Service Tax on Hotel Industry

Contents :

Levy of Service Tax

Levy of Service Tax :

66B of the Finance Act 1994

"There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent 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."

What is Services U/s. 65B(44)? – Negative list regime :

Any activity carried out

By a person for another

For Consideration

Including declared services

Excludes

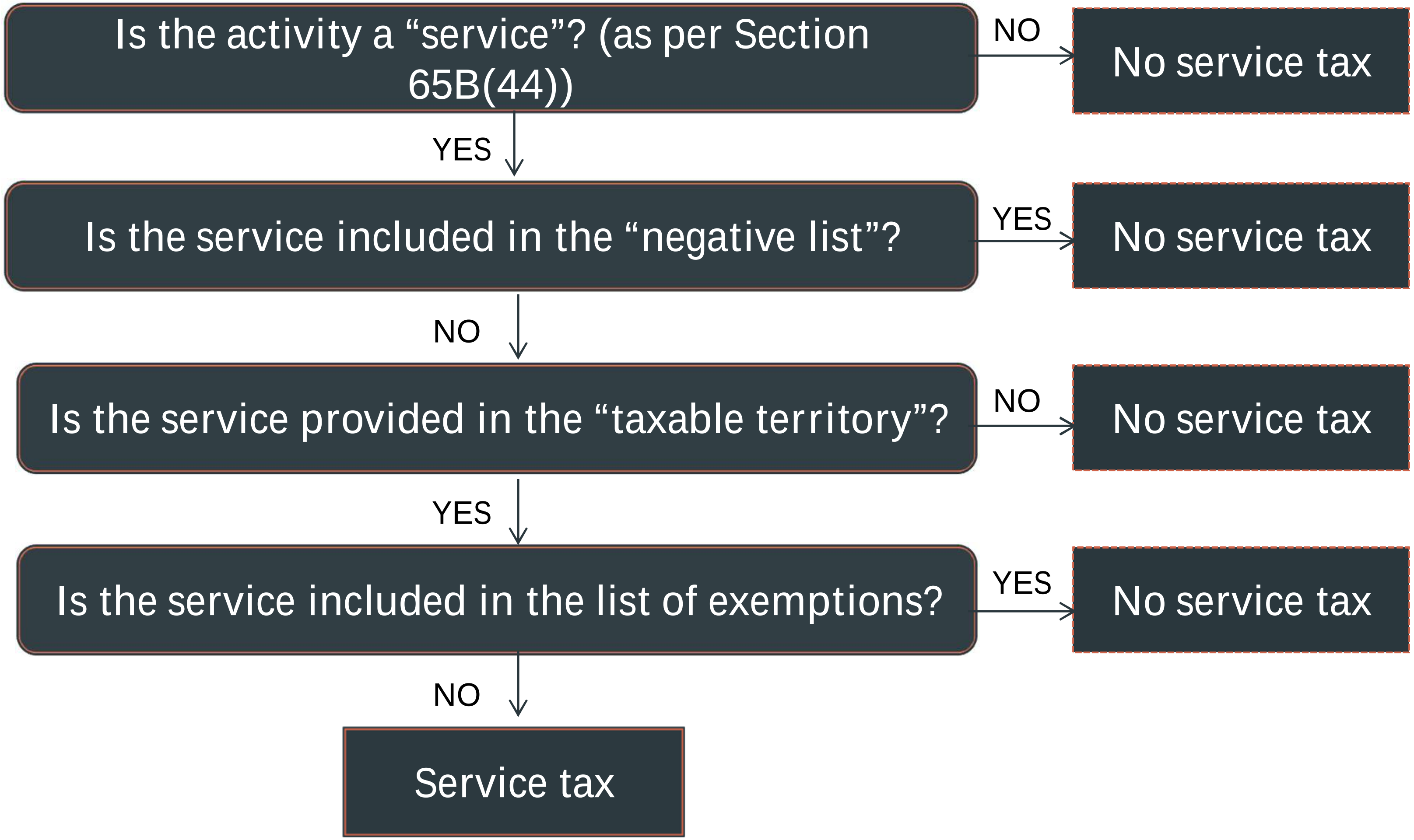
1. Transfer of immovable property
2. Deemed sale as per article 366 (29A) of the Constitution
3. A transaction in money or actionable claim
4. Services provided by an employee to an employer
5. Fees taken in any court

Service under Section 65B(44)

Declared Services

- renting of immovable property
- service portion in the execution of a works contract.
- 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
- agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act
- temporary transfer or permitting the use or enjoyment of any intellectual property right;
- development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software
- transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods
- activities in relation to delivery of goods on hire purchase or any system of payment by installments.
- 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

Determination of Taxability :



Short Term Accommodation Service

Definition :

[Section 65(105) (zzzzw)]

Any service provided or to be provided to any person by a hotel, inn, guest house, club or campsite, by whatever name called, for providing of accommodation for a continuous period of less than three months.

Scope of Taxability:

(Circular / Letter D.O.F. No. 334/3/2011-TRU dated 28/02/2011)

Service Tax Levy is restricted to accommodation with declared tariff of Rs. 1000/- per day or higher. Once this requirement is met, tax will be applicable irrespective of the fact that the actual amount charged is less than Rs. 1000/-

Exemption:

(Entry 18 of Notification 25/2012-ST)

Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below Rs. 1000/- per day or equivalent.

Declared Tariff:

"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, without excluding any discount offered on the published charges for such unit.

Abatement:

(Notification 26-2012-ST)

Sl. No	Description of taxable service	Percentage of abatement	Conditions
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	60	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.

Back

Restaurant Service

Definition :

Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.

Scope of Taxability:

As per Section 66E – Declared Services, 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.

Thus service provided by a Restaurant is taxable service.

Exemption:

(Entry 19 of Notification 25/2012-ST)

Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.

Hence food served in Non AC Restaurant is Exempt.

Valuation:

Taxability of Restaurant Services is governed by Rule 2C of Service Tax (Determination of Value) Rules, 2006.

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, shall be the specified percentage of the total amount charged for such supply, in terms of the following table, namely:-

Sl. No.	Description	Percentage taxable
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

Departmental Clarification :

The CBEC has provided clarifications vide **Circular No. 173/8/2013-ST**., Dated: October 7, 2013 on various doubts and questions raised pertaining to Restaurant Services, which is reproduced here in below: -

Doubt 1: In a complex where air conditioned as well as non-air conditioned restaurants are operational but food is sourced from the common kitchen, will service tax arise in the non-air conditioned restaurant?

Clarification: Services provided in relation to serving of food or beverages by a restaurant, eating joint or mess, having the facility of air conditioning or central air heating in any part of the establishment, at any time during the year (hereinafter referred as 'specified restaurant') attracts service tax. In a complex, if there is more than one restaurant, which are clearly demarcated and separately named but food is sourced from a common kitchen, only the service provided in the specified restaurant is liable to service tax and service provided in a non air-conditioned or non centrally air- heated restaurant will not be liable to service tax. In such cases, service provided in the non air-conditioned / non-centrally air-heated restaurant will be treated as exempted service and credit entitlement will be as per the Cenvat Credit Rules.

Back

Departmental Clarification :

Doubt 2: In a hotel, if services are provided by a specified restaurant in other areas e.g. swimming pool or an open area attached to the restaurant, will service tax arise?

Clarification: Yes. Services provided by specified restaurant in other areas of the hotel are liable to service tax.

Doubt 3: Whether service tax is leviable on goods sold on MRP basis across the counter as part of the Bill/invoice.

Clarification: If goods are sold on MRP basis (fixed under the Legal Metrology Act) they have to be excluded from total amount for the determination of value of service portion.

Back

Banquet Hall Service

(Mandap Keeper Service)

Definition :

Any service provided or to be provided to any person by a *mandap keeper* in relation to the use of *mandap* in any manner including the facilities provided or to be provided to such person in relation to such use and also the services, if any, provided or to be provided as a caterer.

"Mandap keeper" means a person who allows temporary occupation of a mandap for a consideration for organising any official, social or business function including marriage. *[Section 65(67)]*

"Mandap" means any immovable property as defined in section 3 of the Transfer of Property Act, 1882 (4 of 1882) and includes any furniture, fixtures, light fittings and floor coverings therein let out for a consideration for organising any official, social or business function including marriage. *[Section 65(66)]*

Scope of Taxability:

(CBEC instruction F. No. B 43/1/97-TRU dated 6/6/1997).
The definition of *mandap* covers all immovable properties let out for organising social, official or business functions. Hence Hotels and Restaurants providing any such facility within their premises for organising any social, official or business functions shall also be obviously included in coverage of service tax.

Abatement:

(Notification 26-2012-ST)

Sl. No	Description of taxable service	% of abtement	Conditions
4	**Bundled service** by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center,club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises	70	(i) CENVAT credit on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.

Hence Banquet Hall let out **without bundled service** by way of supply of food or any other article of human consumption or any drink will not be eligible for abatement and **shall be taxed at full rate**.

Back

Renting of Motor Vehicle Service

Definition :

Rent a cab service means any person engaged in business of renting of *cabs*.

"Cab means –
a motorcab, or
a maxicab, or
any motor vehicle constructed or adapted to carry more than twelve passengers, excluding the driver, for hire or reward ...."
[extract from section 65(20)]

Scope of Taxability:

Section 66E Clause (f) declares transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods.

Thus hiring of motor vehicle will be covered under said clause as declared service.

Negative List:

[clause (o) of Section 66D]

Service of transportation of passengers, with or without accompanied belongings, by metered cabs or auto rickshaws.

Abatement:

(Notification 26-2012-ST)

Sl. No	Description of taxable service	% of abtement	Conditions
9	Renting of motor-cab	40	1. CENVAT credit on inputs and capital goods has not been taken. 2. Cenvat credit in respect of input service shall be available to service provider as follows: a) ISP paid tax on abated value; credit of entire amount of service tax is available. b) ISP paid tax on non-abated value; credit of 40% of service tax is available. 1. Credit on any other input service shall not be taken.

Reverse Charge Mechanism:

Sl. No	Description of taxable service	Service provider	Service receiver	Service tax Payable by service provider	Service tax Payable by service receiver
7	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business	individual, HUF or partnership firm, whether registered or not, AOP, located in the taxable territory	business entity registered as body corporate, located in the taxable territory	Nil	100%
	(b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non-abated value to any person who is not engaged in the similar line of business			50%	50%

Back

Health and Fitness Service

Definition :

Any service provided or to be provided to any person, by a health club and fitness centre in relation to health and fitness services [section 65(105)(zw)]

"Health and fitness service" means service for physical well-being such as, sauna and steam bath, turkish bath, solarium, spas, reducing or slimming saloons, gymnasium, yoga, meditation, massage (excluding therapeutic massage) or any other like service [section 65(51)]

"Health club and fitness centre" means any establishment, including a hotel or a resort, providing health and fitness service [section 65(52)]

Scope of Taxability:

Health and fitness services are provided by clubs, fitness centres, health saloons, hotels, gymnasiums and massage centres. The services which fall under this category might be for weight reduction and slimming, physical fitness exercise, gyms, aerobics, yoga, meditation, reiki, sauna and steam bath, turkish bath, sun bath and massage for general well-being.

Therapeutic massage does not come in the ambit of taxable service. Therapeutic massage basically means a massage provided by qualified professionals under medical supervision for curing diseases such as arthritis, chronic low back pain and sciatica etc. Ayurvedic massages, acupressure therapy etc. given by qualified professionals under medical supervision for curing diseases/disorders will come under the category of therapeutic massages. (Board's F.No. B11/1/2002-TRU, dated 1.8.2002).

Back

Revenue items which are service taxable over and above described services:

1. Sound System, erection of stage, projector, etc. for holding functions
2. Business Centre and other facilities like telephone, internet, photo-copy, etc.
3. Laundry services
4. Valet parking services
5. Special Loyalty card fee
6. Credit Card incentive
7. Service charge

(The above list is exhaustive list and the items listed therein are to be taxed at full rate)

Revenue items which are NOT service taxable:

(Circular No.173/8/2013 – ST dated 07/10/2013).

MRP counter Sale :
If goods are sold on MRP basis (fixed under the Legal Metrology Act) they have to be excluded from total amount for the determination of value of service portion

Back

Bundled Services:

"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.

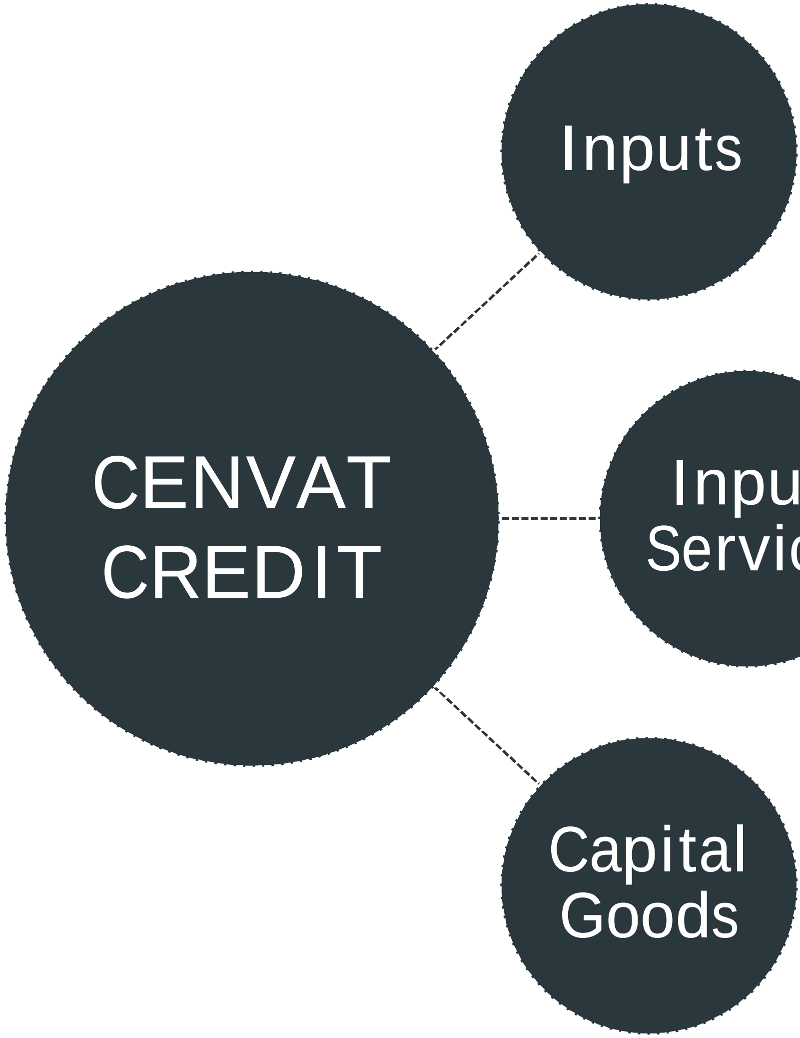
The taxability of a bundled service shall be determined in the following manner, namely:

i. if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;

ii. if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

Back

Summary of CENVAT:



Inputs

- CENVAT of inputs listed under Chapter 1 to 22 of CETA – NOT ALLOWED.
- Others - ALLOWED

Input Service

- ALLOWED

Capital Goods

- For Restaurant Service - ALLOWED
- For Others – NOT ALLOWED

Back


ANY
QUESTIONS?

Shyam Y. Makwana
Service Tax Consultant
Email : shyam_makwana@ymail.com