

Service Tax Law

Bare Act/Rules/Notification

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Law/Rules/Notifications of Service tax law in India

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SERVICE TAX — STATUTORY PROVISIONS

SECTIONS 64 TO 72A OF THE FINANCE ACT, 1994 PROVIDING FOR SERVICE TAX)

SECTION 64. Extent, commencement and application. —

- (1) This Chapter extends to the whole of India except the State of Jammu and Kashmir.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- (3) It shall apply to taxable services provided on or after the commencement of this Chapter.

65B. Interpretations²¹.

In this Chapter, unless the context otherwise requires,-

- (1) "actionable claim"** shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882 (4 of 1882.);
- (2) "advertisement"** means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person;
- (3) "agriculture"** means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products;
- (4) "agricultural extension"** means application of scientific research and knowledge to agricultural practices through farmer education or training;
- (5) "agricultural produce"** means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;

²¹ Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

- (6) "Agricultural Produce Marketing Committee or Board"** means any committee or board constituted under a State law for the time being in force for the purpose of regulating the marketing of agricultural produce;
- (7) "aircraft"** has the meaning assigned to it in clause (1) of section 2 of the Aircraft Act, 1934 (22 of 1934.);
- (8) "airport"** has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994 (55 of 1994.);
- (9) "amusement facility"** means a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided;
- (10) "Appellate Tribunal"** means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962.);
- (11) "approved vocational education course"** means,-
- (i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 (52 of 1961.); or
 - (ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training or State Council for Vocational Training²², run by a person registered with the Directorate General of Employment and Training, Union Ministry of Labour and Employment; ~~or~~
 - ~~_(iii) a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India;²³~~
- (12) "assessee"** means a person liable to pay tax and includes his agent;
- (13) "associated enterprise"** shall have the meaning assigned to it in section 92A of the Income-tax Act, 1961 (43 of 1961.);

²² Applicable from the date of Presidential Assent i.e. 10 May 2013

²³ Applicable from the date of Presidential Assent i.e. 10 May 2013

- (14) "authorised dealer of foreign exchange"** shall have the meaning assigned to "authorised person" in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999.);
- (15) "betting or gambling"** means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring;
- (16) "Board"** means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963.);
- (17) "business entity"** means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession;
- (18) "Central Electricity Authority"** means the authority constituted under section 3 of the Electricity (Supply) Act, 1948 (54 of 1948.);
- (19) "Central Transmission Utility"** shall have the meaning assigned to it in clause (10) of section 2 of the Electricity Act, 2003 (36 of 2003.);
- (20) "courier agency"** means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles;
- (21) "customs station"** shall have the meaning assigned to it in clause (13) of section 2 of the Customs Act, 1962 (52 of 1962.);
- (22) "declared service"** means any activity carried out by a person for another person for consideration and declared as such under section 66E;
- (23) "electricity transmission or distribution utility"** means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003 (36 of 2003.); or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government;

(24) "entertainment event" means an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic film, circus, concerts, sporting event, pageants, award functions, dance, musical or theatrical performances including drama, ballets or any such event or programme;

(25) "goods" means every kind of movable property other than actionable claim and money; and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(26) "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;

(27) "India" means,-

- (a) the territory of the Union as referred to in clauses (2) and (3) of article 1 of the Constitution;
- (b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976.);
- (c) the seabed and the subsoil underlying the territorial waters;
- (d) the air space above its territory and territorial waters; and
- (e) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

(28) "information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment;

(29) "inland waterway" means national waterways as defined in clause (h) of section 2 of the Inland Waterways Authority of India Act, 1985 (82 of

1985.) or other waterway on any inland water, as defined in clause (b) of section 2 of the Inland Vessels Act, 1917 (1 of 1917.);

(30) "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charges in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has been utilised;

(31) "local authority" means-

- (a) a Panchayat as referred to in clause (d) of article 243 of the Constitution;
- (b) a Municipality as referred to in clause (e) of article 243P of the Constitution;
- (c) a Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006.);
- (e) a regional council or a district council constituted under the Sixth Schedule to the Constitution;
- (f) a development board constituted under article 371 of the Constitution;
- or
- (g) a regional council constituted under article 371A of the Constitution;

(32) "metered cab" means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 (59 of 1988.) and the rules made thereunder;

(33) "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;

(34) "negative list" means the services which are listed in section 66D;

(35) "non-taxable territory" means the territory which is outside the taxable territory;

(36) "notification" means notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly;

(37) "person" includes,-

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a society,
- (v) a limited liability partnership,
- (vi) a firm,
- (vii) an association of persons or body of individuals, whether incorporated or not,
- (viii) Government,
- (ix) a local authority, or
- (x) every artificial juridical person, not falling within any of the preceding sub-clauses;

(38) "port" has the meaning assigned to it in clause (q) of section 2 of the Major Port Trusts Act, 1963 (38 of 1963.) or in clause (4) of section 3 of the Indian Ports Act, 1908 (15 of 1908.);

(39) "prescribed" means prescribed by rules made under this Chapter;

(40) "process amounting to manufacture or production of goods" means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944) or the Medicinal and Toilet Preparations (Excise Duties) Act, 1955²⁴ or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force;

(41) "renting" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said

²⁴ Applicable from the date of Presidential Assent i.e. 10 May 2013

immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property;

(42) "Reserve Bank of India" means the bank established under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934.);

(43) "securities" has the meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956 (42 of 1956.);

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-

(a) an activity which constitutes merely,-

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

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

(ii) a transaction in money or actionable claim²⁵;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

²⁵ In the case of Future Gaming Solutions India Pvt Ltd 2013-TIOL-904-HC-Sikkim-ST, the High Court held that:

"70. In view of the facts and circumstances and the discussions, our conclusions are as under:-

(i) In the light of Sub-Section (1) to Section 65B read with Sub-Section (44) thereof lottery is excluded from the definition of 'service' being 'actionable claim...

(iii) The activity of the Petitioner comprising of promotions, organising, reselling or any other manner assisting in arranging of lottery tickets of the State Lotteries does not establish the relationship of a principal or an agent but rather that of a buyer and a seller and, on principal to principal basis in view of the nature of the transaction consisting of bulk purchases of lottery tickets by the Petitioner from the State Government on full payment on a discounted price as a natural business transaction and, other related features like there being no privity of contract between the State Government and the stockists, agents, resellers under the Petitioner"

Explanation 1 For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,-

- (A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or
- (B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- (C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 1A- For the purposes of this clause, transaction in money shall not include, any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged:".

Explanation 2.- For the purposes of this Chapter,-

- (a) an unincorporated association or a body of persons, as the case may be, 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.

Explanation 3.- 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;

(45) "Special Economic Zone" has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005.);

(46) "stage carriage" shall have the meaning assigned to it in clause (40) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988.);

(47) "State Electricity Board" means the Board constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948.);

(48) "State Transmission Utility" shall have the meaning assigned to it in clause (67) of section 2 of the Electricity Act, 2003 (36 of 2003.);

(49) "support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis;

(50) "tax" means service tax leviable under the provisions of this Chapter;

(51) "taxable service" means any service on which service tax is leviable under section 66B ;

(52) "taxable territory" means the territory to which the provisions of this Chapter apply;

(53) "vessel" has the meaning assigned to it in clause (z) of section 2 of the Major Port Trusts Act, 1963 (38 of 1963.);

(54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

(55) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 (1 of 1944.) or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.'

66B. Charge of service tax on and after Finance Act, 2012²⁶. There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

~~²⁷Explanation.— For the removal of doubts, it is hereby clarified that the references to the provisions of section 66 in Chapter V of the Finance Act, 1994(32 of 1994) or any other Act, for the purpose of levy and collection of service tax, shall be construed as references to the provisions of section 66B.~~

²⁸66BA.

~~(1) For the purpose of levy and collection of service tax, any reference to section 66 in the Finance Act, 1994 or any other Act for the time being in force, shall be construed as reference to section 66B thereof.~~

~~(2) The provisions of this section shall be deemed to have come into force on the 1st day of July, 2012~~

66C. Determination of place of provision of service²⁹.

- (1) The Central Government may, having regard to the nature and description of various services, by rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.
- (2) Any rule made under sub-section (1) shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory.

66D. Negative list of services³⁰. The negative list shall comprise of the following services, namely:--

- (a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—
 - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government³¹;

²⁶ Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

²⁷ ~~Omitted from the date of Presidential Assent i.e. 10 May 2013~~

²⁸ ~~Applicable from the date of Presidential Assent i.e. 10 May 2013~~

²⁹ Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

³⁰ Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

³¹ Only specific services such as speed post etc are liable to Service Tax. Thus, basic mail service, money order service, pension payment etc is not liable to Service Tax

- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) transport of goods or passengers; or
- (iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities;
- (b) services by the Reserve Bank of India³²;
- (c) services by a foreign diplomatic mission located in India³³;
- (d) services relating to agriculture or agricultural produce by way of —
 - (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or ~~seed~~³⁴ testing;
 - (ii) supply of farm labour;
 - (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market³⁵;
 - (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
 - (v) loading, unloading, packing, storage or warehousing of agricultural produce;
 - (vi) agricultural extension services³⁶;
 - (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;
- (e) trading of goods³⁷;
- (f) any process amounting to manufacture or production of goods³⁸;

³² Services provided **BY** RBI are exempt (and not **TO** RBI)

³³ This exemption seems to be given in view of Vienna Convention (which provides for grants immunity from local laws to the missions)

³⁴ ~~Omitted from the date of Presidential Assent i.e. 10 May 2013~~

³⁵ Such as shelling of paddy or cleaning of wheat

³⁶ As per Section 65B (4) "**agricultural extension**" means application of scientific research and knowledge to agricultural practices through farmer education or training

³⁷ Refer Entry No. 54 to List II (State List) in Seventh Schedule to Constitution of India which reads as "Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I"

³⁸ Refer Entry No. 84 to List I (Union List) in Seventh Schedule to Constitution of India which reads as "Duties of excise on tobacco and other goods manufactured or

- (g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television³⁹;
- (h) service by way of access to a road or a bridge on payment of toll charges⁴⁰;
- (i) betting, gambling or lottery⁴¹;
- (j) admission to entertainment events or access to amusement facilities⁴²;
- (k) transmission or distribution of electricity by an electricity transmission or distribution utility⁴³;
- (l) services by way of—
 - (i) pre-school education and education up to higher secondary school or equivalent;
 - (ii) education as a part of a curriculum for obtaining a qualification recognised by any law⁴⁴ for the time being in force;
 - (iii) education as a part of an approved vocational education course;
- (m) services by way of renting of residential dwelling for use as residence;
- (n) services by way of—
 - (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
 - (ii) *inter se* sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers;
- (o) service of transportation of passengers⁴⁵, with or without accompanied belongings, by—

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.*" Also, refer Entry 51 of State List.

³⁹ Refer Entry No. 55 to List II (State List) in Seventh Schedule to Constitution of India which reads as "*Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television*"

⁴⁰ Refer Entry No. 59 to List II (State List) in Seventh Schedule to Constitution of India which reads as "*Tolls*"

⁴¹ Refer Entry No. 34 to List II (State List) in Seventh Schedule to Constitution of India which reads as "*Betting and gambling*"

⁴² Refer Entry No. 62 to List II (State List) in Seventh Schedule to Constitution of India which reads as "*Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling*"

⁴³ Refer Entry No. 53 to List II (State List) in Seventh Schedule to Constitution of India which reads as "*Taxes on consumption or sale of electricity*"

⁴⁴ *The legislature has not used the expression "conferred by law" or "conferred by statute". Thus even if the certificate/degree/diploma/qualification is not the product of a statute but has approval of some kind in 'law', would be exempt [2013-TIOL-430-HC-DEL-ST]*

⁴⁵ Refer Entry No. 56 to List II (State List) in Seventh Schedule to Constitution of India which reads as "*Taxes on goods and passengers carried by road or on inland*

- (i) a stage carriage;
- (ii) railways in a class other than—
 - (A) first class; or
 - (B) an airconditioned coach;
- (iii) metro, monorail or tramway;
- (iv) inland waterways;
- (v) public transport, other than predominantly for tourism purpose, in a vessel, between places located in India; and
- (vi) metered cabs, radio taxis or auto rickshaws;
- (p) services by way of transportation of goods⁴⁶—
 - (i) by road except the services of—
 - (A) a goods transportation agency; or
 - (B) a courier agency;
 - (ii) by an aircraft or a vessel from a place outside India up to the customs station of clearance; or
 - (iii) by inland waterways;
- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

66E Declared Services⁴⁷. The following shall constitute declared services, namely:—

- (a) renting of immovable property⁴⁸;
- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

Explanation.— For the purposes of this clause,—

- (I) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time

waterways"

⁴⁶ Ibid

⁴⁷ Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

⁴⁸ Refer Entry No. 49 to List II (State List) in Seventh Schedule to Constitution of India which reads as "Taxes on lands and buildings". Whether collection of Service Tax on 'Renting of immovable property' amounts to "Taxes on lands and buildings" or is it on 'income' arising out of land and building has been long a subject matter of contention – Refer Tamil Nadu Kalyana Mandapam Assn. v. Union of India – 2006 (3) STR 260 (SC) and Home Solutions Retail (India) Ltd 2011 (24) STR 129 (Del)

being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:--

- (A) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972.); or
- (B) chartered engineer registered with the Institution of Engineers (India); or
- (C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (II) the expression "**construction**" includes additions, alterations, replacements or remodeling of any existing civil structure;
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right⁴⁹;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software⁵⁰;
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
- (f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;
- (g) activities in relation to delivery of goods on hire purchase or any system of payment by installments;
- (h) **service portion** in the execution of a works contract;
- (i) **service portion** in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.

66F Principles of interpretation of specified descriptions of services or bundled services⁵¹. (1) Unless otherwise specified, reference to a service

⁴⁹ IPR in normal trade parlance means copyright, patents, trademarks, designs, any other similar right to an intangible property. Also, there is no condition regarding the law under which an intellectual right should be registered. Further, **permanent** transfers do not come under the purview of this entry [Thermax Ltd 201-TIOL1092-CESTAT-MUM].

⁵⁰ It is a settled position of law that pre-packaged or canned software which is put on a media is in the nature of goods [Supreme Court judgment in case of Tata Consultancy Services vs State of Andhra Pradesh [2002(178) ELT22(SC) refers]. Sale of pre-packaged or canned software is, therefore, in the nature of sale of goods and is not covered in this entry. License to use software which does not involve the transfer of 'right to use' would neither be a transfer of title in goods nor a deemed sale of goods. Such an activity would fall in the ambit of definition of 'service' and also in the declared service category specified in clause (f) of section 66E [Refer Para 6.4.4 of Education Guide for details]

(herein referred to as main service) shall not include reference to a service which is used for providing main service⁵².

(2) 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 description⁵³.

(3) 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 character⁵⁴;

(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 tax⁵⁵.

Explanation.— For the purposes of sub-section (3), the expression "bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.';

⁵¹ Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

⁵² Provision of access to any road or bridge on payment of toll' is a specified entry in the negative list in section 66D of the Act. Any service provided in relation to collection of tolls or for security of a toll road would be in the nature of service used for providing such specified service and will not be entitled to the benefit of the negative list entry. [Refer Para 9. 1.1 of Education Guide for details]

⁵³ The services provided by a real estate agent are in the nature of intermediary services relating to immovable property. As per the Place of Provision of Service Rule, 2012, the place of provision of services provided in relation to immovable property is the location of the immovable property. However in terms of the rule 5 pertaining to services provided by an intermediary the place of provision of service is where the intermediary is located. Since Rule 5 provides a specific description of 'estate agent', the same shall prevail [Refer Para 9. 1.2 of Education Guide for details]

⁵⁴ Eg. A hotel provides a 4-D/3-N package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation [Refer Para 9.2.1 of Education Guide for details]

⁵⁵ Eg. A house is given on rent one floor of which is to be used as residence and the other for housing a printing press. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Therefore, if a single rent deed is executed it will be treated as a service comprising entirely of such service which attracts highest liability of service tax. In this case renting for use as residence is a negative list service while renting for non-residence use is chargeable to tax. Since the latter category attracts highest liability of service tax amongst the two services bundled together, the entire bundle would be treated as renting of commercial property [Refer Para 9.2.2 of Education Guide for details]

SECTION 67. Valuation of taxable services for charging service tax. —

(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, —

- (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;
- (ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;
- (iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) 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.

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

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation. — For the purposes of this section, —

(a) “consideration” includes any amount that is payable for the taxable services provided or to be provided⁵⁶;

⁵⁷(b)...

(c) “gross amount charged” includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called “Suspense

⁵⁶ **Notional interest** on security deposit taken for premises rented out on lease basis - No evidence led by revenue to show that such security deposit has influenced the rent received and it is only a presumption - Prima facie appellant has made a case in favour - 2013-TIOL-1068-CESTAT-MUM

⁵⁷ Omitted wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

67A. Date of determination of rate of tax, value of taxable service and rate of exchange⁵⁸. The rate of service tax, value of a taxable service and rate of exchange, if any, shall be the rate of service tax or value of a taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided.

Explanation.— For the purposes of this section, "rate of exchange" means the rate of exchange referred to in the *Explanation* to section 14 of the Customs Act, 1962 (52 of 1962.).

SECTION 68. Payment of service tax. — (1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66B⁵⁹ in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), in respect of such taxable services as may be notified⁶⁰ by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66B⁶¹ and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider⁶².

SECTION 69. Registration. —

(1) Every person liable to pay the service tax under this Chapter or the rules

⁵⁸ With effect from 28 May 2012 ie date of Presidential assent

⁵⁹ Substituted vide Service Tax (Removal of Difficulty) Order, 2012

⁶⁰ Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

⁶¹ Substituted vide Service Tax (Removal of Difficulty) Order, 2012

⁶² Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise

- (2) The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed.

SECTION 70. Furnishing of returns. —

- (1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.
- (2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

SECTION 71. Scheme for submission of Returns through Service Tax Preparers. — (1) Without prejudice to the provisions of section 70, the Board may, by notification in the Official Gazette, frame a Scheme for the purposes of enabling any person or class of persons to prepare and furnish a return under section 70, and authorise a Service Tax Return Preparer to act as such under the Scheme.

- (2) A Service Tax Return Preparer shall assist the person or class of persons to prepare and furnish the return in such manner as may be specified in the Scheme framed under this section.
- (3) For the purposes of this section, —
 - (a) "Service Tax Return Preparer" means any individual, who has been authorised to act as a Service Tax Return Preparer under the Scheme framed under this section;
 - (b) "person or class of persons" means such person, as may be specified in the Scheme, who is required to furnish a return required to be filed under section 70.
- (4) The Scheme framed by the Board under this section may provide for the following, namely :—

- (a) the manner in which and the period for which the Service Tax Return Preparer shall be authorised under sub-section (1);
- (b) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Service Tax Return Preparer;
- (c) the code of conduct for the Service Tax Return Preparer;
- (d) the duties and obligations of the Service Tax Return Preparer;
- (e) the circumstances under which the authorisation given to a Service Tax Return Preparer may be withdrawn;
- (f) any other matter which is required to be, or may be, specified by the Scheme for the purposes of this section.

SECTION 72. Best judgment assessment. — If any person, liable to pay service tax, —

- (a) fails to furnish the return under section 70;
- (b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder,

the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

72A Special audit⁶³.

- (1) If the Commissioner of Central Excise, has reasons to believe that any person liable to pay service tax (herein referred to as "such person"),
 - (i) has failed to declare or determine the value of a taxable service correctly;
 - or
 - (ii) has availed and utilised credit of duty or tax paid-
 - (a) which is not within the normal limits having regard to the nature of taxable service provided, the extent of capital goods used or the type of inputs or input services used, or any other relevant factors as he may deem appropriate; or

⁶³ With effect from 28 May 2012

(b) by means of fraud, collusion, or any wilful misstatement or suppression of facts; or

(iii) has operations spread out in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts from the registered premises falling under the jurisdiction of the said Commissioner, he may direct such person to get his accounts audited by a chartered accountant or cost accountant nominated by him, to the extent and for the period as may be specified by the Commissioner.

- (2) The chartered accountant or cost accountant referred to in sub-section (1) shall, within the period specified by the said Commissioner, submit a report duly signed and certified by him to the said Commissioner mentioning therein such other particulars as may be specified by him.
- (3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of such person have been audited under any other law for the time being in force.
- (4) The person liable to pay tax shall be given an opportunity of being heard in respect of any material gathered on the basis of the audit under sub-section (1) and proposed to be utilised in any proceeding under the provisions of this Chapter or rules made thereunder.

Explanation.— For the purposes of this section,—

- (i) "chartered accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949(38 of 1949.);
- (ii) "cost accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959(23 of 1959.).'

⁶⁴ With effect from 28 May 2012

PLACE OF PROVISION OF SERVICES RULES, 2012

1. Short title, extent and commencement

- (1) These rules may be called the Place of Provision of Services Rules, 2012.
- (2) They shall come into force on 1st day of July, 2012.

2. Definitions

In these rules, unless the context otherwise requires,-

- (a) "Act" means the Finance Act, 1994 (32 of 1994);
- (b) "account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;
- (c) "banking company" has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);
- (d) "continuous journey" means a journey for which a single or more than one ticket or invoice is issued at the same time, either by one service provider or through one agent acting on behalf of more than one service provider, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued;
- (e) "financial institution" has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);
- (f) **"intermediary"** means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a **provision of a service** (hereinafter called the 'main' service) between two or more persons, but does not include a person who provides the main service on his account.;
- (g) "leg of journey" means a part of the journey that begins where passengers embark or disembark the conveyance, or where it is stopped to allow for its servicing or refueling, and ends where it is next stopped for any of those purposes;
- (h) "location of the service provider" means-
 - (a). where the service provider has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;

- (b). where the service provider is not covered under sub-clause (a):
 - (i) the location of his business establishment; or
 - (ii) where the services are provided from a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or
 - (iii) where services are provided from more than one establishment, whether business or fixed, the establishment most directly concerned with the provision of the service; and
 - (iv) in the absence of such places, the usual place of residence of the service provider.
- (i) "location of the service receiver" means:-
 - (a). where the recipient of service has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;
 - (b). where the recipient of service is not covered under sub-clause (a):
 - (i) the location of his business establishment; or
 - (ii) where services are used at a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or
 - (iii) where services are used at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service; and
 - (iv) in the absence of such places, the usual place of residence of the recipient of service.

Explanation:-. For the purposes of clauses (h) and (i), "usual place of residence" in case of a body corporate means the place where it is incorporated or otherwise legally constituted.

Explanation 2:-. For the purpose of clause (i), in the case of telecommunication service, the usual place of residence shall be the billing address.

- (j) "means of transport" means any conveyance designed to transport goods or persons from one place to another;
- (k) "non-banking financial company" means-
 - (i) a financial institution which is a company; or

- (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or
- (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette specify;
- (l) "online information and database access or retrieval services" means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;
- (m) "person liable to pay tax" shall mean the person liable to pay service tax under section 68 of the Act or under sub-clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994;
- (n) "provided" includes the expression "to be provided";
- (o) "received" includes the expression "to be received";
- (p) "registration" means the registration under rule 4 of the Service Tax Rules, 1994;
- (q) "telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means but shall not include broadcasting services.
- (r) words and expressions used in these rules and not defined, but defined in the Act, shall have the meanings respectively assigned to them in the Act.

3. Place of provision generally¹¹⁹

The place of provision of a service shall be the location of the recipient of service:

Provided that in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

¹¹⁹ Advance Ruling - Marketing and sales support in India to a firm in China and USA is covered under Rule 3 and amounts to export of services [[2013-TIOL-03-ARA-ST1](#)]

4. Place of provision of performance based services

The place of provision of following services shall be the location where the services are actually performed, namely:-

- (a) services provided in respect of **goods** that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service¹²⁰:

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:

Provided further that this sub-rule shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or reengineering for re-export, subject to conditions as may be specified in this regard.

- (b) services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.

5. Place of provision of services relating to immovable property

The place of provision of services provided directly in relation to an immovable property, including services provided in this regard by experts and estate agents, provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever, name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

¹²⁰ Examples of such services are repair, reconditioning, or any other work on goods (not amounting to manufacture), storage and warehousing, courier service, cargo handling service (loading, unloading, packing or unpacking of cargo), technical testing/ inspection/ certification/ analysis of goods, dry cleaning etc. – Para 5.4.1 of Education Guide

6. Place of provision of services relating to events

The place of provision of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held.

7. Place of provision of services provided at more than one location

Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided.

8. Place of provision of services where provider and recipient are located in taxable territory

Place of provision of a service, where the location of the provider of service as well as that of the recipient of service is in the taxable territory, shall be the location of the recipient of service.

9. Place of provision of specified services

The place of provision of following services shall be the location of the service provider:-

- (a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;
- (b) Online information and database access or retrieval services;
- (c) Intermediary services;
- (d) Service consisting of hiring of means of transport, upto a period of one month.

10. Place of provision of goods transportation services

The place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods:

Provided that the place of provision of services of goods transportation agency shall be the location of the person liable to pay tax.

11. Place of provision of passenger transportation service

The place of provision in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

12. Place of provision of services provided on board a conveyance

Place of provision of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

13. Powers to notify description of services or circumstances for certain purposes

In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.

14. Order of application of rules

Notwithstanding anything stated in any rule, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.

[F.No. 334 /1/ 2012-TRU]

SERVICE TAX RULES, 1994

NOTIFICATION NO. 2/94 - ST, DATED JUNE 28, 1994, AS AMENDED

In exercise of the powers conferred by sub-section (1), read with sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules for the purpose of the assessment and collection of service tax, namely: -

1. SHORT TITLE AND COMMENCEMENT

(1) These rules may be called the Service Tax Rules, 1994.

(2) They shall come into force on the 1st day of July, 1994.

2. DEFINITIONS

(1) In these rules, unless the context otherwise requires, -

(a) "Act" means the Finance Act, 1994 (32 of 1994);

(b) "assessment" includes self-assessment of service tax by the assessee, reassessment, provisional assessment, best judgment assessment and any order of assessment in which the tax assessed is nil; determination of the interest on the tax assessed or reassessed;

"(bb) "banking company" has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);

(bc) "body corporate" has the meaning assigned to it in clause (7) of section 2 of the Companies Act, 1956 (1 of 1956);

(bd) "financial institution" has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);"

(c) "Form" means a Form appended to these rules;

(c1a) goods carriage" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(ca) "Half-year" means the period between 1st April to 30th September or 1st October-to 31st March of a financial year;

(cb) "input service distributor" has the meaning assigned to it in clause (m) of Rule 2 of the CENVAT Credit Rules, 2004;

“(cba) “insurance agent” has the meaning assigned to it in clause (10) of section 2 of the Insurance Act, 1938 (4 of 1938);”

(cc) “large taxpayer” has the meaning assigned to it in the Central Excise Rules, 2002.

“(cca) “legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority;

(ccb) “life insurance business” has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);

(ccc) “non banking financial company” has the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(cd) “partnership firm” includes a limited liability partnership;

(d) person liable for paying service tax, -

(i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-

(A) in relation to service provided or agreed to be provided by an insurance agent to any person carrying on the insurance business, the recipient of the service.

(B) in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(III) any co-operative society established by or under any law;

(IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(V) any body corporate established, by or under any law; or

(VI) any partnership firm whether registered or not under any law including association of persons;

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.

(C) in relation to service provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory, the recipient of such service;

(D) in relation to service provided or agreed to be provided by,-

(I) an arbitral tribunal, or

(II) an individual advocate or a firm of advocates by way of legal services, to any business entity located in the taxable territory, the recipient of such service;

(E) in relation to support services provided or agreed to be provided by Government or local authority except,-

(a) renting of immovable property, and

(b) services specified sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994,

to any business entity located in the taxable territory, the recipient of such service;

(EE) in relation to service provided or agreed to be provided by a director of a company to the said company, the recipient of such service¹⁰⁷

(F) in relation to services provided or agreed to be provided by way of :-

(a) renting of a motor vehicle designed to carry passengers, to any person who is not engaged in a similar business; or

¹⁰⁷ Not. No. 46/2012-ST dated 7 August 2012

(b) supply of manpower for any purpose or security services¹⁰⁸; or

(c) service portion in execution of a works contract-

by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as a body corporate, located in the taxable territory, both the service provider and the service recipient to the extent notified under sub-section (2) of section 68 of the Act, for each respectively.

(G) in relation to any taxable service provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory, the recipient of such service;

(ii) in a case other than sub-clause (i), means the provider of service.

(dd) "place of provision" shall be the place as determined by Place of Provision of Services Rules 2012;'

(f) "renting of immovable property" means any service provided or agreed to be provided by renting of immovable property or any other service in relation to such renting.

(fa) "security services" means services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity¹⁰⁹

(g) "supply of manpower" means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control.'

(e) "quarter" means the period between 1st January to 31st March or 1st April to 30th June or 1st July to 30th September or 1st October to 31st December of a financial year.

(2) All words and expressions used but not defined in these rules but defined in the Central Excise Act, 1944 (1 of 1944), and the Rules made there under shall have the meanings assigned to them in that Act and rules.

¹⁰⁸ *Ibid*

¹⁰⁹ Not. No. 46/2012-ST dated 7 August 2012

3. APPOINTMENT OF OFFICERS

The Central Board of Excise and Customs may appoint such Central Excise Officers as it thinks fit for exercising the powers under Chapter V of the Act within such local limits as it may assign to them as also specify the taxable service in relation to which any such Central Excise Officer shall exercise his powers.

4. REGISTRATION

(1) Every person liable for paying the service tax shall make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within a period of thirty days from the date on which the service tax under section 66B of the Finance Act, 1994 (32 of 1994) is levied:

Provided that where a person commences the business of providing a taxable service after such service has been levied, he shall make an application for registration within a period of thirty days from the date of such commencement:

Provided further that a person liable for paying the service tax in the case of taxable services referred to in sub-section (4) or sub-section (5) of section 66 of the Finance Act, 1994 (32 of 1994) may make an application for registration on or before the 31st day of December, 1998:

Provided also that a person liable for paying the service tax in the case of taxable services referred to in sub-clause (zzp) of clause (105) of section 65 of the Act may make an application for registration on or before the 31st day of March, 2005.

(2) Where a person, liable for paying service tax on a taxable service,

- (i) provides such service from more than one premises or offices; or
- (ii) receives such service in more than one premises or offices; or
- (iii) is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable for paying service tax, and has centralised billing system or centralised accounting system in respect of such service, and such centralised billing or centralised accounting systems are located in one or more premises, he may, at his option, register such premises or

offices from where centralised billing or centralised accounting systems are located¹¹⁰.

- (3) The registration under sub-rule (2), shall be granted by the Commissioner of Central Excise in whose jurisdiction the premises or offices, from where centralised billing or accounting is done, are located:

Provided that nothing contained in this sub-rule shall have any effect on the registration granted to the premises or offices having such centralised billing or centralised accounting systems, prior to the 2nd day of November, 2006.

- (3A) Where an assessee is providing a taxable service from more than one premises or offices, and does not have any centralized billing systems or centralized accounting systems, as the case may be, he shall make separate applications for registration in respect of each of such premises or offices to the jurisdictional Superintendent of Central Excise.

- (4) Where an assessee is providing more than one taxable service, he may make a single application, mentioning therein all the taxable services provided by him, to the concerned Superintendent of Central Excise.

- (5) The Superintendent of Central Excise shall after due verification of the application form or an intimation under sub-rule (5A), as the case may be, grant a certificate of registration in Form ST-2 within seven days from the date of receipt of the application or the intimation. If the registration certificate is not granted within the said period, the registration applied for shall be deemed to have been granted.

- (5A) Where there is a change in any information or details furnished by an assessee in Form ST-1 at the time of obtaining registration or he intends to furnish any additional information or detail, such change or information or details shall be intimated, in writing, by the assessee, to 112 Service Tax in India the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, within a period of thirty days of such change.

¹¹⁰ Argument that respondent is a service receiver and hence is not eligible for centralized registration is meaningless and defeats the objective of registration **2013-TIOL-990-CESTAT-MUM**

- (6) Where a registered assessee transfers his business to another person, the transferee shall obtain a fresh certificate of registration.
- (7) Every registered assessee, who ceases to provide the taxable service for which he is registered, shall surrender his registration certificate immediately to the Superintendent of Central Excise.
- (8) On receipt of the certificate under sub-rule (7), 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 thereunder, and thereupon cancel the registration certificate.

4A. TAXABLE SERVICE TO BE PROVIDED OR CREDIT TO BE DISTRIBUTED ON INVOICE, BILL OR CHALLAN

- (1) Every person providing taxable service, not later than thirty days 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, as the case may be, a challan signed by such person or a person authorised by him in respect of such taxable service provided or agreed to be provided and such invoice, bill or, as the case may be, challan 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 and value of taxable service provided or agreed to be provided; and (iv) the service tax payable thereon:

Provided that in case the provider of taxable service is a banking company or a financial institution including a non-banking financial company, providing service to any person, an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered, and whether or not containing address of the person receiving taxable service but containing other information in such documents as required under this sub-rule:

Provided further that in case the provider of taxable service is a goods transport agency, providing service to any person, in relation to transport of goods by road in a goods carriage, an invoice, a bill or, as the case may be, a challan shall

include any document, by whatever name called, which shall contain the details of the consignment note number and date, gross weight of the consignment and also contain other information as required under this sub-rule:

Provided also that in case of continuous supply of service, every person providing such taxable service shall issue an invoice, bill or challan, as the case may be, within thirty days of the date when each event specified in the contract, which requires the service receiver to make any payment to the service provider is completed:

Provided also that in case the provider of taxable service is a banking company or a financial institution including a non-banking financial company, providing service to any person, in relation to banking and other financial services, the period within which the invoice, bill or challan, as the case may be is to be issued, shall be forty five days

Provided also that in case the provider of taxable service is providing the service of transport of passenger, an invoice, a bill or as the case may be, challan shall include ticket in any form by whatever name called and whether or not containing registration number of the service provider, classification of the service received and address of the service receiver but containing other information in such documents as required under this sub-rule.

Provided also that wherever the provider of taxable service receives an amount upto rupees one thousand in excess of the amount indicated in the invoice and the provider of taxable service has opted to determine the point of taxation based on the option as given in Point of Taxation Rules, 2011, no invoice is required to be issued to such extent

(2) Every input service distributor distributing credit of taxable services shall, in respect of credit distributed, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorised by him, for each of the recipient of the credit distributed, and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely: -

- (i) the name, address and registration number of the person providing input services and the serial number and date of invoice, bill, or as the case may be, challan issued under sub-rule (1);
- (ii) the name and address of the said input service distributor;

(iii) the name and address of the recipient of the credit distributed;

(iv) the amount of the credit distributed:

Provided that in case the input service distributor is an office of a banking company or a financial institution including a non-banking financial company, providing service to any person, , an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered but containing other information in such documents as required under this sub-rule.

4B. ISSUE OF CONSIGNMENT NOTE

Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the recipient of service:

Provided that where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted under section 93 of the Act, the goods transport agency shall not be required to issue the consignment note.

Explanation. - For the purposes of this rule and the second proviso to rule 4A, "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.

5. RECORDS

- (1) The records including computerised data as maintained by an assessee in accordance with the various laws in force from time to time shall be acceptable.
- (2) Every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time or the 31st day of January, 2008, whichever is later, a list in duplicate, of
 - (i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,

- (a) providing of any service,;
 - (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.
- (ii) all other financial records maintained by him in the normal course of business.
- (3) All such records shall be preserved at least for a period of five years immediately after the financial year to which such records pertain.

111 5A. ACCESS TO A REGISTERED PREMISES

- (1) An officer authorised by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
- (2) Every assessee shall, on demand, make available to the officer authorised under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, within a reasonable time not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by such officer or the audit party, as the case may be,-
- (i) the records as mentioned in sub-rule (2) of rule 5;
 - (ii) trial balance or its equivalent; and
 - (iii) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961), for the scrutiny of the officer or audit party, as the case may be

¹¹¹ CAG has no power to audit records of a private assessee: there is no provision in Chapter V of the Finance Act, 1994 or for that matter in the CAG Act which empowers the CAG to audit the accounts of an assessee which is a nongovernment company, not in receipt of aid or assistance from any government or government entity- Since conflicting decision matter referred to Division Bench - SKP Securities Ltd Infinity Infotech Parks Ltd 2013-TIOL-38-HC-KOL-ST

6. PAYMENT OF SERVICE TAX

(1) The service tax shall be paid to the credit of the Central Government,-

- (i) by the **6th day of the month**, if the duty is deposited electronically through internet banking; and
- (ii) by the **5th day of the month**, in any other case, immediately following the calendar month in which the service is deemed to be provided as per the rules framed in this regard:

Provided that where the assessee is an **individual or proprietary firm or partnership firm**, the service tax shall be paid to the credit of the Central Government by the 6th day of the month if the duty is deposited electronically through internet banking, or, in any other case, the 5th day of the month, as the case may be, immediately following the **quarter** in which the service is deemed to be provided as per the rules framed in this regard:

Provided further that the service tax on the service deemed to be provided in the month of **March**, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the **31st day of March** of the calendar year.

Provided also that in case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the **previous financial year**, the service provider shall have the option to pay tax on taxable services provided or agreed to be to be provided by him up to a **total of rupees fifty lakhs** in the current financial year, by the dates specified in this sub-rule with respect to the month or quarter, as the case may be, in which payment is received

(1A) Without prejudice to the provisions contained in sub-rule (1), every person liable to pay service tax, may, on his own volition, pay an amount as service tax in advance, to the credit of the Central Government and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period:

Provided that the assessee shall,-

- (i) intimate the details of the amount of service tax paid in advance, to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such payment; and
 - (ii) indicate the details of the advance payment made, and its adjustment, if any in the subsequent return to be filed under section 70 of the Act.
- (2) The assessee shall deposit the service tax liable to be paid by him with the bank designated by the Central Board of Excise and Customs for this purpose in Form G.A.R.-7 or in any other manner prescribed by the Central Board of Excise and Customs:

Provided that where an assessee has paid a total service tax of rupees ~~ten lakh~~ one lakh¹¹² or more including the amount paid by utilisation of CENVAT credit, in the preceding financial year, he shall deposit the service tax liable to be paid by him electronically, through internet banking.

- (2A) For the purpose this rule, if the assessee deposits the service tax by cheque, the date of presentation of cheque to the bank designated by the Central Board of Excise and Customs for this purpose shall be deemed to be the date on which service tax has been paid subject to realization of that cheque.
- (3) 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 the contract, the assessee may take 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.;
- (4) Where an assessee is, for any reason, **unable to correctly estimate**, on the date of deposit, the actual amount payable for any particular month or quarter, as the case may be, he may make a request in writing to the

¹¹² Vide Not. No. 16/2013-ST dated 22.11.2013

Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, giving reasons for payment of service tax on provisional basis and the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, on receipt of such request, may allow payment of service tax on provisional basis on such value of taxable service as may be specified by him and the provisions of the Central Excise (No. 2) Rules, 2001, relating to provisional assessment except so far as they relate to execution of bond, shall, so far as may be, apply to such assessment.

(4A) Notwithstanding anything contained in sub-rule (4), where an assessee has paid to the credit of Central Government any amount **in excess** of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may **adjust** such excess amount paid by him against his service tax liability for the **succeeding month or quarter**, as the case may be.

(4B) The adjustment of excess amount paid, under sub-rule (4A), 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**.

(4C) Notwithstanding anything contained in sub-rules (4), (4A) and (4B), where the person liable to pay service tax in respect of services of **renting of immovable property** has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, on account of non-availment of deduction of property tax paid in terms of notification No. **29/2012-Service Tax**, dated the 20th June, 2012, from the gross amount charged for renting of the immovable property for the said period at the time of payment of service tax, the assessee may adjust such excess amount paid by him against his service tax liability within one year from the date of payment of such property tax and the details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of fifteen days from the date of such adjustment.”;

- (5) Where an assessee under sub-rule (4) requests for a **provisional assessment** he shall file a statement giving details of the difference between the service tax deposited and the service tax liable to be paid for each month in a memorandum in Form ST-3A accompanying the quarterly or half - yearly return, as the case may be.
- (6) Where the assessee submits a memorandum in **Form ST-3A** under sub-rule (5), it shall be lawful for the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, to complete the assessment, wherever he deems it necessary, after calling such further documents or records as he may consider necessary and proper in the circumstances of the case.

Explanation. - For the purposes of this rule and rule 7, "Form G.A.R.-7" means a memorandum or challan referred to in rule 26 of the Central Government Account (Receipts and Payments) Rules, 1983.

- (6A) Where an amount of service tax payable has been self-assessed under sub-section (1) of section 70 of the Act, but not paid, either in full or part, the same, shall be recoverable alongwith interest in the manner prescribed under section 87 of the Act.
- (7) The person liable for paying the service tax in relation of booking of tickets for travel by air by an **air travel agent**, shall have the option, to pay an amount calculated at the rate of **0.6% of the basic fare** in the case of domestic bookings, and at the rate of **1.2% of the basic fare** in the case of international bookings, of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66B of Chapter V of the Act and 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.

Explanation. - 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.

- (7A) **An insurer** carrying on **life insurance** business shall have the option to pay tax:

- (i) on the gross premium 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;
- (ii) in all other cases, **3 per cent.** of the premium charged from policy holder in the first year and **1.5 per cent.** of the premium charged from policy holder in the subsequent years:

towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66B of Chapter V of the said Act.

Provided that such option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance.

(7B) The person liable to pay service tax in relation to **purchase or sale of foreign currency, including money changing**, shall have the option to pay an amount calculated at the following rate towards discharge of his service tax liability instead of paying service tax at the rate specified in section 66B of Chapter V of the Act, namely:

- (a) **0.12 percent.** of the gross amount of currency exchanged for an amount upto rupees 100,000, subject to the minimum amount of rupees 30; and
- (b) **rupees 120 and 0.06 percent.** of the gross amount of currency exchanged for an amount of rupees exceeding 100,000 and upto rupees 10,00,000; and
- (c) **rupees 660 and 0.012 percent.** of the gross amount of currency exchanged for an amount of rupees exceeding 10,00,000, subject to **maximum amount of rupees 6000:**

Provided that the person providing the service shall exercise such option for the financial year and such option shall not be withdrawn during the remaining part of that financial year.

(7C) The **distributor or selling agent**, liable to pay service tax for the taxable service of promotion, marketing, organising or in any other manner assisting in organising **lottery**, shall have the option to pay an amount at the rate specified in column (2) of the Table given below, subject to the conditions specified in the corresponding entry in column (3) of the said Table, instead of paying service tax at the rate specified in section 66B of Chapter V of the said Act:

Sl.No.	Rate	Condition
1	2	3
1	Rs 7000 on every Rs 10 lakh (or part of Rs 10 lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is more than 80%
2	Rs 11000 on every Rs 10 lakh (or part of Rs 10 lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is less than 80%

Provided that in case of online lottery, the aggregate face value of lottery tickets for the purpose of this sub-rule shall be taken as the aggregate value of tickets sold, and service tax shall be calculated in the manner specified in the said Table.

Provided further that the distributor or selling agent shall exercise such option within a period of one month of the beginning of each financial year and such option shall not be withdrawn during the remaining part of the financial year.

Provided also that the distributor or selling agent shall exercise such option for financial year 2010-11, within a period of one month of the publication of this sub-rule in the Official Gazette or, in the case of new service provider, within one month of providing of such service and such option shall not be withdrawn during the remaining part of that financial year.

Explanation.- For the purpose of this sub-rule-

- (i) "distributor or selling agent" shall have the meaning assigned to them in clause (c) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs published in the Gazette of India, Part-II, Section 3, Sub-section (i) vide number G.S.R. 278(E) dated 1st April, 2010 and shall include distributor or selling agent authorised by the lottery organising State.
- (ii) "draw" shall have the meaning assigned to it in clause (d) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs published in the Gazette of India, Part-II, Section 3, Sub-section (i) vide number G.S.R. 278(E) dated 1st April, 2010.

- (iii) **"online lottery"** shall have the meaning assigned to it in clause (e) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs published in the Gazette of India, Part-II, Section 3, Sub-section (i) vide number G.S.R. 278(E) dated 1st April, 2010.
- (iv) "organising state" shall have the meaning assigned to it in clause (f) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs published in the Gazette of India, Part-II, Section 3, Sub-section (i) vide number G.S.R. 278(E) dated 1st April, 2010.

6A. Export of services.-

- (1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-
- (a) the provider of service is located in the taxable territory ,
 - (b) the recipient of service is located outside India,
 - (c) the service is not a service specified in the section 66D of the Act,
 - (d) the place of provision of the service is outside India,
 - (e) the payment for such service **has been received** by the provider of service in convertible foreign exchange, and
 - (f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of section 65B of the Act
- (2) Where any service is exported, the Central Government may, by notification, grant **rebate of service tax or duty** paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.

7. RETURNS

- (1) Every assessee shall submit a half-yearly return in Form 'ST-3' or 'ST-3A', as the case may be, along with a copy of the Form G.A.R.-7, in triplicate for the months covered in the half-yearly return.

- (2) Every assessee shall submit the half - yearly return by the 25th of the month following the particular half-year.

Provided that the Form 'ST-3' required to be submitted by the 25th day of October, 2012 shall cover the period between 1st April to 30th June, 2012 only.¹¹³

Provided further that the Form ST- 3 for the period between the 1st day of July 2012 to the 30th day of September 2012, shall be submitted by the 25th day of March, 2013¹¹⁴

- (3) Every assessee shall submit the half yearly return electronically
- (4) The Central Board of Excise and Customs may, by an order extend the period referred to in sub-rule (2) by such period as deemed necessary under circumstances of special nature to be specified in such order.

7A. RETURNS

IN CASE OF TAXABLE SERVICE PROVIDED BY GOODS TRANSPORT OPERATORS AND CLEARING AND FORWARDING AGENTS

Notwithstanding anything contained in rule 7, an assessee, in case of service provided by -

- (a) goods transport operator for the period commencing on and from the 16th day of November, 1997 to 2nd day of June, 1998; and
- (b) clearing and forwarding agents for the period commencing on and from the 16th day of July, 1997 to 16th day of October, 1998,

shall furnish a return within a period of six months from the 13th day of May, 2003, in Form ST-3B alongwith copy of Form G.A.R.-7 in triplicate, failing which the interest and penal consequences as provided in the Act shall follow.

7B. REVISION OF RETURN

An assessee may submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of **ninety days** from the date of submission of the return under rule 7.

¹¹³ Not. No. 47/2012-ST dated 28 September 2012

¹¹⁴ Inserted Vide Not. No. 1/2013-ST dated 22 February 2013

Explanation - 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.

7C. AMOUNT TO BE PAID FOR DELAY IN FURNISHING THE PRESCRIBED RETURN

Where the return prescribed under rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Central Government, for the period of delay of-

- (i) **fifteen days** from the date prescribed for submission of such return, an amount of **five hundred rupees**;
- (ii) beyond fifteen days but not later than **thirty days** from the date prescribed for submission of such return, an amount of **one thousand rupees**; and
- (iii) **beyond thirty days** from the date prescribed for submission of such return an amount of **one thousand rupees plus one hundred rupees** for every day from the thirty first day till the date of furnishing the said return:

Provided that the total amount payable in terms of this rule, for delayed submission of return, shall **not exceed the amount specified in section 70 of the Act**:

Provided further that where the assessee has paid the amount as prescribed under this rule for delayed submission of return, the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded:

Provided also that 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**¹¹⁵.

Explanation - It is hereby declared that any pending proceedings under section 77 for delayed submission or non-submission of return that has been initiated before the date on which the Finance Bill, 2007 receives the assent of the President, shall also be deemed to be concluded if the amount specified for delay

¹¹⁵ **No penalty for delayed NIL return– Suchak Mrkt. Pvt Ltd 2013-TIOL-63-CESTAT-KOL**

in furnishing the return is paid by the assessee within sixty days from the date of assent to the said Finance Bill.

8. FORM OF APPEALS TO COMMISSIONER OF CENTRAL EXCISE (APPEALS)

- (1) An appeal under section 85 of the Act to the Commissioner of Central Excise (Appeals) shall be in Form ST-4.
- (2) The appeal shall be filed in duplicate and shall be accompanied by a copy of order appealed against.

9. FORM OF APPEALS TO APPELLATE TRIBUNAL

- (1) An appeal under sub-section (1) of section 86 of the Act to the Appellate Tribunal shall be made in Form ST-5 in quadruplicate and shall be accompanied by a copy of the Order appealed against (one of which shall be a certified copy).
- (2) An appeal under sub-section (2) of section 86 of the Act to the Appellate Tribunal shall be made in Form ST-7 in quadruplicate and shall be accompanied by a copy of the order of the Commissioner of Central Excise (one of which shall be a certified copy) and a copy of the order passed by the Central Board of Excise and Customs directing the Commissioner of Central Excise to apply to the Appellate Tribunal.
- (2A) An appeal under sub-section (2A) of section 86 of the Act to the Appellate Tribunal shall be made in Form ST-7 in quadruplicate and shall be accompanied by a copy of the order of the Commissioner of Central Excise (Appeals) (one of which shall be a certified copy) and a copy of the order passed by the Commissioner of Central Excise directing the Assistant Commissioner of Central Excise or as the case may be, the Deputy Commissioner of Central Excise to apply to the Appellate Tribunal; and
- (3) A Memorandum of cross-objections under sub-section (4) of section 86 of the Act, shall be made in Form ST-6 in quadruplicate.

10. Procedure and facilities for large taxpayer

Notwithstanding anything contained in these rules, the following shall apply to a large taxpayer, -

- (1) A large taxpayer shall submit the returns, as prescribed under these rules, for each of the registered premises.

Explanation. - A large taxpayer who has obtained a centralized registration under sub-rule (2) of Rule 4, shall submit a consolidated return for all such premises.

- (2) A large taxpayer, on demand, may be required to make available the financial, stores and CENVAT credit records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification, as may be necessary.
- (3) A large taxpayer may, with intimation of at least thirty days in advance, opt out to be a large taxpayer from the first day of the following financial year.
- (4) Any notice issued but not adjudged by any of the Central Excise Officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise Officers of the said unit.
- (5) Provisions of these rules, insofar as they are not inconsistent with the provisions of this rule shall *mutatis mutandis* apply in case of a large taxpayer.

SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006

[Notification No. 12/2006-S.T., dated 19-4-2006]

In exercise of the powers conferred by clause (aa) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely :-

1. Short title and commencement. —

- (1) These rules may be called the Service Tax (Determination of Value) Rules, 2006.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions

In these rules, unless the context otherwise requires, -

- (a) "Act" means the Finance Act, 1994 (32 of 1994);
- (b) "section" means the section of the Act;
- (c) "value" shall have the meaning assigned to it in section 67;
- (d) words and expressions used in these rules and not defined but defined in the Act shall have the meaning respectively assigned to them in the Act.

2A. Determination of value of service portion in the execution of a works contract

- Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-

- (i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Explanation.- For the purposes of this clause,-

- (a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;
- (b) value of works contract service shall include, -
- (i) labour charges for execution of the works;
 - (ii) amount paid to a sub-contractor for labour and services;
 - (iii) charges for planning, designing and architect's fees;
 - (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
 - (v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;
 - (vi) cost of establishment of the contractor relatable to supply of labour and services;
 - (vii) other similar expenses relatable to supply of labour and services; and
 - (viii) profit earned by the service provider relatable to supply of labour and services;
- (c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.
- (ii) Where the value **has not been determined** under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-
- (A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent. of the total amount charged for the works contract;

- (B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent. of the total amount charged for the works contract;
- (C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property , service tax shall be payable on sixty per cent. of the total amount charged for the works contract;

Explanation 1.- For the purposes of this rule,-

(a) "original works" means-

- (i) all new constructions;
- (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- (iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

¹¹⁶(b) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

- (i) the amount charged for such goods or services, if any; and

¹¹⁶ The Larger Bench in the case of Bhayana Builder Pvt. Ltd 2013-TIOL-1331-CESTAT-Del-LB in the context of **erstwhile** Not. No. 15/2004 (as amended from time to time) held that:

- (a) The value of goods and materials supplied free of cost by a service recipient to the provider of the taxable construction service, being neither monetary or non-monetary consideration paid by or flowing from the service recipient, accruing to the benefit of service provider, would be outside the taxable value or the gross amount charged, within the meaning of the later expression in Section 67 of the Finance Act, 1994; and
- (b) Value of free supplies by service recipient do not comprise the gross amount charged under Notification No. 15/2004-ST, including the Explanation thereto as introduced by Notification No. 4/2005-ST.

G D Builders [2013-TIOL-908-HC-DEL-ST] Service Tax - Service Tax on works contract/ construction service - Abatement - Notification No. 1/2006 - Abatement notifications optional, but once opted, have to be complied with fully.

(ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2.--For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004."

2B. Determination of value of service in relation to money changing

Subject to the provisions of section 67, the value of taxable service provided for the services, so far as it pertains to purchase or sale of foreign currency, including money changing, shall be determined by the service provider in the following manner :-

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

Example I : [US \$ 1000] are sold by a customer at the rate of Rupees 45 per US \$. RBI reference rate for US \$ is Rupees 45.50 for that day. The taxable value shall be Rupees 500.

Example II : INR 70000 is changed into Great Britain Pound (GBP) and the exchange rate offered is Rupees 70, thereby giving GBP 1000. RBI reference rate for that day for GBP is Rupees 69. The taxable value shall be Rupees 1000.

Provided that in case 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:

Provided further that in case 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.

2C. Determination of value of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering

Subject to the provisions of section 67, the value of service portion, in an activity wherein goods being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity at a restaurant or as outdoor catering, shall be the specified percentage of the total amount charged for such supply, in terms of the following Table, namely:-

Table

Sl. No.	Description	Percentage of the total amount
(1)	(2)	(3)
1.	Service portion in an activity wherein goods, being food or any other article of human consumption or any drink(whether or not intoxicating) is supplied in any manner as a part of the activity, at a restaurant	40
2.	Service portion in outdoor catering wherein goods, being food or any other article of human consumption or any drink(whether or not intoxicating) is supplied in any manner as a part of such outdoor catering	60

Explanation 1.- For the purposes of this rule, "total amount" means the sum total of the gross amount charged and the fair market value of all goods and services supplied in or in relation to the supply of food or any other article of human consumption or any drink(whether or not intoxicating), whether or not supplied under the same contract or any other contract, after deducting-

- (i) the amount charged for such goods or services, if any; and
- (ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2.- For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986).

3. Manner of determination of value

Subject to the provisions of section 67, the value of taxable service, where such value is not ascertainable, shall be determined by the service provider in the following manner :-

- (a) the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration;
- (b) where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service.

4. Rejection of value¹¹⁷

- (1) Nothing contained in rule 3 shall be construed as restricting or calling into question the power of the Central Excise Officer to satisfy himself as to the accuracy of any information furnished or document presented for valuation.
- (2) Where the Central Excise Officer is satisfied that the value so determined by the service provider is not in accordance with the provisions of the Act or these rules, he shall issue a notice to such service provider to show cause why the value of such taxable service for the purpose of charging service tax should not be fixed at the amount specified in the notice.

¹¹⁷ Service Tax - Pre-deposit: Free Telephone Service to employees and associates - Tribunal ordered pre-deposit of Rs . 80 Crores. Taxability doubtful for the period prior to 23.08.2007. Pre-deposit reduced to Rs. 25 Crores. Bharti Airtel Ltd 2013-TIOL-426-HC-DEL-ST

- (3) The Central Excise Officer shall, after providing reasonable opportunity of being heard, 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.

5. Inclusion in or exclusion¹¹⁸ from value of certain expenditure or costs

- (1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

Explanation.- For the removal of doubts, it is hereby clarified that for the value of the telecommunication service shall be the gross amount paid by the person to whom telecommunication service is actually provided,.

- (2) Subject to the provisions of sub-rule (1), 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, namely :-

- (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;

¹¹⁸ If a receipt is for reimbursing the expenditure incurred for the purpose, the mere act of reimbursement, per se, would not justify the contention of the Revenue that the same, having the character of the remuneration or commission, deserves to be included in the sum amount of remuneration / Commission – **Sangmitra Service Agency 2013-TIOL-606-HC-MAD-ST**

- (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.

Explanation 1. - For the purposes of sub-rule (2), "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.

Explanation 2. - For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.

Illustration 1. - X contracts with Y, a real estate agent to sell his house and thereupon Y gives an advertisement in television. Y billed X including charges for Television advertisement and paid service tax on the total consideration billed. In such a case, consideration for the service provided is what X pays to Y. Y does not act as an agent behalf of X when obtaining the television advertisement even if the cost of television advertisement is mentioned separately in the invoice issued by X. Advertising service is an input service for the estate agent in order to enable or facilitate him to perform his services as an estate agent.

Illustration 2. - In the course of providing a taxable service, a service provider incurs costs such as travelling expenses, postage, telephone, etc., and may indicate these items separately on the invoice issued to the recipient of service.

In such a case, the service provider is not acting as an agent of the recipient of service but procures such inputs or input service on his own account for providing the taxable service. Such expenses do not become reimbursable expenditure merely because they are indicated separately in the invoice issued by the service provider to the recipient of service.

Illustration 3. - A contracts with B, an architect for building a house. During the course of providing the taxable service, B incurs expenses such as telephone charges, air travel tickets, hotel accommodation, etc., to enable him to effectively perform the provision of services to A. In such a case, in whatever form B recovers such expenditure from A, whether as a separately itemised expense or as part of an inclusive overall fee, service tax is payable on the total amount charged by B. Value of the taxable service for charging service tax is what A pays to B.

Illustration 4. - Company X provides a taxable service of rent-a-cab by providing chauffeur-driven cars for overseas visitors. The chauffeur is given a lump sum amount to cover his food and overnight accommodation and any other incidental expenses such as parking fees by the Company X during the tour. At the end of the tour, the chauffeur returns the balance of the amount with a statement of his expenses and the relevant bills. Company X charges these amounts from the recipients of service. The cost incurred by the chauffeur and billed to the recipient of service constitutes part of gross amount charged for the provision of services by the Company X.

6. Cases in which the commission, costs, etc., will be included or excluded

(1) 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;
 - (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: and.
 - (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.
- (2) 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; and
 - (iv) **interest** on delayed payment of any consideration for the provision of services or sale of property, whether moveable or immovable
 - (v) 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: and]

- vi) **accidental damages** due to unforeseen actions not
relatable to the provision of service; and
- (vii) **subsidies and grants** disbursed by the Government, not
directly affecting the value of service

POINT OF TAXATION RULES, 2011

[Notification No. 18/2011-S.T., dated 1-3-2011 as amended]

In exercise of the powers conferred under clause (a) and clause (hhh) of subsection (2) of section 94 of the Finance Act, 1994. The Central Government has notified the following rules for the purpose of collection of service tax and determination of rate of service tax, namely,-

1. Short title and commencement

(1) These rules shall be called the Point of Taxation Rules, 2011.

(2) They shall come into force on the 1st day of April, 2011.

2. Definitions

In these rules, unless the context otherwise requires,-

- (a) "Act" means the Finance Act, 1994 (32 of 1994);
- (ba) "change in effective rate of tax" shall include a change in the portion of value on which tax is payable in terms of a notification issued in the Official Gazette under the provisions of the Act, or rules made thereunder;
- (c) "continuous supply of service" means any service which is provided, or to be provided continuously or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time, or where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition;
- (d) "invoice" means the invoice referred to in rule 4A of the Service Tax Rules, 1994 and shall include any document as referred to in the said rule;
- (e) "point of taxation" means the point in time when a service shall be deemed to have been provided;

2A. Date of payment

For the purposes of these rules, "date of payment" shall be the earlier of

the dates on which the payment is entered in the books of accounts or is credited to the bank account of the person liable to pay tax:

Provided that —

- (A) the date of payment shall be the date of credit in the bank account when —
 - (i) there is a change in effective rate of tax or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account; and
 - (ii) the credit in the bank account is after four working days from the date when there is change in effective rate of tax or a service is taxed for the first time; and
 - (iii) the payment is made by way of an instrument which is credited to a bank account,
- (B) if any rule requires determination of the time or date of payment received, the expression “date of payment” shall be construed to mean such date on which the payment is received;

3. Determination of point of taxation

For the purposes of these rules, unless otherwise provided, ‘point of taxation’ shall be,-

- (a) the time when the invoice for the service provided or agreed to be provided is issued :

“Provided that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994, the point of taxation shall be the date of completion of provision of the service”;

- (b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

“Provided that for the purposes of clauses (a) and (b), —

- (i) 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;

- (ii) wherever the provider of taxable service receives a payment up to rupees one thousand 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 taxable service, shall be determined in accordance with the provisions of clause (a)."

Explanation — For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

4. Determination of point of taxation in case of change in effective rate of tax

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 following manner, namely :-

- (a) in case a taxable service has been provided before the [change in effective rate of tax,-
 - (i) where the invoice for the same has been issued and the payment received after the [change in effective rate of tax], the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or
 - (ii) where the invoice has also been issued prior to [change in effective rate of tax] but the payment is received after the change in effective rate of tax, the point of taxation shall be the date of issuing of invoice; or
 - (iii) where the payment is also received before the [change in effective rate of tax], but the invoice for the same has been issued after the [change in effective rate of tax], the point of

taxation shall be the date of payment;

(b) in case a taxable service has been provided after the [change in effective rate of tax,-

- (i) where the payment for the invoice is also made after the change in effective rate of tax but the invoice has been issued prior to the change in effective rate of tax, the point of taxation shall be the date of payment; or
- (ii) where the invoice has been issued and the payment for the invoice received before the [change in effective rate of tax], the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier; or
- (iii) where the invoice has also been raised after the [change in effective rate of tax] but the payment has been received before the [change in effective rate of tax], the point of taxation shall be date of issuing of invoice.

5. Payment of tax in case of new services

Where a service is taxed for the first time, then,—

- (a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;
- (b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within fourteen days of the date when the service is taxed for the first time.

7. Determination of point of taxation in case of specified services or persons

Notwithstanding anything contained in these rules, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made:

Provided that, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist:

Provided further that in case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

8. Determination of point of taxation in case of copyrights, etc

In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where 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, the service shall be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect thereof, or an invoice is issued by the provider, whichever is earlier.

8A. Determination of point of taxation in other cases

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.

9. Transitional Provisions

Nothing contained in [these rules] shall be applicable, -

- (i) where the provision of service is completed; or
 - (ii) where invoices are issued
- prior to the date on which these rules come into force.

Provided that services for which provision is completed on or before 30th day of June, 2011 or where the invoices are issued upto the 30th day of June, 2011, the point of taxation shall, at the option of the taxpayer, be the date on which the payment is received or made as the case may be

Service Tax Mega Exemption Notification No 25/2012

[TO BE PUBLISHED IN THE GAZZETE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 25/2012-Service Tax

New Delhi, the 20th June, 2012

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *videnumber* G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1. Services provided to the United Nations or a specified international organization;
2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;
3. Services by a veterinary clinic in relation to health care of animals or birds;
4. Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities;
5. Services by a person by way of-
 - (a) renting of precincts of a religious place meant for general public; or
 - (b) conduct of any religious ceremony;
6. Services provided by-
 - (a) an arbitral tribunal to -
 - (i) any person other than a business entity; or
 - (ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;
 - (b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-
 - (i) an advocate or partnership firm of advocates providing legal services ;
 - (ii) any person other than a business entity; or
 - (iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or
 - (c) a person represented on an arbitral tribunal to an arbitral tribunal;
7. Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India;
8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;

9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-
- (a) auxiliary educational services; or
 - (b) renting of immovable property;
10. Services provided to a recognised sports body by-
- (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;
 - (b) another recognised sports body;
11. Services by way of sponsorship of sporting events organised,-
- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
 - (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
 - (c) by Central Civil Services Cultural and Sports Board;
 - (d) as part of national games, by Indian Olympic Association; or
 - (e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme;
12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -
- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
 - (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
 - (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
 - (d) canal, dam or other irrigation works;
 - (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
 - (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation 1* to clause 44 of section 65 B of the said Act;
13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-
- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;
 - (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

- (c) a building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
 - (d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;
14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-
- (a) an airport, port or railways, including monorail or metro;
 - (b) a single residential unit otherwise than as a part of a residential complex;
 - (c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
 - (d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
 - (e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;
15. Temporary transfer or permitting the use or enjoyment of a copyright covered under clauses (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films;
16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;
17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;
18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;
19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and (ii) a licence to serve alcoholic beverages;
20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods -
- (a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
 - (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
 - (c) defence or military equipments;
 - (d) postal mail or mail bags;
 - (e) household effects;
 - (f) newspaper or magazines registered with the Registrar of Newspapers;
 - (g) railway equipments or materials;
 - (h) agricultural produce;
 - (i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or

- (j) chemical fertilizer and oilcakes;

21. Services provided by a goods transport agency by way of transportation of -

- (a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
- (b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or
- (c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;

22. Services by way of giving on hire -

- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
- (b) to a goods transport agency, a means of transportation of goods;

23. Transport of passengers, with or without accompanied belongings, by -

- (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;
- (b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or
- (c) ropeway, cable car or aerial tramway;

24. Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;

25. Services provided to Government, a local authority or a governmental authority by way of -

- (a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or
- (b) repair or maintenance of a vessel or an aircraft;

26. Services of general insurance business provided under following schemes -

- (a) Hut Insurance Scheme;
- (b) Cattle Insurance under Swarnajayanti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
- (c) Scheme for Insurance of Tribals;
- (d) Janata Personal Accident Policy and Gramin Accident Policy;
- (e) Group Personal Accident Policy for Self-Employed Women;
- (f) Agricultural Pumpset and Failed Well Insurance;
- (g) premia collected on export credit insurance;
- (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;

- (i) Jan Arogya Bima Policy;
- (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);
- (k) Pilot Scheme on Seed Crop Insurance;
- (l) Central Sector Scheme on Cattle Insurance;
- (m) Universal Health Insurance Scheme;
- (n) Rashtriya Swasthya Bima Yojana; or
- (o) Coconut Palm Insurance Scheme;

27. Services provided by an incubatee up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-

- (a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and
- (b) a period of three years has not been elapsed from the date of entering into an agreement as an incubatee;

28. Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -

- (a) as a trade union;
- (b) for the provision of carrying out any activity which is exempt from the levy of service tax; or
- (c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

29. Services by the following persons in respective capacities -

- (a) sub-broker or an authorised person to a stock broker;
- (b) authorised person to a member of a commodity exchange;
- (c) mutual fund agent to a mutual fund or asset management company;
- (d) distributor to a mutual fund or asset management company;
- (e) selling or marketing agent of lottery tickets to a distributor or a selling agent;
- (f) selling agent or a distributor of SIM cards or recharge coupon vouchers;
- (g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or
- (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

30. Carrying out an intermediate production process as job work in relation to -

- (a) agriculture, printing or textile processing;
- (b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act ,1985 (5 of 1986);
- (c) any goods on which appropriate duty is payable by the principal manufacturer; or

- (d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;

31. Services by an organiser to any person in respect of a business exhibition held outside India;

32. Services by way of making telephone calls from -

- (a) departmentally run public telephone;
- (b) guaranteed public telephone operating only for local calls; or
- (c) free telephone at airport and hospital where no bills are being issued;

33. Services by way of slaughtering of bovine animals;

34. Services received from a provider of service located in a non- taxable territory by -

- (a) Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
- (b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or
- (c) a person located in a non-taxable territory;

35. Services of public libraries by way of lending of books, publications or any other knowledge- enhancing content or material;

36. Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 (34 of 1948);

37. Services by way of transfer of a going concern, as a whole or an independent part thereof;

38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;

39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

2. Definitions. - For the purpose of this notification, unless the context otherwise requires, –

- (a) "Advocate" has the meaning assigned to it in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961);
- (b) "appropriate duty" means duty payable on manufacture or production under a Central Act or a State Act, but shall not include 'Nil' rate of duty or duty wholly exempt;
- (c) "arbitral tribunal" has the meaning assigned to it in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 (26 of 1996);
- (d) "authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by law in India and includes a medical professional

having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;

(e) "authorised person" means any person who is appointed as such either by a stock broker (including trading member) or by a member of a commodity exchange and who provides access to trading platform of a stock exchange or a commodity exchange as an agent of such stock broker or member of a commodity exchange;

(f) "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;

(g) "banking company" has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);

(h) "brand ambassador" means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person;

(i) "business facilitator or business correspondent" means an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by Reserve Bank of India;

(j) "clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

(k) "charitable activities" means activities relating to -

(i) public health by way of -

- (a) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
- (b) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion or spirituality;

(iii) advancement of educational programmes or skill development relating to,-

- (a) abandoned, orphaned or homeless children;
- (b) physically or mentally abused and traumatized persons;
- (c) prisoners; or
- (d) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife; or

(v) advancement of any other object of general public utility up to a value of,-

(a) eighteen lakh and seventy five thousand rupees for the year 2012-13 subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during 2011-12;

(b) twenty five lakh rupees in any other financial year subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during the preceding financial year;

(l) “commodity exchange” means an association as defined in section 2 (j) and recognized under section 6 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);

(m) “contract carriage” has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(n) “declared tariff” includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit;

(o) “distributor or selling agent” has the meaning assigned to them in clause (c) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), *vide* number G.S.R. 278(E), dated the 1st April, 2010 and shall include distributor or selling agent authorised by the lottery- organising State;

(p) “general insurance business” has the meaning assigned to it in clause (g) of section 3 of General Insurance Business (Nationalisation) Act, 1972 (57 of 1972);

(q) “general public” means the body of people at large sufficiently defined by some common quality of public or impersonal nature;

(r) “goods carriage” has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(s) “governmental authority” means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;

(t) “health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;

(u) “incubatee” means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to develop and produce hi-tech and innovative products;

(v) “insurance company” means a company carrying on life insurance business or general insurance business;

(w) “legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority;

(x) “life insurance business” has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);

(y) "original works" means has the meaning assigned to it in Rule 2A of the Service Tax (Determination of Value) Rules, 2006;

(z) "principal manufacturer" means any person who gets goods manufactured or processed on his account from another person;

(za) "recognized sports body" means - (i) the Indian Olympic Association, (ii) Sports Authority of India, (iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations, (iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government, (v) the International Olympic Association or a federation recognised by the International Olympic Association or (vi) a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India;

(zb) "religious place" means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality;

(zc) "residential complex" means any complex comprising of a building or buildings, having more than one single residential unit;

(zd) "rural area" means the area comprised in a village as defined in land revenue records, excluding-
the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or
any area that may be notified as an urban area by the Central Government or a State Government;

(ze) "single residential unit" means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;

(zf) "specified international organization" means an international organization declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply;

(zg) "state transport undertaking" has the meaning assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(zh) "sub-broker" has the meaning assigned to it in sub-clause (gc) of clause 2 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992;

(zi) "trade union" has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926 (16 of 1926).

3. This notification shall come into force on the 1st day of July, 2012.

[F. No.334/1/2012 -TRU]

(Rajkumar Digvijay)

Under Secretary to the Government of India