

Service Tax (Determination of Value) Rules 2006

Section 67

Section 67 provides for the valuation of taxable services. The provisions of this section are discussed below:

(1) Consideration in terms of money: If the consideration for a taxable service is in terms of money, the value of such service shall be the gross amount charged by the service provider for such service provided or to be provided by him.

(2) Consideration not wholly or partly in terms of money: If the consideration for a taxable service is not wholly or partly in terms of money, then the value of such service shall be such amount in money, with the addition of service tax charged, is equivalent to the consideration.

(3) Consideration not ascertainable: If the consideration for a taxable service is not ascertainable, the value of such service shall be the amount as may be determined in the prescribed manner.

(4) Where the gross amount charged is inclusive of service tax payable: 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.

(5) Gross amount charged includes amount received before/during/after the provision of such service: The gross amount charged for the taxable service shall include any amount received towards the taxable service either before, during or after the provision of such service.

(6) Subject to the aforementioned provisions, the value of a taxable service shall be determined in such manner as may be prescribed **[prescribed in the Service Tax (Determination of Value) Rules, 2006]**.

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 40%** of the total amount charged for the works contract;

(B) In case of works contract, not covered under sub-clause (A), including works contract entered into for,-

(i) Maintenance or repair or reconditioning or restoration or servicing of any goods; or

(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property, service tax shall be payable **on 70%** of the total amount charged for the works contract". **(01.10.2014)**

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;

(d) "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

(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."

Illustration: Mahavir Enterprises (ME) has entered into a contract for construction of a building with Sambhav Constructions Ltd (SCL). As per the agreement, the amount payable (excluding all taxes) by ME to SCL is ` 95,00,000 in addition to the steel and cement to be supplied by ME for which it charged ` 5,00,000 from SCL. Fair market value of the steel and cement (excluding VAT) is ` 10,00,000. Compute the 'total amount charged' pertaining to the said works contract for execution of 'original works'.

Particulars	Amount (Rs.)
Gross amount received excluding taxes (A)	95,00,000
Fair market value of steel and cement supplied by ME excluding taxes (B)	10,00,000
Amount charged by service receiver for steel and cement (C)	5,00,000
Total amount charged [(A) + (B) - (C)]	1,00,00,000
Value of service portion (40% of total amount charged in case of original Works)	40,00,000

Note: When the service provider pays partially or fully for the materials supplied by the service receiver, gross amount charged would inevitably go higher by that much amount.

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 referred to in sub clause (zm) and (zzk) of clause (105) of section 65 of the Act, 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:-
(01.04.2011)

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to 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 for that day, 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: INR70000 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:- **(06.06.2012)**

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 value. - (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.

(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 exclusion 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;
- (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.

Explanation1.-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.

Explanation2.- 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 traveling 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.

If a RWA provides certain services such as payment of electricity or water bill issued by third person, in the name of its members, acting as a 'pure agent' of its members, is exclusion from value of taxable service available for the purposes of exemptions provided in Notification 33/2012-ST or 25/2012-ST **?(circular no.175/01/2014) (10.01.2014)**

In Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006, it is provided that expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable service, subject to the conditions specified in the Rule.

For illustration, where the payment for an electricity bill raised by an electricity transmission or distribution utility in the name of the owner of an apartment in respect of electricity consumed thereon, is collected and paid by the RWA to the utility, without charging any commission or a consideration by any other name, the RWA is acting as a pure agent and hence exclusion from the value of taxable service would be available. However, in the case of electricity bills issued in the name of RWA, in respect of electricity consumed for common use of lifts, motor pumps for water supply, lights in common area, etc., since there is no agent involved in these transactions, the exclusion from the value of taxable service would not be available.

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,- (10 items)**

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| (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; and |
| (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.”(06.06.2012) |

(2) Subject to the provisions contained in sub-rule (1), the value of any taxable service, as the case may be, **does not include-** (7 items)

(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 loans. Interest on delayed payment of any consideration for the provision of services or sale of property, whether moveable or immovable ;"(06.06.2012)
(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."(27.02.2010)
(vi) accidental damages due to unforeseen actions not relatable to the provision of service; and(06.06.12)
(vii) subsidies and grants disbursed by the Government, not directly affecting the value of service.".(06.06.12)

~~7. Actual consideration to be the value of taxable service provided from outside India.—(1) The value of taxable service received under the provisions of section 66A, shall be such amount as is equal to the actual consideration charged for the services provided or to be provided.~~

~~(2) Notwithstanding anything contained in sub-rule (1), the value of taxable services specified in clause (ii) of rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, as are partly performed in India, shall be the total consideration paid by the recipient for such services including the value of service partly performed outside India. (06.06.2012)~~