Service Tax Law in India

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CONSTITUTIONAL VALIDITY

Article 265 of the Constitution lays down that no tax shall be levied or collected except by the authority of law. Schedule VII divides this subject into three categories-

a) Union list (only Central Government has power of legislation)
b) State list (only State Government has power of legislation)
c) Concurrent list (both Central and State Government can pass legislation).

To enable Parliament to formulate by law principles for determining the modalities of levying the Service Tax by the Central Govt. and collection of the proceeds thereof by the Central Govt. and the State, the amendment vide Constitution (92nd amendment) Act, 2003 has been made. Consequently, new article 268 A has been inserted for Service Tax levy by Union Govt., collected and appropriated by the Union Govt., and amendment of seventh schedule to the constitution, in list I-Union list after entry 92B, entry 92C has been inserted for taxes on services as well as in article 270 of the constitution the clause (1) article 268A has been included.

Article 246 in The Constitution Of India 1949

Subject matter of laws made by Parliament and by the Legislatures of States

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List)

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List)

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List

ARTICLE 246 OF CONSTITUTION

Schedule-VII Constitution of India

List I	List II	List III
Union List	State List	Concurrent List
It contains the matters in respect of which only central government can make laws	It contains the matters in respect of which only state government can make laws	It contains the matters in respect of which both Central government and state governments have the power to make laws

UNION LIST

82. Taxes on income other than agricultural income.
83. Duties of customs including export duties.
84. Duties of excise on tobacco and other goods manufactured or produced in India except-
(a) alcoholic liquors for human consumption.
(b) opium, Indian hemp and other narcotic drugs and narcotics,
but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.
92. Taxes on the sale or purchase of newspapers and on advertisements published therein.
92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.
92B. Taxes on the consignment of goods (whether the consignment is to the person making it
or to any other person), where such consignment takes place in the course of inter-State trade or commerce.
92C. Taxes on services (inserted in Constitution via 92nd amendment in 2004)
97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists

STATE LIST

51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:-

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List – I.

60. Taxes on professions, trades, callings and employments

63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

Background of service tax

1. Levied (imposed) after recommendation by committee headed by Raja J Chelliah in 1994-95
2. Service tax was first imposed on telephones, non-life insurance and stock brokers @ 5%
3. As per Constitution of India any tax can be imposed only by any Act. No special Act was made for service tax. Finance Act 1994 was used for charging service tax
4. CBEC is given the work of service tax
5. There are two approaches of imposing tax on services
   1. Under selective approach, only few selected services are taxable
   2. Under Comprehensive approach, all the services are made taxable and a negative list is provided to exempt some of the services

In year 2012, the comprehensive approach was adopted and currently is in effect

Negative vis-à-vis Positive list regime – A Comparative Analysis

Current provisions (Negative List)	Coverage	Earlier provisions (Positive List)
65B	Definitions	65
66B	Charging Section	66 and 66A
66C	Determination of Place of Provision of services	Export and Import Rules
66D	Negative List	Service specific exclusions/ exemptions
66E	Declared services	65 (105)
66F	Interpretation Rules and Bundled services	65A (covers classification only)
67 and Valuation Rules (Amended)	Valuation	67 and Valuation Rules
67A and POTR	Date of determination tax rate, value and exchange Rate	POTR
25/2012-ST	One mega notification	Various notifications

RULES DELETED/ SUBSTITUTED

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

Key provisions and effective date

Provisions	Particulars
Negative List regime	Applicable w.e.f. 1 July 2012
Applicable rate of Service Tax	12.36%
Service tax returns	-For the period for October 2013 to March 2014 returns to be filed before **25 April 2014**

Rules under Service Tax Law

1. Service Tax Rules, 1994
2. Point of Taxation Rules, 2011
3. Place of provision of Services Rules, 2012
4. Service Tax (Determination of Value) Rules, 2006
5. Service Tax Voluntary Compliance Encouragement Rules, 2013
6. Service Tax (Compounding of Offences) Rules, 2012
7. Service Tax (Settlement of Cases) Rules, 2012
8. Dispute Resolution Scheme Rules, 2008
9. Service Tax Dispute Resolution Scheme, 2008
10. Service Tax (Provisional Attachment of Property) Rules, 2008
11. The Service Tax (Publication of Names) Rules, 2008
12. Service Tax (Advance Rulings) Rules 2003
13. Service Tax Return Preparer Scheme, 2009

Extent, commencement and application
Section 64 of Finance Act, 1994
(As amended by Finance Act, 2013)

- This Chapter V extends to the whole of India *except* the State of Jammu and Kashmir
- It shall apply to all services provided

As per Section 65B "India" includes Exclusive Economic Zone

Exclusive Economic Zone extends to 200 nautical miles* from land.
In this area, only India can do any activity like fishing, mineral resources and scientific research

(Unit of measurement in air/water, 1 nautical mile = 1.852 km)

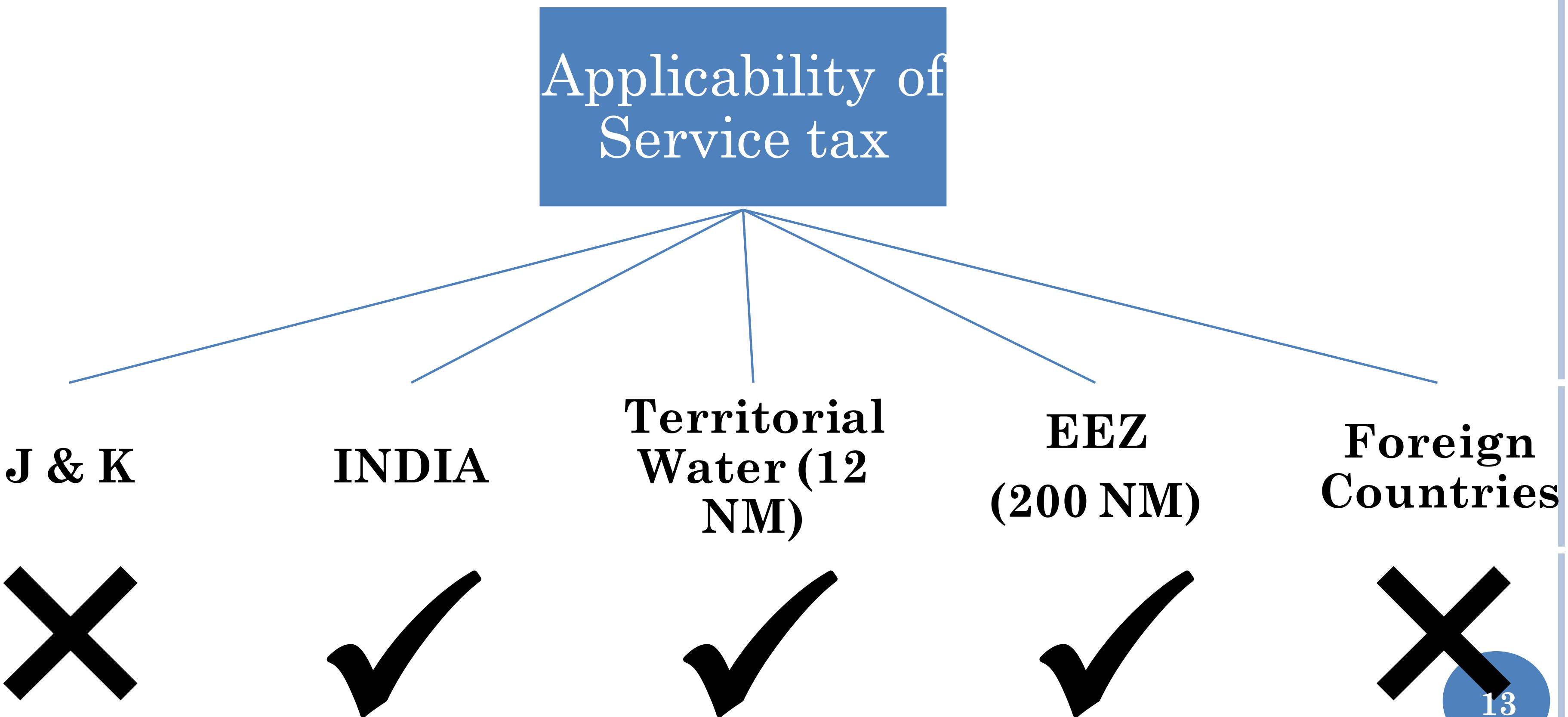
Whether this non-applicability of service tax is on service provider of J&K or on services provided in J&K??

Note: Service tax destination based consumption tax

[*Applicability or inapplicability of Service-tax provisions shall be decided w.r.t. location of services not w.r.t. location of service provider*]

CONSTITUTION OF INDIA; ARTICLE 370

The concurrence (consent) of State of J & K required before applying law in J & K. And till date Concurrence of the State assembly has not been obtained



Administration of service tax in India.

Service tax in India is administered in the following manner. The topmost authority for service tax in India is listed first.

1 Ministry of Finance.

2 Department of revenue

3 Central board of Excise and Customs.

3 Central board of Direct Taxes

4 CE Chief Commissioners.

5 Central Excise Commissioners.

6 Service tax commissionerate.

7 Additional Commissioner.

8 Joint Commissioner.

9 Asst Commissioner/Deputy Commissioner.

10. Superintendent.

11 Inspector.

What is Service

'Service' has been defined in clause (44) of the section 65B and means –

- any activity
- For a consideration
- carried out by a person for another
- and includes a declared service (66E)

What is Service

- Activity must be for a consideration (nexus / reciprocity)
- Activity – includes both activity as well as non-activity
- Consideration – includes both monetary and non monetary consideration.
- Two persons are involved –

  Service provider

  Service receiver
- Only services provided by one person to another are taxable
- Person – natural as well as artificial

Is service tax payable on such services?

Question: Mr. Obama has rendered freely, a service to a client which is taxable, but has not charged or received any fee from the client.

Question: Services rendered by a Sub-Contractor

Question: Services rendered to associated enterprise.

Meaning of person

Person-65B(37)

"person" includes,—

- an individual,
- a Hindu undivided family,
- a company,
- a society,
- a limited liability partnership,
- a firm,
- an association of persons or body of individuals, whether incorporated or not,
- Government,
- a local authority, or
- every artificial juridical person, not falling within any of the above

Activity

Departmental clarification Guidance Note 2

Activity

- Not defined in the Act
- In common understanding, activity includes –
  - An act done
  - A work done
  - A deed done
  - An operation carried out
  - Execution of an act
  - Provision of a facility etc.
- Activity could be active or passive and forbearance to act
- Agreeing to an obligation to refrain from an act or to tolerate an act or a situation - listed as a declared service u/s 66E

Consideration

- Means everything received or recoverable in return for a provision of service which includes -
  - Monetary payment
  - Non-monetary payment
  - Deferred consideration

- Under Indian Contract Act, 1872, Consideration means -

  "When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise"

CONSIDERATION

- Need not to be adequate. *[Ku. Sonia Bhatia V. State of U.P. & Ors]*
- Consideration must move at the desire of the promisor
- Consideration can be given to or by third party *[Chinayya V. Ramayya]*
- Consideration may be past, present or future
- Consideration may consist of an act or abstinence
- Consideration must be 'something of value'

The phrase 'consideration' has not been defined in the Act.

As per Explanation (a) to Section 67 of the Act, 'consideration' includes any amount that is payable for the taxable services provided or to be provided.

Activity for Consideration

Activity for a Consideration

- Activity should be carried out by a person for a consideration
- Activity without consideration like-
    - Donation
    - Gifts
    - Free charities

  outside the ambit of service
- Charity for consideration would be service and taxable unless otherwise exempted

WHAT IS SERVICE : EXCLUSIONS

'Service' does not include -

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

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

- a transaction only in money 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

Article 366 Constitution Of India

Definition In this Constitution, unless the context otherwise requires, the following expressions have l, the meanings hereby respectively assigned to them, that is to say

(29A) tax on the sale or purchase of goods includes

a) a tax on the transfer, otherwise than in pursuance of a contact, of property in any goods for cash, deferred payment or other valuable consideration;

b) a tax on the transfer of property in goods (whether as goods or in some other form) invoked in the execution of a works contract;

c) a tax on the delivery of goods on hire purchase or any system of payment by installments;

d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;

EXCLUSIONS FROM SERVICE

This scope shall not apply to –

a) functions performed by M.P., M.L.A., Members of Panchayats / Municipalities who receive any consideration in performing the functions of that office as such member; or

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

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

Service – Explanations

For the purpose of scope of service -

(a) an unincorporated association or a AOP and a member thereof shall be treated as distinct persons;

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

(c) 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

SEC 66E –DECLARED SERVICES

- Clause 44 of section 65B defines service – it includes a declared service.
- There are 9 categories of services or activities as declared services implying that on all such nine declared services, Service Tax shall be payable
- Does not include any such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of Article 366 (29A) of the Constitution of India.
- What is declared services is defined in section 65B(22) to mean any activity carried out by a person for another person for a consideration and declared as such under section 66E of the Act.
- They are amply covered by the definition of service but have been declared with a view to remove any ambiguity for the purpose of uniform application of law all over the country

SEC 66E – LIST OF DECLARED SERVICES

Following constitute Declared Services (Section 66E)

1. Renting of immovable property; - 66E(a)

2. Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority; 66E(b)

3. Temporary transfer or permitting the use or enjoyment of any intellectual property right; 66E(c)

4. Development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software; 66E(d)

Sec 66E – List of declared services

5. Agreeing to an obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; 66E(e)

6. Transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods; 66E(f)

7. Activities in relation to delivery of goods on hire purchase or any system of payment by installments ; 66E(g)

8. Service portion in execution of a works contract; 66E(h)

9. Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity. 66E(i)

RENTING OF IMMOVABLE PROPERTY SEC 66E(a)

FAQ 1 Mr. A is the owner of two properties in Delhi. The first property is located in South Delhi [Residential Area] and second property is located in Tilak Nagar [Residential Area]. He has given first property on rent to a bank for locating its ATM. The second property has been given on rent to Mr Akshay Kumar for residential purposes. Determine whether Service Tax will be leviable in the each of renting of two properties . *[2.97]*

RENTING OF IMMOVABLE PROPERTY SEC 66E(a)

FAQ 2 Mr. Milkha Singh is the owner of an immovable property located in Delhi. He has given that property on rent of Rs 70,000 per month, with effect from 01.08.2012. Determine whether service tax will be leviable in each of the following independent cases.

i. If the immovable property is given on rent to Delhi Public School which provides education up to senior secondary school?

ii. If the immovable property given on rent to Akash Institute which conducts coaching classes for students preparing for engineering exams.

iii. If the immovable property given on rent to Rishi Entertainment Pvt Ltd. which is engaged in conducting entertainment shows.

iv. If the immovable property is given on rent to Bharti Airtel Ltd for erection and use of its communication tower for its business purpose. *[2.98]*

CHARGING SECTION

Section 66B of Finance Act, 1994

Section 66B

There shall be

- levied a tax
- @ 12% of the value of
- services
- Other than those specified in negative list
- Provided or agreed to be provided
- In the taxable territory
- By one person to another and
- collected in such a manner as may be prescribed

Departmental Clarification

Departmental Educational Guide dated 20.06.2012

Service tax shall be levied on the basis of services provided or agreed to be provided.

1. Service provided i.e., relevant service has already been provided by the concerned provider
2. Agreed to be provided i.e., relevant service shall be provided in future as **agreed** by the service provider.

What is the significance of the phrase 'agreed to be provided'?

The phrase 'agreed to be provided' has been retained from the definition of taxable service as contained in the erstwhile clause (105) of 65 of the Act. The implication of this phrase are

- Services which have only been agreed to be provided but are yet to be provided are taxable
- Receipt of advances for services agreed to be provided become taxable before the actual provision of service
- Advances that are retained by the service provider in the event of cancellation of contract of service by the service receiver become taxable as these represent consideration for a service that was agreed to be provided.

EC AND SHEC ON SERVICE TAX

Section 95 of the Finance Act, 2004
In case of all taxable services
An education cess @ 2% on the service tax levied under Finance Act, 1994

Section 140 of the Finance Act, 2007
In case of all taxable services
an Secondary and higher education cess @ 1% on the service tax levied under Finance Act, 1994

VALUATION OF TAXABLE SERVICES FOR CHARGING SERVICE TAX SECTION 67

For charging service tax, the value of any taxable service shall be

Consideration in money	Consideration in kind	Consideration not ascertainable
The gross amount charged by the service provider for such service	Market value of such consideration shall be taxable	The value shall be determined as per rules framed by the Govt.

Where the gross amount charged is inclusive of service tax payable, service tax shall be calculated in the following manner: -

$$\text{Gross amount charged} \times \frac{12.36\%}{112.36\%}$$

CONSTRUCTION RELATED SERVICES

According to erstwhile provisions of Finance Act, 1994 [which were in force until 30.06.2012] services provided in connection with construction sector could be broadly classified under the following categories

S. No.	Name of Relevant Taxable Services	Effective Date
1	Erection, Commissioning or Installation Services	01.07.2003
2	Commercial or Industrial Construction Services	10.09.2004
3	Complex Construction Services	16.06.2005
4	Site Formation and Clearance, Excavation, Earthmoving and Demolition and such other similar services	16.06.2005
5	Services in Execution of Works Contract	01.06.2007
6	Renting of Immovable Property Services	01.06.2007
7	Special Services provided by Builder, etc.	01.07.2010

Mega Exemption Notification 25-2012

Services related to construction sector (1/5)

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

d) canal, dam or other irrigation works;

e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;

FAQ'S ON ENTRY NO. 12 OF N.N. 25-2012

a) Archeological Survey of India awarded a contract for repair and maintenance of Rs 48 lakhs to Balram Ltd. for repair and maintenance of a fort in August, 2012
b) Tata Ltd. awarded a contract for completion of its irrigation works to Modern Construction Ltd. for Rs 65 lakhs in September, 2012
c) Pushkar Ltd. awarded a contract for repair of its sewerage treatment plant to Kirti Ltd. for Rs 83 lakhs in July, 2012.
d) Municipal Corporation of Delhi awarded a contract for Rs 45 lakhs in August, 2012 to M/s Sameer & Sons, [a partnership firm] for construction of a garbage collection centre. *[2.100]*

MEGA EXEMPTION NOTIFICATION 25-2012

SERVICES RELATED TO CONSTRUCTION SECTOR (2/5)

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

(c) a building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;

(d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;

MEGA EXEMPTION NOTIFICATION 25-2012

SERVICES RELATED TO CONSTRUCTION SECTOR (3/5)

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;

FAQ'S ON ENTRY NO. 13,14 OF N.N. 25-2012

a) Deenanath Ltd. provided services by way of renovation of an old bridge over River Ganges to HP Government in September, 2012 for Rs 15 lakhs

b) Gajender Ltd. is having a factory in Delhi. It has awarded a contract for commissioning of a effluent treatment plant[located within factory premises] to Hair Ltd. for Rs 70 lakhs in Augsust, 2012.

c) Airports Authority of India has awarded a contract for providing repair and maintenance services in respect of Chennai Airport to M/s Nikhil Ltd. in Aug, 2012 for Rs 200 lakhs.

d) Delhi Metro Rail Corporation has awarded a contract for Rs 350 lakhs in Sept, 2012 to Reliance Industries Ltd. for construction a metro station in Delhi.

e) Birla Charitable Trust [An entity registered u/s 12AA of Income Tax Act] has awarded a contract for Rs 40 lakhs in September, 2012 to Arya Ltd. for providing maintenance services in respect of a temple. The said temple is meant for religious use by general public.

f) Rohan Ltd. was awarded by a contract for constructing low-cost houses up to a carpet area of 60 sq. mtr. per house in pursuance to a 'Scheme of Affordable Housing in Parnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India, in Aug, 2012.Will the answer be different if foregoing contract is for repair and maintenance of foregoing houses? *[2.103]*

FAQ'S ON N.N. 25-2012

Mr. Rahim has agreed to purchase a flat from Eros Builders Pvt Ltd which is expected to be completed by Dec 2013. The payment of said flat is to be made in 20 installments. However, due to some financial difficulties, after making four installments to Eros Builders Pvt Ltd, Rahim transferred his interest in the immovable property to Mr. Karan in January, 2013?

Will transfer of such interest to Mr. Karan attracts Service tax?

Further, Mr. Karan applied to Eros Builders Pvt Ltd in February 2013 for incorporating his name in the Company's Records. The Company accepted the request of Mr. Karan subject to the condition that he will have to pay Rs 35,000 as transfer charges. The said condition was accepted by Mr. Karan and he made the payment to Company in respect of transfer charges.

Will such transfer charges be subject to Service tax? *[2.105]*

Mega Exemption Notification 25-2012

Services related to construction sector (4&5/5)

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;

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.

ABATEMENT (N.N. 26/2012 AND VALUATION RULES)

SR	Service	Taxable	Condition
1	Goods Transport Agency (GTA) (any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage) Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.	25%	-No cenvat credit availed
2	Transport of goods by rail	30%	-Nil
3	Transport of passengers by rail	30%	-Nil
4	Transport of goods in a vessel from one port in India to another	50%	-No cenvat credit availed
5	Transport of passengers by air	40%	-Cenvat credit on inputs and CG is not availed
6	Supply of food or any other article of human consumption or any drink, in a restaurant / other premises	40%/ 60%	-Cenvat credit of goods in Ch. 1 to 22 not taken. Further, Rule 6 reversal required.

ABATEMENT (N.N. 26/2012 AND VALUATION RULES)

SR	Service	Taxable	Condition
7	Supply of food in convention centre, pandal, shamiana etc	70%	-As above
8	Accommodation in hotels, inns etc	60%	-Cenvat credit on inputs and CG is not availed
9	Renting of any motor vehicle designed to carry passengers	40%	-No cenvat credit availed
10	Package tour	25%	-As above -Bill incl. of charges for tour
11	Booking accommodation	10%	-No cenvat credit availed -Bill indicates so -NA if invoice only for service charges
12	Services other than 11 and 12 provided in relation to tour	40%	-No cenvat credit availed -Invoice is for gross amount
13	Financial leasing services including hire purchase	10%	-Nil
14	Services in relation to chit	70%	-No cenvat credit availed

ABATEMENT (N.N. 26/2012 AND VALUATION RULES)

SR	Service	Taxable	Condition
15	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly, except where entire consideration is received after issuance of completion certificate by the competent authority,- (a) for a residential unit satisfying both the following conditions, namely:– (i) the carpet area of the unit is less than 2000 square feet; and (ii) the amount charged for the unit is less than rupees one crore; (b) for other than the (a) above	 25% 30%	-(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004; -(ii) The value of land is included in the amount charged from the service receiver.‖.

Abatement (Refer N.N. 26/2012 and Valuation Rules)

SR	Service	Taxable	Condition
16	Works contracts entered into for execution of original works	40%	-Cenvat credit on inputs not availed
17	Works contracts entered into for maintenance or repair or reconditioning or restoration or servicing of any goods	70%	-Cenvat credit on inputs not availed
18	For other works contracts, not covered under sr. no. 16 and 17 , including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property,	60%	-Cenvat credit on inputs not availed

DEFINITIONS
FINANCE ACT, 1994 (AS AMENDED)

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. **"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;
4. **"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;
5. **"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.);

Definitions
Finance Act, 1994 (as amended)

(*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;

6. "**money**" means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any similar instrument but shall not include any currency that is held for its numismatic value;
7. "**negative list**" means the services which are listed in section 66D;
8. "**non-taxable territory**" means the territory which is outside the taxable territory;

Important Points in Reverse Charge Mechanism

- Governed by Notification No. 30/2012-ST dated 20.06.2012 w.e.f. 1.7.2012
- Liabilities of both the service provider and service receiver are independent of each other
- Reverse charge will not apply where the service receiver is located in non-taxable territory
- For three specified services provided by business entities being company, society, cooperative society, trust etc, reverse charge will not apply.
- Reverse charge will also not apply where the service recipient is any person or business entity not being a body corporate in case of three specified services
- Small scale benefit is available only to service provider (not to service receiver), if entitled

Important Points in Reverse Charge Mechanism

- Service receiver under reverse charge cannot avail exemption of Rs. 10 lakh under Notification No. 33/2012-ST dated 20.06.2012
- Valuation of services by services provider and service receiver can be on different principles, if permitted by law (e.g. works contract - Refer Notification No. 30/2012-ST, explanation II)
- Liability to pay Service Tax for ongoing contracts will be as per Point of Taxation Rules, 2011
- Rule 7 of POT: In case of reverse charge u/s 68(2) the date on which payment is made.
- Reverse charge shall not be applicable if provider of service was liable before 1.7.2012
- Service Tax will not be payable by service receiver under reverse charge, if service was provided prior to 1.7.2012, even if payment is made after 30.06.2012

Reverse Charge for Legal Services

Service Provider	*Service Receiver*
Individual Advocate / Firm / LLP	**Business entity with turnover > Rs 10 lakhs in preceding financial year
Arbitral Tribunal	**Business entity with turnover > Rs 10 lakh in previous financial year
** Business entity may be an individual also	

Reverse Charge Mechanism under various services

S. No.	Description of Service	Service provider	Service receiver
1.	Services provided by an insurance agent to any person carrying on insurance business	Nil	100%
2.	Services provided by a goods transport agency in respect of transportation of goods by road	Nil	100%
3.	Services provided by way of sponsorship	Nil	100%

Reverse Charge Mechanism under various services

S. No.	Description of Service	Service provider	Service receiver
4.	Services provided by an arbitral tribunal	Nil	100%
5.	Services provided by individual advocate or a firm of advocates by way of legal services	Nil	100%
5A.	in respect of services provided or agreed to be provided by a director of a company to the said company (w.e.f 7.08.2012)	Nil	100%
6.	Services provided by Government or local authority by way of support services excluding,- (1) renting of immovable property, (2) postal services (3) transport of goods / passengers (4) air craft or vessel	Nil	100%

Reverse Charge Mechanism under various services

S. No.	Description of Service	Service provider	Service receiver
7.	Hiring of Motor Vehicle (a) renting of a motor vehicle designed to carry passengers *on abated value* to any person not engaged in the similar line of business (b) renting of a motor vehicle designed to carry passengers *on non abated value* to any person who is not engaged in the similar line of business	Nil 60%	100 % 40%
8.	Services provided by way of supply of manpower for any purpose or security services (w.e.f 07.08.2012)	25%	75 %

Reverse Charge Mechanism under various services

Sr.No	Description of Service	Service provider	Service receiver
9.	Services provided in service portion in execution of works contract	50%	50%
10.	Services provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Nil	100%

Reverse Charge Obligations for three Specified Services

Service Provider	Service Receiver	Service Tax Payable by
Individual /HUF/ Partnership firm /AOP	Business entity – body corporate	Joint
Individual /HUF/ Partnership firm /AOP	Individual /HUF/ partnership firm /AOP	100 % by service provider
Business entity – Body Corporate / Company	Individual /HUF/ Partnership firm /AOP	100 % by service provider
Business entity – Body Corporate	Business entity – Body Corporate	100 % by service provider

Liability to pay tax under Reverse Charge by Service Receiver

Under Partial Reverse Charge (Proportional)

- Renting of motor vehicles
- Manpower supply & security services
- Works contracts

Under Full Reverse Charge (100%)

- Insurance related services by agents
- goods transportation by road
- sponsorship
- arbitral tribunals
- legal services
- company director's services
- services provided by Government / local authority excluding specified services
- services provided by persons located in non-taxable territory to persons located in taxable territory.

Point of Taxation Rules, 2011

Determination of point of Taxation

If Invoke is **issued** in 30 days from completion of services

Date of Payment or Date of Invoice

Whichever is earlier

If invoice is **NOT issued** in 30 days of completion of services

Date of Payment or Date of Completion

Whichever is earlier

Rule 4: Change in Effective rate of tax, POT

Service provided before change in rate	Service provided after change
• **Invoice issued before change but payment received after change:-** Date of invoice • **Payment received before change but invoice issued after change** Date of payment • **After change invoice issued and payment received** Date of invoice or payment whichever is earlier	• **Invoice issued before change but payment received after change:-** Date of Payment • **Payment received before change but invoice issued after change** Date of invoice • **After change invoice issued and payment received** Date of invoice or payment whichever is earlier

Thank You

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