Introduction: Consequences which lead to introduction of Negative list of Service Tax

With the introduction of Negative Service tax regime in Finance Act 2012, the then Finance minister ushered drastic changes in indirect taxes regime.

After lot of deliberation and discussion, a consensus had been arrived that long positive list is neither conducive for tax administration or compliance. Besides, it also results in legal disputes and litigations.

As to the timing for the introduction of the Negative List, the opinion is divided. While some feel that it should be introduced at the time of GST, with a wider Constitutional mandate, there are others who feel that the introduction of Negative List should be done independently of the GST. In fact, it has been added that such introduction at an earlier stage will pave the way for the smooth transition to the GST, and significantly ease the challenges arising out of implementing the GST. It can be safely interpreted that Negative List is a precursor to the yet to be introduced GST regime.

Pranab Mukherjee estimated 18,660 crores of additional revenue due to changes in Budget 2012. It could be said that it is considerably low compared to share of Service Sector 59% in GDP.

Implementing the Negative list almost reduced the pages of law by 40% with 290 definitions reduced to 54 and number of exemptions from 88 to 10.

After giving due consideration to federal nature of our polity, the best international practices and our socio-economic requirements, the negative list of 17 Services has been drawn up.

Significant Changes in Negative List of Services:

Introduction of Definition of Service:

Earlier the word "Service" was not defined anywhere in Chapter V of the Finance Act, 1994. In order to ensure wide coverage of services under the ambit of service tax, the term 'Service' has been defined under the new inserted section 65B(44) in the Finance Act, 2012, which reads as follows-

"Service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

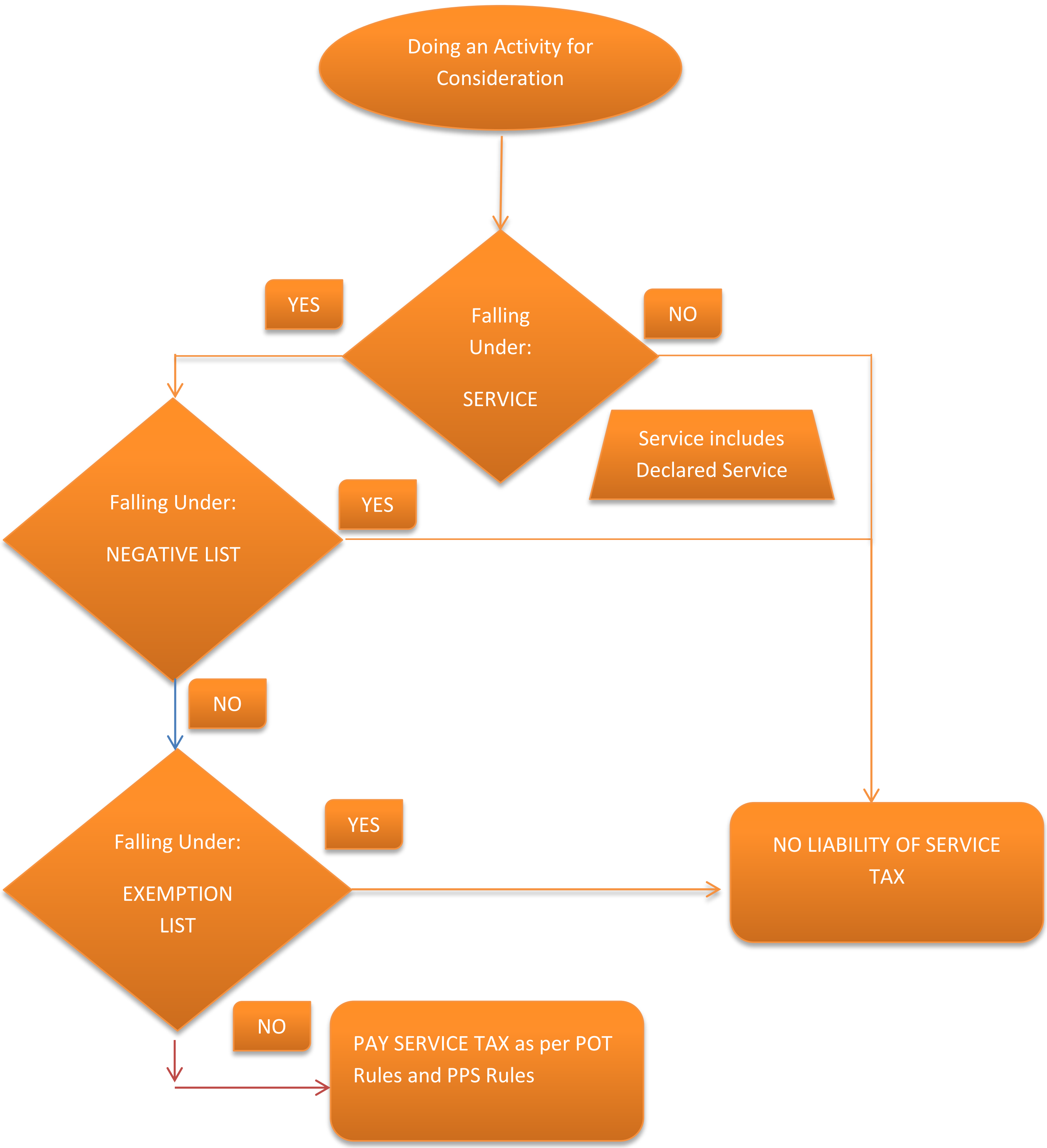
a. an activity which constitutes merely,—
   i. a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
   ii. such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
b. a transaction in money or actionable claim.
c. a provision of service by an employee to the employer in the course of or in relation to his employment;
d. fees taken in any Court or tribunal established under any law for the time being in force.

The definition prescribes the following three essential ingredients that must be present in order to call an activity as 'service'-

a. it must be an activity;
b. it must be performed by a person for another person;

c. the activity is performed for a consideration.

System of Levy under Negative List:



Section 66D Negative List of Services:

Section 66D contains Negative List of 17 services.

	Name of Service	Inclusions	Exclusions
1)	Services by Government or a local authority	All services provided by Government in sovereign right to business entities. (Granting Licenses etc)	(i) services by the Department of Posts by way of: • speed post, • express parcel post • life insurance and agency services provided to a person other than Government; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers; or (iv) ~~support services~~ "any services"(FA 2015) provided to business entities;(Reverse Charge)
2)	Services by the Reserve Bank of India;		Services provided to RBI
3)	Services by a foreign diplomatic mission located in India		Services provided to Foreign diplomatic mission is also exempted vide NT 27/2012 26.06.2012
4)	Services relating to agriculture	(i) agricultural operations directly related to production of any agricultural produce including • Cultivation • Harvesting • Threshing • plant protection or • Testing; (ii) supply of farm labour; (iii) processes carried out at an agricultural farm including tending, • pruning, • cutting • harvesting • drying • cleaning • trimming	• Potato Chips or Tomato Ketchup are not agricultural products • Grinding, sterilization and extraction of packaging in retail packs of agricultural products.

		• sun drying • fumigating • curing • sorting • grading • cooling • or bulk packaging • and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market; (iv) renting or leasing of: • agro machinery or • vacant land with or without a structure incidental to its use; (v) loading, unloading, packing, storage or warehousing of agricultural produce; (vi) agricultural extension services; (vii) services by any Agricultural Produce Marketing Committee or Board or (viii) Services provided by a commission agent for sale or purchase of agricultural produce	
5)	Trading of goods;	Sale/Purchase of : Goods Future Contracts/other Derivatives	Auxiliary services related to Future contracts/Other Derivatives
6)	Any process amounting to manufacture or production of goods	All process for which Excise Duty(State/Central) is leviable. Exempted goods also covered *"Excluding alcoholic liquor"(FA 2015)*	Processes which don't amount to manufacture. Manufacture of alcoholic liquor on job work is liable to ST
7)	Selling of space in print media;	Sale of Time slots/Space in: Print Media: Books and Newspapers Excluding commercial books like Yellow pages, Business Directories, Trade catalogues	• Sale of time slots/space on TV/Radio • Bill Board, Aerial Ads • Internet Sites • Cellphones, ATM • Advertisement agencies services are always taxable.
8)	Service by way of access to a road or a bridge on payment of toll charges;		Contract for outsourcing toll collection to any third party agency

9)	Betting, gambling or lottery;	Sale of Lottery Tickets	• Sales promotion or marketing of lottery tickets • Distributor or Selling agent (Can opt Composition scheme too)
~~10)~~	~~Admission to entertainment events or access to amusement facilities;~~ (FA 2015)	~~Recreation~~ ~~Past time Fun or enjoyment~~ ~~Cinemas~~ ~~Pageants~~	• *ST on admission to concerts, pageants, music concerts, award functions if amount charged more than 500;* (FA 2015) • Membership of Club • Auxiliary services to entertainment event • By entertainers at the event
11)	Transmission or distribution of electricity by an electricity transmission or distribution utility;	Services by : • Central Electricity Authority • SEB • State Transmission Utility • Transmission licensee	• Charges collected by developer or housing society to distribute electricity • Installation of Generators
12)	Services by Educational institution	(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 recognized by any law for the time being in force; (iii) education as a part of an approved vocational education course;	• Qualifications recognized by law of foreign countries • Private Tuitions • Campus recruitments • Services to educational institutions
13)	Services by way of renting of residential dwelling	for use as residence; Given by government for license fee	Residential dwelling for commercial purpose Rooms of lodge/Hotel
14)	Services provided by Banks/Financial institutions 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 authorized dealers of foreign exchange or amongst banks and such dealers	All other banking/financial/insurance services
15)	Service of transportation of passengers, with or without accompanied belongings, by—	(i) a stage carriage; (ii) railways in a class other than— (A) first class; or (B) an air-conditioned coach; (iii) metro, monorail or tramway; (iv) inland waterways;	Public transport for Tourism purpose

		(v) public transport, other than predominantly for tourism purpose, in a vessel of less than fifteen tonne net; and (vi) metered cabs, ~~radio taxis~~ (FA 2014) or auto rickshaws	
16)	Services by way of transportation of goods—	(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 to the first customs station of landing in India; or (iii) by inland waterways;	GTA, Couriers
17)	Funeral, burial, crematorium or mortuary services including transportation of the deceased.		

ABCD of Negative List: Mnemonic

01) A-Advertisement (except on radio & T.V.)
02) B-Betting, Gambling & Lottery
03) C- Charges collected by Toll Plaza
04) D- Diplomatic Mission
05) E- Electricity
06) F- Funeral (includes transportation of deceased)
07) G- Goods Transportation
08) H- House for residential purpose
09) I- Interest/Foreign Exchange
10) J- Jhule (Amusement Rides & Entertainment)
11) K- Kheti (Agriculture)
L
12) M- Manufacture
N-O
13) P- Passenger Transport
14) Q- Qualification (education)
15) R- RBI
16) S- Sarkar (Government)
17) T- Trading of Goods.

Special Issues

- Services provided by transportation loading or unloading of rice: Exempted by Notification 4/2014
- Goods transported by costal waterways taxable.
- Security services provided by police attract ST as support services under reverse charge.
- Agriculture means cultivation of plants and rearing or breeding of animals and other species of life forms except rearing of horses(stud farm)
- Subsequent exemption of duty levy on any production process would not make it liable for service tax.
- Taxability of distributor or selling agent of lottery tickets is as per Rule 6(7C) of Service Tax Rules 1994
- Shall services provided by an educational institution which has no direct relationship with course curriculum fall under Negative List?
- It is not clear whether compensations for failure to perform a promise would be a declared service or not.
- The condition of AC is only for railways. Metros can have AC still they won't be taxed.

Conclusion:

The shift to 'comprehensive approach' or 'Negative List-based levy of Service Tax' was inevitable considering the fact that the GST regime is knocking at the door of the Indian economy. Besides this, the 'selective approach', though, served its purpose well in the initial years, with the passage of time; it was turning out to be a burden, both, for the departmental authorities and the tax payers. Undoubtedly, the coverage of the activities vide the Negative List as also the Mega Exemption Notification No. 25/2012-ST is sufficiently large which may create complications at the time of introduction of GST. Multiple exemption notifications and classifying the services in Service tax registration certificate even during the Negative regime of service tax would damage the effectiveness of a negative regime. One can only hope that the steps would be taken to ensure, on one hand, the comprehensive coverage of services under the tax net, barring a bare minimum exceptions and on the other hand uninterrupted and unrestricted availment of input-stage CENVAT Credit to the assessees.