VALUATION UNDER SERVICE TAX

*"Power is gained by **sharing knowledge**, not hoarding it"*

Constitution of India

- **Article 268A:** Service tax levied by Union, collected & appropriated by Union & States(Entry no. 92C of Union List)
  Not made effective so far

- **Article 246:** Schedule VII, Entry no. 97 of Union List

Why is valuation required

To answer this, let's take a look at the **definition of service** defined **u/s 65B(44)** of Finance Act,1994, which reads out as follows:

- Any activity
- By one person to another
- For **consideration**

What are the sources

There are broadly two sources for determination of the taxable value for service tax:

- ✓ **Finance Act,1994;**
- ✓ **Service tax(determination of value) rules, 2006**

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Statutory provisions under Finance Act,1994

Statutory provisions

Section 67 of Finance Act, 1994 defines taxable value as follows:

Consideration in money → Gross amount charged

Consideration partly in money → Amount charged plus money value of non-monetary consideration

Consideration not ascertainable → Refer valuation rules

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Statutory provisions

- Where **Service Tax is inclusive** and not charged separately , value shall be determined on **back calculation basis**

- "**Gross amount charged"** shall include any amount received before/ during / after such services(i.e. it **includes advance** for services to be provided)

- "**Consideration**" includes **any amount that is payable for the taxable services** provided or to be provided

Statutory provisions

Section 67A of Finance Act,1994

- **Relevant date** -------------------The time when taxable service has been provided or agreed to be provided
- **Relevant rate of exchange**---Rates notified by CBEC

Service tax(determination of value) Rules, 2006

Rule 2B: Sale/Purchase of Foreign currency

Case	USD units	Conversion rate	RBI rate	Taxable Value
I	100	45	46	100X(46-45)
II	100	45	Not available	1%X45X100
III	100 USD converted into 70 GBP	-	USD-45 GBP-70	1%X least of --- (45X100); or (70X70)

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Rule 2C: Restaurant/Outdoor Catering

S.No.	Description	Taxable value
I	Service portion in restaurant service	40% of total amount
II	Service portion in outdoor catering service	60% of total amount

Note: **Kerala High Court held the service tax on restaurant services as unconstitutional**

- **Total amount** means-

Gross amount charged	XXX
Add: FMV of goods supplied	XXX
Less: Amount charged	(XXX)
Less: VAT levied thereon	(XXX)

- No CENVAT is allowed on goods falling under Chapter 1 to 22 of CETA,1985 (e.g. animal products, vegetable products, beverages, vinegar, etc.)

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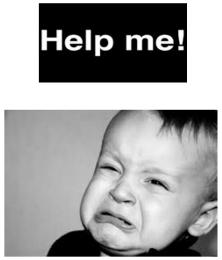
Rule 3: Consideration not ascertainable



Consideration not ascertainable → Gross amount charged of similar service provided to another person in ordinary course of trade

If the value can't be determined in aforesaid manner, then value shall be:

- ❖ Equivalent money value of such consideration;

  Or

- ❖ Cost of provision of service

} Higher

Rule 4: Rejection of value

- Central excise officer can reject the value determined by the assessee
- He shall issue SCN for the same
- After providing opportunity of being heard, determine the value

Stay blessed!!

Rule 5: Re-imbursements

- Re-imbursements also form the part of taxable value, except as ‘pure agents’ {However, in case of Intercontinental Consultants & Technocrats Pvt. Ltd., **Delhi High Court held the same unconstitutional**}

- **Who is a pure agent?**

  A person who-

  - Enters into a **contractual agreement with the recipient of service to act as his pure agent** to incur expenditure or costs in the course of providing taxable service;
  - **Doesn’t hold any title to the goods or services** so procured or provided as pure agent of the recipient of service;
  - **Doesn’t use such goods** or services so procured; and
  - **Receives only actual amount** to procure such goods or services

Rule 5: Re-imbursements

Eight conditions for exemption of re-imbursements as pure agents:

- **Service provider(S.P.) acts as a pure agent** of service receiver(S.R.) while making payment to third party for goods/services procured;

  +

- **S.R. uses goods procured** by S.P. as pure agent;

  +

- **S.R. is liable to make payment** to third party;

  +

- **S.R. authorizes S.P.** to make payment on his behalf;

  +

- **S.R. knows** that goods & services shall be **provided by third party**;

  +

- **Payment made by S.P. separately indicated** in invoice issued by S.P. to S.R.

  +

- **S.P. recovers** from S.R. only the **actual amount** as paid to third party;

  +

- Goods/services procured by S.P. from third party as a pure agent are in addition to the services provided on his own account.

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Rule 6: Inclusions/ Exclusions

Inclusions:

1) the **commission /brokerage** charged by a broker on the **sale or purchase of securities ;**

2) the **adjustments** made by the **telegraph authority** from any **intial deposits** made by the subscriber;

3) the amount of **premium charged by the insurer** from the policy holder;

4) the **commission** received by the **air travel agent from the airline**;

5) the **commission, fee** or any other sum received by **an actuary**, or **insurance agent** from the insurer;

6) 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;

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Rule 6: Inclusions/ Exclusions

Inclusions(Contd.):

7) the **commission** or any amount **received by the rail travel agent** from the Railways or the customer;

8) the **remuneration** or commission, paid to **clearing & forwarding agent;**

9) the **commission**, fee or any other sum, by whatever name called, **paid to such insurance agent agent by the insurer;**

10) 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.

Rule 6: Inclusions/ Exclusions

Exclusions:

1) **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;

2) the **airfare collected by air travel agent** in respect of service provided by him;

3) the **rail fare collected by [rail travel agent]** in respect of service provided by him;

4) **interest on delayed payment** of any consideration for the provision of services or sale of property, whether moveable or immoveable;

5) the **taxes** levied by any Government on any passenger **travelling** by air, if **shown separately on the ticket**, or the invoice for such ticket, issued to the passenger;

6) **accidental damages** due to unforeseen actions **not relatable to the provision of service**; and

7) **subsidies** & grants disbursed by the Government, not directly affecting the value of service

Abatement

Notification no. 26/2012-ST

S.No.	Particulars	Taxable portion	Conditions
1.	Services in relation to financial leasing including hire purchase	10%	-----
2.	Transport of goods/passengers by rail	30%	----
3.	Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal,shamiana or any other place, specially arranged for organizing a function) together with renting of such premises	70%	CENVAT of goods under chapter 1 to 22 are not taken
4.	Transport of passengers by air, with or without accompanied belongings	40%	CENVAT of inputs & capital goods are not taken

Abatement

S.No.	Particulars	Taxable portion	Conditions
5.	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	60%	CENVAT of input & capital goods is not taken
6.	Goods transport agency	25%	No CENVAT is taken
7.	Services provided in relation to chit	70%	No CENVAT is taken
8.	Renting of any motor vehicle designed to carry passengers	40%	No CENVAT is taken
9.	Transport of goods in a vessel	50%	No CENVAT is taken
10.	Services by a tour operator in relation to,- (i) a package tour	25%	1. No CENVAT is taken 2. The bill issued for this purpose indicates that it is inclusive of charges for such a tour

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Abatement

S.No.	Particulars	Taxable portion	Conditions
10.	Services by a tour operator in relation to,- (ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour (iii) any services other than specified at (i) and (ii) above.	10% 40%	1. No CENVAT is taken 2. The invoice, bill or challan issued indicates that it is towards the charges for such accommodation. 1. No CENVAT is taken 2. The invoice, bill or challan issued indicates that it is the gross amount charged for such tour.
11.	Construction service: (i) Residential property(area 2000 sq ft or more , or amount is Rs. 1 crores or more) (ii) Other cases	25% 30%	1. No CENVAT is taken on inputs 2. Land value is also included in amount charged from customers

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Prepared by: CA Sumit Grover
E- mail: : Sumitgrover.ca@gmail.com
Contact :+91-9910946323