

SERVICE TAX RULES, 1994

Rule 2. Definitions –

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

(a) "Act" means the Finance Act, 1994.

(aa) "aggregator" means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator **(01.03.2015)**.

Provided that aggregator shall not include such person who enables a potential customer to connect with persons providing services by way of renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes subject to following conditions, namely:-

- (a) the person providing services by way of renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes has a service tax registration under provision of these rules; and
- (b) whole of the consideration for services provided by such service provider is received directly by such service provider and no amount, which forms part of the consideration of services of such service provider, is received by the aggregator directly from either recipient of the service or his representative.

(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.

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

(bca) "brand name or trade name" means, a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as an invented word or writing, or a symbol, monogram, logo, label, signature, which is used for the purpose of indicating, or so as to indicate a connection, in the course of trade, between a service and some person using the name or mark with or without any indication of the identity of that person; **(01.03.2015)**

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

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

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

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

(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;

(cc) large taxpayer shall have the meaning assigned to it in the Rule 2(ea) of 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;

‘(ccba) “non-assesse online recipient” means Government, a local authority, a governmental authority or an individual receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

Explanation. - For the purposes of this clause, “governmental authority” means an authority or a board or any other body :

- (i) set up by an Act of Parliament or a State legislature; or
- (ii) established by Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

(ccc) nonbanking financial company” has the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934.

‘(ccd) “online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology and includes electronic services such as,-

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music, etc.);
- (vi) digital data storage; and
- (vii) online gaming;’;

(cd) partnership firm” includes a LLP.

(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.	(AA) in relation to service provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a nonbanking financial company, the recipient of the service.	(AAA) in relation to service provided or agreed to be provided by a person involving an aggregator in any manner, the aggregator of the service: Provided that if the aggregator does not have a physical presence in the taxable territory, any person representing the aggregator for any purpose in the taxable territory shall be liable for paying service tax; Provided further that if the aggregator does not have a physical presence or does not have a representative for any purpose in the taxable territory, the aggregator shall appoint a person in the taxable territory for the purpose of paying service tax and such person shall be liable for paying service tax (01.03.2015)
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(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;
- II. any society registered under the Societies Registration Act, 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 or the rules made there under;
- V. anybody 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 other than representational services by senior advocates.

(DD) in relation to service provided or agreed to be provided by a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, and the senior advocate is providing such services, the recipient of such services, which is the business entity who is litigant, applicant, or petitioner, as the case may be.

(E) In relation to support ~~(01.04.2016)~~ 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 or a body corporate to the said company or the body corporate, the recipient of such service

~~(EEA) in relation to service provided or agreed to be provided by a mutual fund agent or distributor to a mutual fund or asset management company, the recipient of the service; (01.04.2015) omitted w.e.f.1-04-2016~~

(EEB) in relation to service provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent, the recipient of the service.

(EEC) in relation to services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, the importer as defined under clause (26) of section 2 of the Customs Act, 1962 of such goods.

(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
- (b) supply of manpower for any purpose; or security services
- (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 other than online information and database access or retrieval services 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."

(H) in relation to services provided or agreed to be provided by way of online information and database access or retrieval services, by any person located in a non-taxable territory and received by any person in the taxable territory other than non-assessee online recipient, recipient of such service.

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

Provided that in case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and received by non-assessee online recipient, provider of service located in a non-taxable territory shall be the person liable for paying service tax:

Provided further that in case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and received by non-assessee online recipient, an intermediary located in the non-taxable territory including an electronic platform, a broker, an agent or any other person, by whatever name called, who arranges or facilitates provision of such

service but does not provides the main service on his account shall be deemed to be receiving such services from the service provider in non-taxable territory and providing such services to the non-assesse online recipient except when such intermediary satisfies all the following conditions, namely :-

- (a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question, its supplier in non-taxable territory and the service tax registration number of the supplier in taxable territory;
- (b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge i.e. intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-assesse online recipient and the supplier of such services.
- (c) the intermediary involved in the supply does not authorise delivery;
- (d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the service provider:

Provided also that in case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and received by non-assesse online recipient, any person located in taxable territory representing such service provider for any purpose in the taxable territory shall be the person liable for paying service tax:

Provided also that in case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and received by non-assesse online recipient, if the service provider does not have a physical presence or does not have a representative for any purpose in the taxable territory, the service provider may appoint a person in the taxable territory for the purpose of paying service tax and such person shall be liable for paying service tax:

Provided also that in case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and received by any person located in the taxable territory, person receiving such services shall be deemed to be located in the taxable territory if any two of the following non-contradictory conditions are satisfied, namely :-

- (a) the location of address presented by the service recipient via internet is in taxable territory;
- (b) the credit card or debit card or store value card or charge card or smart card or any other card by which the service recipient settles payment has been issued in the taxable territory;
- (c) the service recipient's billing address is in the taxable territory;
- (d) the internet protocol address of the device used by the service recipient is in the taxable territory;
- (e) the service recipient's bank in which the account used for payment is maintained is in the taxable territory;
- (f) the country code of the subscriber identity module (SIM) card used by the service recipient is of taxable territory;
- (g) the location of the service recipient's fixed land line through which the service is received by the person, is in taxable territory:

Provided also that in case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and received by non-assesse online recipient, a person receiving such services shall be deemed to be a non-assesse online recipient, if such person does not have service tax registration under these rules.

(dd) place of provision shall be the place as determined by Place of Provision of Services Rules, 2012.

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

(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 activity."

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

(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.

Rule 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 Officers shall exercise his powers.

Rule 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 30 days from the date on which the service tax under section 66B of the Finance Act, 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 30 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 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.

Provided also that a person located in non taxable territory liable for paying the service tax in the case of online information and database access or retrieval services may make an application for registration in form ST-1A for registration within a period of 30 days from the date on which the service tax under section 66B of the Act is levied or the person located in non-taxable territory has commenced supply of taxable services in the taxable territory in India and notwithstanding anything contrary in these rules, the registration shall be deemed to be granted in form ST-2A from the date of receipt of the application.

(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 centralized accounting systems are located.

(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 02.11.2006.

(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-within 7 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 the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, within a period of **30 days** of such change.

(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 there under, and thereupon cancel the registration certificate.

(9) The registration granted under this rule shall be subject to such conditions, safeguards and procedure as may be specified by an order issued by the Board.

Rule 4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan –

(1) Every person providing taxable service shall, not later than 30 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, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect of 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, or any other body corporate or any other person, providing service to any person an invoice, 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 30 days** of the date when each even specified in the contract, which requires the service receiver to make any payment to 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, the period within which the invoice, bill or challan, as the case may be, is to be issued, shall be forty-five days:

Provided 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 provider of service and address of the service recipient of service 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 up to 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.

Provided also that in case of online information and database access or retrieval services provided or agreed to be provided in taxable territory by a person located in the non-taxable territory, 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 name and address of the person receiving taxable service to the extent available and other information in such documents as required under this sub-rule.

(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 authorized 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 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.”

Circular No.166/1/2013 –ST dated 01.01.2013

It has been represented by life insurance companies that in terms of the practice followed, reminder notices/letters are being issued to the policy holders to pay renewal premiums. Such reminder notices only solicit furtherance of service which if accepted by policy holder by payment of premium results in a service. Clarification has been desired whether service tax needs to be paid on the basis of such reminders. Thus it is clarified that reminder letters/notices for insurance policies not being invoices would not invite levy of service tax. In case of issuance of any invoice, point of taxation shall accordingly be determined. The above clarification is issued only for life insurance sector.

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.

4C. Authentication by digital signature-

(1) Any invoice, bill or challan issued under rule 4A or consignment note issued under rule 4B may be authenticated by means of a digital signature.

Provided that a person located in non-taxable territory providing online information and database access or retrieval services to a non-assesse online recipient located in taxable territory may issue online invoices not authenticated by means of a digital signature for a period up to 31.01.2017.

(2) The Board may, by notification, specify the conditions, safeguards and procedure to be followed by any person issuing digitally signed invoices.

Rule 5. Records –

(1) The records including computerized 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.

(4) Records under this rule may be preserved in electronic form and every page of the record so preserved shall be authenticated by means of a digital signature.

(5) The Board may, by notification, specify the conditions, safeguards and procedure to be followed by an assessee preserving digitally signed records.

Specified vide instruction no F. No. 224/44/2014-CX.6 dated 06.07.2015

Explanation – For the purposes of rule 4C and sub-rule (4) and (5) of this rule, -

(i) The expression “authenticate” shall have the same meaning as assigned in the Information Technology Act, 2000

(ii) The expression “digital signature” shall have the meaning as defined in the Information Technology Act, 2000 and the expression “digitally signed” shall be construed accordingly. (01.03.2015)

Explanation. – For the purposes of this rule, “registered premises” includes all premises or offices from where an assessee is providing taxable services.

Rule 5A. Access to a registered premise. (1) An officer assessed 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 empowered under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, or a cost accountant or chartered accountant nominated under section 72A of the Finance Act, 1994, -

- (i) the records maintained or prepared by him in terms of sub-rule (2) of rule 5;
- (ii) the cost audit reports, if any, under section 148 of the Companies Act, 2013; and
- (iii) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961,

for the scrutiny of the officer or the audit party, or the cost accountant or chartered accountant, within the time limit specified by the said officer or the audit party or the cost accountant or chartered accountant, as the case may be.

Circular No. 181/7/2014-Service Tax dated 10.10.2014)

It may also be noted that the Hon'ble High Court of Delhi in the judgment dated 04.08.2014 in the case of M/s Travelite (India) [2014-TIOL-1304-HC-DEL-ST] had quashed rule 5A (2) of the Service Tax Rules, 1994 on the ground that the powers to conduct audit envisaged in the rule did not have appropriate statutory backing. This judgment can now be distinguished as a clear statutory backing for the rule now exists in section 94(2)(k) of the said Act.

Departmental officers are directed to audit the Service Tax assessees as provided in the departmental instructions in this regard.

Rule 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 a **OPC** whose aggregate value of taxable services provided from one or more premises is **≤ 50 lakh rupees** in the previous financial year, or is an individual or proprietary firm or partnership firm or Hindu Undivided Family, 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 service is deemed to be provided as per the rules framed in this regard

Provided also 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 such individuals, partnership firms and one person companies whose aggregate value of taxable services provided from one or more premises is 50 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 provided by him up to a total of rupees 50 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.

Provided also that in case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and received by non-assessee online recipient, the service tax payable for the month of December, 2016 and January, 2017, shall be paid to the credit of the Central Government by the 06.03.2017.

RTP MAY 2013: - Vishal Piyush & Sons, a partnership firm is engaged in providing construction services. Aggregate value of its taxable service provided during the financial year 2013-14 was Rs.47 lakh. However, its receipts from taxable services was Rs.51 lakh. However, during the financial year 2014-15, up to 20.09.2014 value of its taxable services was Rs.50 lakh out of which payment of Rs.42 lakh was received by it until 30.09.2014. Subsequently, on 22.09.2014 the firm provided services of Rs.15 lakh, the payment for which was received by it in January 2015. Discuss the options available to the above referred firm regarding deposit of service tax. (NOV-2015 EXAMS CONDUCTED ON 26.11.2015)

Solution: - Following two options are available for depositing Service Tax by Vishal Piyush & Sons:

(i) To deposit Service Tax on Accrual basis

(ii) To take the benefit of third proviso to Rule 6(1) of Service Tax Rules, 1994 and deposit service tax to the credit of Central Government up to Rs.50 lakh in current financial year on receipt basis. According to afore stated third proviso to Rule 6(1) of Service Tax Rules, 1994 in case of individuals and partnership firm 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 provided by him up to a total of rupees fifty lakh in the current financial year, by the 6th day of the month or 5th day of the month immediately following the quarter in which the payment is received. In simple words, such service providers can discharge their service tax liability up to Rs.50 lakh in current financial year on receipt basis.

Since in the present case, value of taxable services provided by Vishal Piyush & Sons was 47 lakh, less than Rs.50 lakh it can take the benefit of above-mentioned third proviso to Rule 6(1) of Service Tax Rules, 1994 and discharge its service tax liability on receipt basis up to Rs.50 lakh in the current financial year 2014-15. It is to be noted carefully that the fact of receipt of Rs.51 lakh in the preceding financial year is not a deciding factor for the purpose of eligibility to the benefit provided by above- mentioned third proviso. In other words, for deciding the eligibility to avail the benefit of third proviso, only value of services provided in the previous financial year are to be kept in mind.

As a result, in the present case, Vishal Piyush & Sons can deposit service tax on taxable services provided or agreed to be provided up to a total of rupees 50 lakh in the financial year 2014-15 on receipt basis. However, once the foregoing limit of Rs.50 lakh is crossed, service tax is required to be deposited on accrual basis. In the foregoing legal position, the firm is required to deposit service tax as under by 6th October, 2014

(A) Service Tax on receipt basis on Rs.42 lakh

(B) Service Tax on accrual basis on Rs.15 lakh

(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 15 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) Every assessee shall electronically pay the service tax payable by him, through internet banking:

Provided that the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction, may for reasons to be recorded in writing, allow the assessee to deposit the service tax by any mode other than internet banking. (01.10.2014)

(2A) For the purpose of 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 a contract] the assessee may take the credit of such excess service tax paid by him, if the assessee,

(a) has refunded the payment or part thereof, so received along with the service tax payable thereon for the service to be provided by him to the person from whom it was received;

(b) has issued a credit note for the value of the service tax 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 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 Rules, 2002, 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 service 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. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of 15 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 of 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 TR-6” means a memorandum or challan referred to in rule 92 of the Treasury Rules of the Central Government.

(7) The person liable for paying the service tax in relation of booking of tickets for travel by air Provided by an air travel agent, shall have the option, to pay an amount calculated at the rate of 0.7% of the basic fare in the case of domestic bookings, and at the rate of 1.4% 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 of 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;

(ia) in case of single premium annuity policies other than (i) above, 1.4 per cent. of the single premium charged from the policy holder;” (w.e.f.01-04-2016)

(ii) in all other cases, 3.5 % of the premium charged from policy holder in the first year and 1.75 % 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) 0.14 per cent. of the gross amount of currency exchanged for an amount up to rupees 100,000, subject to the minimum amount of rupees 35 and;

(b) Rupees 140 and 0.07 per cent. of the gross amount of currency exchanged for an amount of rupees exceeding rupees 100,000 and up to rupees 10,00,000; and

(c) rupees 770 and 0.014 percent. of the gross amount of currency exchanged for an amount of rupees exceeding 10, 00,000, subject to maximum amount of rupees 7 000:

Provided that the person providing the service shall exercise such option for a 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, organizing or in any other manner assisting in organizing 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 rates specified in section 66B of Chapter V of the said Act:

T A B L E

Sr.No	Rate	Condition
(1)	(2)	(3)
1.	Rs.8200 on every Rs.10 lakh (or part of Rs.10 lakh) of aggregate face value of lottery tickets printed by the organizing State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is more than 80%
2.	Rs.12800 on every Rs. 10 lakhs (or part of Rs. 10 lakh) of aggregate face value of lottery tickets printed by the organizing 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 1 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 1 month of the publication of this sub-rule in the Official Gazette or, in the case of new service provider, within 1 month of providing of such service and such option shall not be withdrawn during the remaining part of that financial year.

(7CA) The person liable for paying service tax for the taxable services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, shall have the option to pay an amount calculated at the rate of 1.4% of the sum of cost, insurance and freight (CIF) value of such imported goods.”

(7D) The person liable for paying the service tax under sub-rule (7), (7A), (7B), (7C) or (7CA) of rule 6, shall have the option to pay such amount as determined by multiplying total service tax liability calculated under sub-rule (7), (7A), (7B), (7C) or (7CA) of rule 6 by 0.5 and dividing the product by 14 (fourteen), during any calendar month or quarter, as the case may be, towards the discharge of his liability for Swachh Bharat Cess instead of paying Swachh Bharat Cess at the rate specified in sub-section (2) of section 119 of the Finance Act, 2015, and the option under this sub-rule once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances. **(15.11.2015)**

Mr. X's service tax liability for the quarter ended on 30th September, 2015 was Rs.10,000. However, while making the online payment of the same, Mr. X inadvertently paid Rs. 30,000. What recourse is available to him under rule 6(4A) of the Service Tax Rules, 1994?

Will your answer be different if the excess payment is on account of non-availment of deduction towards property tax in case of renting of immovable property? (RTP M-16)

Ans.As per rule 6(4A) of Service Tax Rules, 1994, 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.

However, rule 6(4B) lays down that the self-adjustment of excess amount paid by him 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.

Since in the given case, the reason for excess payment of amount by Mr. X does not involve any interpretation of law, taxability, valuation or applicability of any exemption notification, he can adjust the excess payment of Rs. 20,000 against his service tax liability for the succeeding quarter.

In case of renting of immovable property, a deduction of property taxes paid in respect of the immovable property is allowed from the gross amount charged for renting of the said immovable property vide Notification No. 29/2012 ST dated 20.06.2012.

However, where any amount in excess of the amount required to be paid towards service tax liability has been paid on account of non-availment of such deduction, such excess amount may be adjusted against the service tax liability within 1 year from the date of payment of such property tax. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of 15 days from the date of such adjustment.

Hence, Mr. X can adjust the excess amount paid on account of non-availment of deduction towards property tax against his service tax liability within 1 year from the date of payment of the property tax.

Rule 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 the 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 services 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 3 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.

Rule 7. Returns – (1) Every assessee shall submit a half yearly return in Form-ST-3" or „ST-3A", "or ST-3C" as the case may be, along with a copy of the Form TR-6, 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.

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, 2013.

(3) Every assessee shall submit the half-yearly return electronically.

(3A) Notwithstanding anything contained in sub-rule (1), every assessee shall submit an annual return for the financial year to which the return relates, in such form and manner as may be specified in the notification in the Official Gazette by the Central Board of Excise and Customs, by the 30th day of November of the succeeding financial year; **(w.e.f.01-04-2016)**.

(3B) The Central Government may, subject to such conditions or limitations, specify by notification an assessee or class of assesses who may not be required to submit the annual return referred to in sub-rule(3A). **(w.e.f.01-04-2016)**.

(4) The Central Board of Excise and Customs may, by an **order** extend the period referred to in sub-rules (2) and (3A) by such period as deemed necessary under circumstances of special nature to be specified in such order.

Order No: 1/2017 dated 25.04.2017 the CBEC extends the date of submission of the form ST-3&3C for the period from 01.10.2016 to 31.03.2016 from 25.04.2017 to 30.04.2017.

Rule 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 16.07.1997 to 16.10.1998, shall furnish a return within a period of 6 months from the 13.05.2003, in Form-ST-3B" along with copy of Form TR-6 in triplicate, failing which the interest and penal consequences as provided in the Act shall follow.

(1) **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 90 days from the date of submission of the return under rule 7.

(2) An assessee who has filed the annual return referred to in sub-rule (3A) of rule 7 by the due date may submit a revised return within a period of 1 month from the date of submission of the said annual return. **(w.e.f.01-04-2016)**.

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.

(1) 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) 15 days from the date prescribed for submission of such return, an amount of 500 rupees;

(ii) beyond 15 days but not later than 30 days from the date prescribed for submission of such return, an amount of 1000 rupees; and

(iii) beyond 30 days from the date prescribed for submission of such return an amount of 1000 rupees + 100 rupees for every day from the 31ST 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.

(2) Where the annual return referred to in sub-rule (3A) of rule 7 is filed by the assessee after the due date, the assessee shall pay to the credit of the Central Government, an amount calculated at the rate of 100 rupees per day for the period of delay in filing of such return, subject to a maximum of 20000 rupees. **(w.e.f.01-04-2016).**

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 in furnishing the return is paid by the assessee within 60 days from the date of assent to the said Finance Bill.

Rule 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.

Rule 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 from 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.

Rule 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 there under 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, in so far as they are not inconsistent with the provisions of this rule shall mutatis mutandis apply in case of a large taxpayer.

11. Determination of rate of exchange. -

The rate of exchange for determination of value of taxable service shall be the applicable rate of exchange as per the generally accepted accounting principles on the date when point of taxation arises in terms of the Point of Taxation Rules, 2011.

12. Power to issue supplementary instructions. - The Board or the Chief Commissioners of Central Excise may issue instructions for any incidental or supplemental matters for the implementation of the provisions of the Act.”.

