not ascertainable* [Rule 3]

The value of taxable service, ***where such value is not ascertainable***, shall be determined by the service provider in the manner described below.

❖ ***Value of similar services:***

The value of taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person subject to fulfillment of the conditions below:

1. Such service is in the ordinary course of trade.
2. The gross amount charged is the sole consideration

❖ ***When value of similar services cannot be ascertained:***

Where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration. However, such value shall, in no case be less than the cost of provision of such taxable service.

Rejection of value by Central Excise Officer and its determination thereon [Rule 4]

Central Excise Officer empowered to verify the value adopted by the service provider:

- ❖ The Central Excise Officer shall have the power to satisfy himself as to the accuracy of any information furnished or document presented for valuation. In other words, where there are adequate reasons warranting verification of the value adopted by the service provider for payment of service tax, rule 4 specifically enables verification of records in such cases.

- ❖ The provisions contained in rule 3 shall not restrict or put to question such power of the Central Excise Officer.

- A show cause notice (SCN) shall be issued to the service provider, if the Central Excise Officer is satisfied that the value determined by such service provider is not in accordance with the provisions of the Act or these rules.

- Such show cause notice will specify the amount of service tax fixed by the Central Excise officer.

- The Central Excise Officer shall provide a reasonable opportunity of being heard, to the service provider. Thereafter, he shall 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.

Inclusion in or exclusion from value of certain expenditure or costs [Rule 5]:
The expenditure or costs incurred by the service provider in the course of providing taxable service forms integral part of the taxable value of the service provided or to be provided. Therefore, they shall be included in the value for the purpose of charging service tax on the said service. It shall not be relevant that various expenditure or costs are separately indicated in the invoice or bill issued by the service provider to his client.

For the telecommunication service, 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.

Hence, in case of service provided by way of recharge coupons or prepaid cards or the like, the ***value shall be the gross amount charged from the subscriber or the ultimate user of the service and not the amount paid by the distributor or any such intermediary to the telegraph authority.***

Amounts paid to the third party by the service provider as a "pure agent" of the client not to be included in the taxable value

There could be situations where the client of the service provider specifically engages the service provider, as his agent, to contract with the third party for supply of any goods or services on his behalf. In those cases, such goods or services so procured are treated as supplied to the client rather than to the contracting agent. The service provider in such cases incurs the expenditure purely on behalf of his client in his capacity as an agent, i.e. "pure agent" of the client. Amounts paid to third party by the service provider as a pure agent of his client can be treated as reimbursable expenditure and shall not be included in taxable value.

Conditions to be satisfied in this regard:-

Subject to the provisions mentioned in point (1) above, 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:

(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.

Meaning of pure agent

"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.

Service specific inclusion/exclusion of certain items from the value of taxable service [Rule 6]

Inclusions:

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.

(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.

Exclusions:

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;

(iv) interest on delayed payment of any consideration for the provision of services or sale of property, whether moveable or immoveable and

(v) the taxes levied by any Government (including foreign Governments, where a passenger disembarks) on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger.

(vi) accidental damages due to unforeseen actions not relatable to the provision of service.

(vii) subsidies and grants disbursed by the Government, not directly affecting the value of service.

PAYMENT OF SERVICE TAX

Prior to 01.04.2011, service tax was to be paid on actual receipt basis but w.e.f. 01.04.2011, service tax shall be paid on the basis of point of taxation i.e. the point in time when the service shall be deemed to have been provided shall be taken into consideration.

The exception is that where the value of taxable services in the previous year was less than `₹50 lakhs, service can be paid on receipt basis instead of accrual basis in case of Individuals, Partnership Firms and LLP.

Section 68 casts the liability to pay service tax upon the service provider. This liability is not contingent upon the service provider realizing or charging the service tax at the prevailing rate. The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver.

Advance payment of tax: No provision is made for payment of service tax in advance. However, the assessee can tax on his own motion make advance payment of service tax. Such advance payment will be adjusted against his service tax liability.

On advance payment of service tax, the assessee has to intimate to Jurisdictional Superintendent of Central Excise within 15 days from the date of payment and adjustment of such advance payment should be reflected in the return filled by the assessee.

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

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

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

(c)

However, self-adjustment of such excess amount paid shall be subject to the condition that the excess amount paid is on account of reasons not involving interpretation of law, taxability, valuation or applicability of any exemption notification.

In case of immovable property: In case of renting of immovable property service, a deduction of property taxes paid in respect of the immovable property is allowed from the gross amount charged for renting of the said immovable property.

However, where any amount in excess of the amount required to be paid towards service tax liability has been paid on account of non-availment of such deduction, such excess amount may be adjusted against the service tax liability within 1 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 15 days from the date of such adjustment.

Provisional Assessment:

In case the assessee is unable to correctly estimate, at the time of the deposit, the actual amount of service tax for any month or quarter, he may make a written request to Assistant/ Deputy Commissioner of Central Excise for making payment of service tax on provisional basis.

For the purpose of provisional assessment at the time of filing the return, the assessee is required to file a statement in form ST - 3A giving detail of difference between service tax deposited and the service tax liable to be paid for each month. The quarterly or half yearly statements should also accompany.

The Assistant/Deputy Commissioner of Central Excise, on the basis of memorandum in form ST - 3A may complete the assessment after calling for necessary documents or records, if need be.

Payment of Service Tax:

The due date for payment of service tax on the service which is deemed to be provided (as per the Point of Taxation Rules, 2011) by an individual or a proprietary firm or a partnership firm:-

S. No.	Particulars	Due date for payment of service tax
1.	If the service tax is paid electronically[11] through internet banking	6th day of the following **quarter**
2.	In any other case	5th day of the following **quarter**
3.	In the case service is deemed to be provided in the quarter ending in March	31st day of March

[11] E-payment of service tax becomes mandatory if the assessee has paid a total service tax of ₹`10 lakh or more (including the amount of service tax paid by utilizing CENVAT credit) in the previous financial year.

Due date for payment of service tax on the service which is deemed to be provided (as per the Point of Taxation Rules, 2011) in any other cases (company and HUF):-

S. No.	Particulars	Due date for payment of service tax
1.	If the service tax is paid electronically through internet banking	6th day of the following month
2.	In any other case	5th day of the following month
3.	In the case service is deemed to be provided in the month of March	31st day of March

Service tax to be paid on the value of taxable services charged by the assessee. Income Tax Deducted at source is included in the value of taxable service.

If the payment of service tax made through cheque, the date of presentation of cheque to the bank shall deemed to be date on which service tax has been paid subject to realization of the cheque.

Optional Scheme for payment of Service Tax:

- **Air Travel Agent**: Person liable for paying the service tax in relation to the services of booking of tickets for travel by air provided by an air travel agent, shall have the option to pay following amounts instead of paying service tax at the rate of 12%:-

In the case of	Option to pay an amount calculated at the rate of
Domestic bookings of passage for travel by air during any calendar month or quarter, as the case may be	0.6% of the basic fare
International bookings of passage for travel by air during any calendar month or quarter, as the case may be	1.2% of the basic fare

Note:

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.

Meaning of basic fare

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.

❖ **<u>In case of insurer carrying on life insurance business:</u>** An insurer carrying on the business of Life Insurance shall have an option to pay tax:

(i) On the gross amount 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;

Where the amount of gross premium allocated for investment or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service-

(ii) 3% of the gross amount of premium charged from policy holder in the first year and 1.5% of the gross amount of premium charged;

Note: This option is not available in case the entire premium paid by the policy holder is only towards risk cover in life insurance.

<u>In case of sale/purchase of foreign currency including money changing [Sub-rule (7B)] :</u> Person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, has an option to pay an amount at the following rates instead of paying service tax at the rate of 12%:-

S. No.	For an amount	Service tax shall be calculated at the rate of
1.	Upto `₹100,000	0.12 % of the gross amount of currency exchanged Or ` ₹30 whichever is higher
2.	Exceeding `₹1,00,000 and upto ` ₹10,00,000	` ₹120 + 0.06 % of the (gross amount of currency exchanged- ` ₹1 lakh)
3.	Exceeding `₹10,00,000	` ₹660 + 0.012 % of the (gross amount of currency exchanged – ` ₹10 lakh) Or ` ₹6,000 whichever is lower

<u>Note:</u>

However, 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.

❖ **Optional Composition Scheme for the taxable service of promotion, marketing or organising/assisting in organising lottery [Sub-rule (7C)] :** An optional mode of payment of service tax has been provided for the taxable service of promotion, marketing or organising/assisting in organising lottery in the following manner instead of paying service tax at the rate of 12%:-

Where the guaranteed lottery prize payout is > 80%	`₹ 7000/- on every ` ₹10 Lakh (or part of `₹ 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw.
Where the guaranteed lottery prize payout is < 80%	`₹11,000/- on every ` ₹10 Lakh (or part of `₹ 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw.

Note:-

1. In case of online lottery, the aggregate face value of lottery tickets will be the aggregate value of tickets sold.
2. The distributor/selling agent will have to exercise such option within a period of one month of the beginning of each financial year. The new service provider can exercise such option within one month of providing the service.
3. The option once exercised cannot be withdrawn during the remaining part of the financial year.

EASIEST(Electronic Accounting System in Central Excise and Service Tax):

This has been developed to make payment of tax easy. This facility is available with 28 banks.

Benefits:

- Only one copy of Challan has to be filled.
- Facility of online verification of status of tax payment using CIN (Challan Identification Number)

ACES(Automation of Central Excise and Service Tax):

It is part of national e-governance plan and it aims at improving tax- payer services, transparency and efficiency in Indirect Tax administration in India.

ACES has automated the major processes of Central Excise and Service tax registration, returns, accounting, refunds, dispute resolution, provisional assessment, exports, claims, intimation and permissions.

Benefits to the Assessee: (i) reduce physical interference with Department; (ii) Save time (iii) Reduce Paper Work; (iv) System generated ack (v) Online view of selected documents etc…

RETURNS,INTEREST AND PENALTIES

Returns:

Every person liable to pay service tax and also input service distributor is liable to file service tax return.

The returns are to be filed as follows:

Assessee	Authority	Duration of return	Form	Time limit
All assessee	Superintendent	Half- yearly	ST-3 or ST- 3A	By 25th of the month following the end of the said half yearly
Input Service Distributor	Superintendent	Half-yearly	ST-3	By the last day of the month following the half year period.

Every assessee shall submit such return electronically.

When the due date for filing return of service tax is a public holiday, then the return may be filed on the succeeding working day.

Contents of the return:
The service tax return contains the following major details:

- Particulars of the assessee
- Particulars of the service
- Particulars of the period
- Particulars of value of taxable service
- Particulars of service tax and education cess
- Particulars of CENVAT credit.

Where the return in prescribed form is furnished after due date for its submission, the person liable to furnish such return shall pay to the credit of Central Government a fees such delayed submission, computed as follows:

Period of delay in furnishing return	**Fees to be paid in ₹**
15 days from due date	500
Beyond 15 days but upto 30 days from due date	1000
Beyond 30 days from due date	1000+100 for every from 31st day till the date furnishing of return subject to maximum of 20,000

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 (late fee).

An assessee can submit a revised return, in **Form ST-3**, in **triplicate**, to correct a mistake or omission, within a period of **90 days** from the date of submission of the original return.

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**.**

Even if no service has been provided during a half year and no service tax is payable; the assessee has to file a Nil return within the prescribed time limit.

First Return:

Every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time a list in duplicate, of-

- All the records prepared or maintained by the assessee for accounting of transactions in regard to,-
  (a) providing of any service, 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.

- All other financial records maintained by him in the normal course of business.

For an assessee who provides more than one taxable service, only a single return will be sufficient. However, the details in each of the columns of the Form ST-3 have to be furnished separately for each of the taxable service rendered by him.

INTEREST:

Failure to pay service tax, including a part thereof within the period prescribed, attracts simple interest at a rate not below 10% p.a. but not exceeding 36% p.a. as may be notified by the Central Government.

Interest would also apply in case of excess availment and utilization of CENVAT credit.

Rate of interest

Currently, the interest rate @ 18% per annum has been notified vide *Notification No. 14/2011 dated 01.03.2011*.

Time-period for payment of interest

Interest is payable for the period by which such crediting of the tax or any part thereof is delayed.

Exception:

In case of a service provider, whose value of taxable service provided in a financial year does not exceed ` ₹60 lakh during any of the financial years covered by the notice or during the preceding financial year, as the case may be, such rate of interest shall be reduced by 3% per annum**. (Small Service Provider)**

Hence, a concessional rate of interest of **15% per annum** is available to the tax payers whose turnover during any of the years covered in the notice or the preceding financial year is upto `₹ 60 lakh.

Tax Collected from any person to be deposited with Central Government(Sec 73A):

Any person who is liable to pay service tax under the provisions of this Chapter or the rules made there under, 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 there under 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.

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.

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 there under 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 @ 18% per annum from the first day of the month succeeding the month in which the amount ought to have been paid under this Chapter, till the date of payment of such amount.

In the case of a small service provider, the above rate of interest shall be reduced by 3% per annum.

PENALTIES:

Sec	**Reason**	**Quantum of Penalty (in addition to interest and tax)**
76	Any person liable to pay service tax fails to pay tax	Highest of following: (a) ₹ 100 per day[12] (b) 1% p.m of service tax.
77	1. Failure to take registration	Highest of following: (a) ₹ 200 per day[13] (b) ₹ 10,000.
	2. Failure to maintain or retain books of account and other documents as required this law.	Penalty which may be extended upto ₹ 10,000.
	3. Failure to pay electronically, through internet banking.	
	4.Failure to issue Invoice	
	5. Contravention of any provisions of this chapter or rules for which no penalty is separated provided	
	6. Failure to furnish the information called by an officer Or Produce documents called for by Central Excise Officer	Highest of the following: (a) ₹ 200 per day after the due date till the compliance (b) ₹ 10,000.
78[Note]	Non levy/payment, or short levy/payment or Erroneous refund of tax to due to fraud, suppression, or willful misstatement or contravention of provisions of act with an intention to evade to payment of tax. (If penalty levied under this section, no penalty would be levied U/S 76)	If the true and complete details of the transactions are available in the records= 50% of service tax sought to be evaded. Other cases= 100%of service tax sought to be evaded.

Note:

If the **tax and interest has been paid within 30 days of receiving** the orders from the Central Excise Officer, penalty payable shall be **25% of such service tax**. Further such penalty should also be paid within the period of **30 days** as mentioned above. In case of Small Service provider, the period of **30 days** shall be taken as **90 days**

12 Starting with the date first day after the due date till date of actual payment of outstanding amount of service tax, subject to maximum of 50% of tax.

13 Starting with first day after the due date till the date of actual compliance.