

STUDY NOTE - 7

BASICS OF SERVICE TAX

This Study Note includes

- Introduction
- Value of Taxable Service
- Exemption from Service Tax
- Classification of Service
- Procedures of Service Tax
- Adjudication and Appeals
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7.1 INTRODUCTION

Service tax is tax of 21st Century. In India share of GDP in 2006-07 was - Agriculture - 18.5%, Industry - 26.4%, Services - 55.1% (Source - Economic Survey 2006-07). Service tax was imposed on three services w.e.f. 1-7-1994 and its scope is being widened every year. Highlights of the service tax are as follows –

- Service tax is imposed under Finance Act, 1994 as amended from time to time. There is no Service Tax Act.
- Service tax is payable @ 12% plus education cess of 2%, plus SAH education cess of 1% (total 12.36%) w.e.f. 11th May 2007 [Section 66]. Service tax was 12.24% from 18-4-2006 to 10-5-2007. Earlier, the rate was 10.2% from 10-9-2004 to 17-4-2006.
- Service tax is payable on taxable services as defined in various clauses of section 65(105) of Finance Act, 1994. Presently, about 99 services are taxable.
- Service tax is payable on gross amount charged for taxable service provided or to be provided [Section 67]. If consideration is partly not in money, valuation is required to be done as per Valuation Rules. Tax is payable when advance is received.
- Small service providers upto eight lakhs are exempt. Export of service is exempt from service tax under Notification No. 6/2005-ST dated 1-3-2005. Services provided in J&K are not taxable [section 64(1)]
- Cenvat credit is available of inputs, input services and capital goods used for providing taxable output services.
- In some cases, receiver of service is liable to pay service tax. This is termed as ‘reverse charge’ [Section 68(2)].



- Every provider of taxable service should apply for registration in form ST-1 within 30 days from date of levy (in case of new services) and date of commencement of business of providing taxable service. In case of existing services [Rule 4(1)]. Registration will be deemed to have been granted if not received within seven days [Rule 4(5)].
- Assessee providing service from various premises can have centralised registration [Rule 4(2)]
- Service provider is required to prepare invoice within 14 days, even in respect of advance received [Rule 4A].
- Tax should be paid by 5th of following month (6th in case of e-payment). If assessee is individual or proprietary or partnership firm, tax is payable on quarterly basis. This facility is not available to HUF. In March, tax is payable by 31st March [Rule 6].
- If payment of tax is delayed, interest is payable @ 13% [Section 75]
- Assessee has to submit half yearly return in form ST-3 in triplicate within 25 days of close of half year [Rule 7]
- Penalty is payable for non-registration, late payment of tax, non-submission of returns etc. Mandatory penalty is payable for suppression of facts, willful misstatement, fraud or collusion [sections 76 to 80]
- The tax is administered by excise department. Adjudication order is issued by excise officer.
- First appeal lies with Commissioner (Appeals) [section 85] and second appeal with Appellate Tribunal (Customs, Excise and Service Tax Appellate Tribunal) [Section 86]. Further appeal lies with High Court and Supreme Court.

Nature of levy of Service Tax - Service tax is levied under Entry No. 97 of List I of Seventh Schedule to Constitution of India. The entry reads as follows – ‘Any other matter not included in List II, List III and any tax not mentioned in list II or list III’. (*These are called ‘Residual Powers’.*)

As per section 65(95) of Finance Act, 1994, ‘service tax’ means tax leviable under the provisions of this Chapter (i.e. Chapter V of Finance Act, 1994). Section 66 (charging section) provides that there shall be levied a tax (service tax) @ 12% of the value of taxable service referred to in various clauses of section 65(105). It will be collected in a manner as may be prescribed.

Taxable Service - As per section 66 of Finance Act, 1994, service tax is payable on ‘taxable service’. Various clauses of section 65(105) of Finance Act, 1994 define each type of ‘taxable service’. The definition is different for each class of services, e.g. as per section 65(105)(a), any service provided by stock broker to any person in connection with sale or purchase of securities listed on a recognised stock exchange will be ‘taxable service’.



Service tax is destination-based consumption tax - Service tax is a destination based consumption tax, as per CBE&C Circular No. 56/5/2003 dated 25-4-2003.

Service implies existence of two parties - Service tax is attracted when there are two parties. One cannot give service to himself.

Cenvat Credit – Assessee is entitled to avail Cenvat credit of excise duty and service tax paid on his inputs, input services and capital goods. This aspect has been discussed in another chapter.

Rate of Service Tax

This tax was first time introduced with effect from 1-7-1994 on three services. The rate was 5%. It was subsequently increased to 8% w.e.f. 14-5-2003. It was 10% plus education cess of 2% w.e.f. 10-9-2004 (total 10.2%) during 10-9-2004 to 17-4-2006. Service tax rate was 12% plus education cess of 2% (total 12.24%) during 18-4-2006 till 10-5-2007.

Presently (w.e.f. 11-5-2007), service tax is payable @ 12% of value of taxable services referred in section 65(105) of Finance Act, 1994. In addition, education cess of 2% and SAH education cess of 1% is payable. Thus, total service tax is 12.36%.

Service tax, education cess and SAH education cess to be shown separately in invoice - You have to show service tax, education cess and SAH education cess *separately* in invoice. You cannot just charge 12.36% as 'service tax'.

Taxable Event in Service Tax

Section 66 (which is a charging section), reads, 'There shall be levied a tax (hereinafter referred to as the service tax) at the rate of ten percent of value of taxable services referred to in sub-clauses (a), (b), - - (zzzzc) and (zzzzd) of clause (105) of section 65 and collected in such manner as may be prescribed.

Opening sentence of section 65(105) as amended w.e.f. 16-6-2005 reads as follows, 'taxable service' means any service provided or 'to be provided'. Thus, following are taxable events -

- (a) *Entering into contract for service* - Entering into contract for providing service. Once you enter into a contract, it is certainly '*service to be provided*'. (Service tax is actually payable after payment is received, but receipt of advance is not a taxable event. It only defers the liability).
- (b) *Provision of service* - This will happen in cases where contract for providing service was entered into *before* the service became taxable, but service was provided *after* the service became a 'taxable service'.

Person liable to pay Service tax

In most of the cases, service provider, i.e. person who is providing taxable service is liable to pay service tax. However, in few cases, exceptions have been made and service receiver is made liable to pay service tax. The provision that service receiver is liable to pay service tax is termed as 'Reverse Charge'. The exceptions are as follows -



Services provided to non-resident - In relation to taxable service provided or to be provided by any person from a country other than India and received by any person under section 66A of Finance Act, service tax is payable by recipient of service [Rule 2(1)(d)(iv)]

Services of insurance agents - In case of insurance auxiliary service by an insurance agent, the tax will be payable by insurance company (general insurance or life insurance as the case may be). The insurance agent is not liable to register and pay tax. *[However, the insurance agent is not entitled to avail exemption available to a small service provider].*

Consignor/consignee paying freight, in case of GTA services - In case of services of Goods Transport Agency (GTA), service tax is payable by consignor / consignee who is paying freight [rule 2(1)(d)(v)] *[However, the consignor/consignee is not entitled to avail exemption available to a small service provider].*

Services of Agents of mutual fund - In case of distributors / agents of mutual funds, the liability will be on the recipient of service, namely, mutual funds [Rule 2(1)(vi)] *[However, the mutual fund agent is not entitled to avail exemption available to a small service provider].*

Body corporate or firm located in India receiving sponsorship service - In case of sponsorship service provided to a body corporate or firm located in India, the body corporate or firm receiving such sponsorship service will be liable to pay service tax [rule 2(1)(d)(vii) inserted w.e.f. 1-5-2006 and amended w.e.f. 1-4-2007]. If the recipient of sponsorship service is located outside India, service tax is required to be paid by the service provider and not by the recipient.

Cenvat credit of tax paid - The Body corporate or firm paying such service tax will be eligible to avail Cenvat credit of the service tax paid, on the basis of TR-6/ GAR-7 challan by which the tax is paid [Rule 9(1)(e) of Cenvat Credit Rules, as amended w.e.f. 1-5-2006]. *It may be noted that when person receiving service is liable to pay service tax, he is not entitled to exemption which is available to a small service provider.*

Large Taxpayer Unit (LTU) - A concept of LTU has been introduced for large taxpayers of direct taxes and indirect taxes. In case of service tax, Large Taxpayer has meaning assigned to it in Central Excise Rules [rule 2(cccc) of Service Tax Rules]. LTU has started functioning in Bangalore w.e.f. 1-10-2006.

Service on sub-contract basis

CBE&C vide circular No. 999.03/23.8.07 has clarified that a sub-contractor is also a taxable service provider. His services are taxable even if these are used by main provider for completion of his work. The sub-contractor is liable even if the service is input service of the main contractor and main contractor is paying service tax on entire value of contract.

7.2 VALUE OF TAXABLE SERVICE

Section 67 of Finance Act, 1994 contains provisions for valuation of taxable services for charging service tax. The highlights of provisions of section 67 as effective from 18-4-2006 are as follows -

- Service tax is payable on gross amount charged by service provider for service provided or 'to be provided'. Thus, tax is payable as soon as advance is received.
- 'Value of taxable service' plus service tax payable is equal to 'gross amount charged' [section 67(2)].
- Where the consideration for providing services is entirely in money, gross amount charged by service provider of taxable service provided or to be provided by him will be relevant for 'valuation' [section 67(1)(i)].
- Where the consideration for providing services is not wholly or partly in terms of money, service tax is payable on amount of money, which with addition of tax service tax charged, is equivalent to the consideration [section 67(1)(ii)].
- Where consideration is not ascertainable, valuation will be on basis of Valuation Rules [section 67(1)(iii)]
- If gross amount charged by service provider is inclusive of service tax (i.e. service tax not charged separately in invoice), value of taxable service will be calculated by back calculations such that with addition of service tax payable, the total is equal to the gross amount charged [section 67(2)].
- Gross amount charged for taxable services can be before, during or after provision of service [section 67(3)].

Highlights of service tax valuation rules - In exercise of powers under section 67, Service tax (Determination of Value) Rules, 2006 have been issued w.e.f. 19-4-2006. The Service Tax Valuation Rules provide as follows -

- If consideration is not wholly or partly consisting of money, value will be determined by service provider in terms of rule 3.
- As per rule 3(a) of Service Tax Valuation Rules, valuation shall be on basis of gross amount charged by service provider for similar services.
- If value cannot be determined on basis of rule 3(a), valuation shall be on basis of equivalent money value of such consideration, which shall not be less than cost of provision of such services [rule 3(b) of Service Tax Valuation Rules]
- Central Excise Officer can reject 'value' determined by service provider and determine 'value' for purpose of service tax payment [rule 4].
- Rules 5 and 6 make provisions for certain specific inclusions and exclusions for valuation



- Payments made by service provider as 'pure agent' of service receiver and recovered from service receiver are excluded for purpose of valuation [rule 5(2)]
- In case of services provided from outside India, actual consideration received will be relevant for valuation [rule 7(1)].

Amount need not be 'charged' by service provider - money paid to third party may also be includible - It is not necessary that the money should be paid to service provider himself. Amount paid even to third party is includible in 'value' of service if it is for provision of service and at the instance of service provider.

Service tax payable on net amount excluding Vat/sales tax - Rule 2A(1)(i)(a) of Service Tax Valuation Rules and rule 3(1) of Works contract (Composition Scheme for Payment of Service Tax) Rules, 2007 make it clear that Vat/sales tax is not to be included in value for purpose of service tax. Thus, service tax is payable only on net amount excluding Vat/sales tax payable on the transaction.

Tax payable only on amount actually received - Rule 6(1) of Service Tax Rules makes it clear that service tax is payable on value of taxable services received. Thus, if service provider does not receive any payment from his customer, there is no liability of service tax. Service tax is payable only on 'value of taxable service' actually 'received', and not on amount 'billed'.

Calculation of service tax by back calculations

The gross amount charged can be taken as inclusive of service tax and the 'value' and 'service' tax is to be calculated by back calculations.

For example, if Bill amount is Rs. 1,000 and service tax is not shown separately in Invoice, the tax payable calculated by a simple mathematical formula is as follows -

Assessable Value = (Cum tax price)/(1 + rate of tax)

Assume that Assessable Value (AV) is equal to 'Z'.

AV	=	1.000 Z
Duty @ 12.36%	=	0.1236 × Z
Sub-Total	=	1.1236 × Z
Now :		
1.1236 × Z	=	1,000
Hence, 'Z'	=	1,000 / 1.1236
i.e. Z	=	890.00

Thus, 'Z', i.e. Assessable Value is Rs 890 and service tax @ 12% will be Rs 106.79. Education cess @ 2% of service tax will be Rs 2.14. SAH education cess is Rs 1.07. Thus, total tax will be Rs 110.00.

Reimbursement of expenses or 'Out of pocket' expenses

The service provider often claims reimbursement of certain expenses incurred by him (like travelling, boarding and lodging, etc.) while providing a taxable service. These are often termed as 'out of pocket' expenses. These are really charges for taxable services and are includible.

Reimbursement of expenses incurred on behalf of service receiver not includible - Often, a service provider incurs some expenditure on behalf of service receiver and then recovers the amount from him. Such expenditure is not part of service provided by him to service receiver, but is incurred by him as per business practice or convenience. Following illustrations may clarify the provisions -

- Octroi/entry tax amount paid by Clearing & Forwarding Agent, CHA or Transporter on behalf of owner of goods/Principal.
- Customs duty, dock dues, demurrage, transport charges etc. paid by Customs House Agent on behalf of client.
- Advertisement charges paid by Advertising Agency to newspaper on behalf of clients.
- Ticket charges paid by Travel Agent and recovered from his customer.
- Reimbursement of godown, salary and loading/unloading expenses by Principal to C&F Agent.

These are not part of service provided and hence are not includible. Rule 5(2) provides that the expenditure or costs that a service provider incurs, as a pure agent of the client, shall be excluded from the value if such service provider fulfils prescribed conditions.

The principle is also discernible from various exclusions as contained in rule 6(2).

Valuation in case of indivisible contracts

In case of indivisible contracts involving sale of goods plus provision of service, it is difficult to identify service portion.

Exclusion of value of material - Notification No. 12/2003-ST dated 20-6-2003 provides that if the amount charged includes value of goods and materials sold, service tax will not be payable on value of goods and materials sold. There should be documentary evidence showing value of goods and materials sold. This exemption is available *only if* Cenvat credit of such material is not taken. If such credit was taken, assessee should pay amount equal to the credit. Such payment should be before sale of such goods and materials.



Many exemption notifications provide that exclusion under notification 12/2003-ST is allowable only when the service tax is paid at full rate and any abatement under any other exemption notification is not claimed. Hence, in such cases, notification No. 12/2003-ST is of no use.

In *Bharat Sanchar Nigam Ltd. v. UOI* (2006) 3 SCC 1 = 152 Taxman 135 = 282 ITR 273 = 3 VST 95 = 145 STC 91 = 3 STT 245 = AIR 2006 SC 1383 = 2 STR 161 (SC 3 member bench), it has been clearly held that price of goods cannot be included in value of services. Conclusion (E) of the judgment (para 92 of SCC and para 81 of STT and Taxman) reads as follows, 'The aspect theory would not apply to enable the value of service to be included in the sale of goods or the price of goods in the value of service'.

All expenditure and costs relating to provision of service incurred by service provider are includible - Rule 5(1) provides that where certain expenditure or costs are incurred by the service provider in the course of providing any taxable service, all such expenditure or costs shall be treated as consideration for the taxable services provided or to be provided and shall be included in the 'value' for purpose of charging of service tax on the said service.

This is a general rule which makes it clear that, even when such expenditure or costs are recovered separately by service provider from service receiver, such expenditure or costs must be included in the value of taxable service.

However, expenditure incurred by service provider as 'pure agent' of service receiver is not includible, as per rule 5(2).

7.3 EXEMPTIONS FROM SERVICE TAX

Central Government can grant partial or total exemption, by issuing an 'exemption notification' u/s 93 of Finance Act, 1994. Such exemption may be partial or total. Exemption may be conditional or unconditional. The only limitation is that exemption cannot be granted by Central Government with retrospective effect. There are following general exemptions -

Small service providers - Small units whose turnover less than Rs. ten lakhs per annum are exempt from service tax. Provisions are discussed a little later (The exemption limit was Rs four lakhs upto 31-3-2007).

Export of Services - There is no service tax on export of services, if service is exported as per 'Export of Service Rules'.

Services to UN Agencies - Services provided to UN and International Agencies are exempt [Notification No. 16/2002-ST dated 2-8-2002].

Services provided within SEZ - Services provided to SEZ unit or SEZ developer for consumption within SEZ are exempt [Notification No. 4/2004-ST dated 31-3-2004 in respect of SEZ]. The wording of notification is such that services consumed within the zone are alone exempt. Thus services provided outside SEZ (e.g. customs clearance, transport etc.) are *not* exempt.

Taxable services provided to a developer or a unit in SEZ are exempt from service tax [section 26(1)(e) of SEZ Act]. [rule 31 to SEZ Rules]

Services provided to foreign diplomatic missions, family members of diplomatic missions etc. - Any taxable service provided to foreign diplomatic mission or consular post in India is exempt vide Notification No. 33/2007-ST dated 23-5-2007. Similarly, any taxable service provided for private use of family members of diplomatic agents or career consular offices posted in a foreign diplomatic mission or consular post in India is exempt vide Notification No. 34/2007-ST dated 23-5-2007.

Services provided by RBI exempt - Exemption from service tax has been provided to all taxable services provided by Reserve Bank of India. Services where RBI is liable to pay service tax are also exempt (Notification No. 22/2006-ST dated 31-5-2006 – earlier Notification No. 7/2006-ST dated 1.3.2006).

General Exemption to small service providers

The small service providers whose turnover of taxable services from one or more premises did not exceed Rs. ten lakhs in 2007-08 will be exempt from service tax in next financial year i.e. in 2008-09 upto the turnover of Rs. ten lakhs. The provisions are prescribed in Notification No. 6/2005-ST dated 1-3-2005 (The exemption limit was Rs four lakhs upto 31-3-2007). However, if value of taxable turnover exceeds Rs 10 lakhs in 2008-09, there will be not exemption at all in 2009-10.

For the purpose of determining eligibility in current year, what is relevant is that ‘aggregate value of taxable services rendered’ in previous financial year should not exceed Rs. ten lakhs, while for purpose of exemption upto first-Rs. ten lakhs in current year, service tax is exempt to the extent of ‘aggregate value not exceeding ten lakhs’, i.e. the sum total of first *consecutive payments received* during the current financial year.

The exemption to small service providers is available subject to following conditions -

- ❖ The provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services.
- ❖ Where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services.
- ❖ The taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; will not be eligible for exemption available to small service providers.
- ❖ Person providing taxable service in excess of Rs. nine lakhs per annum (but less than Rs. ten lakhs) will have to register with Superintendent of Central Excise under Service Tax

provisions [Notification No. 26/2005-ST dated 7-6-2005], though they will be eligible for exemption if turnover is less than Rs. ten lakhs per annum.

Specific Exemptions

In case of some services e.g. catering services, mandap keeper services and construction services, service tax is payable at lower rates, i.e. partial abatement is available from gross value, vide 1/2006-ST dated 1-3-2006. The lower rate is applicable if the service provider does not avail Cenvat credit of duty/tax on inputs, input services and capital goods. *Till 28-2-2006, he was entitled to avail Cenvat credit on input services.* W.e.f. 1-3-2006, he cannot avail any Cenvat credit, if he avails the partial abatement.

Some important exemptions are as follows –

Taxable Service	Partial abatement available
Accommodation booking service by tour operator	10% of gross amount charged
Air Travel Agent	Option to pay service tax at flat rate on 'basic fare' @ 0.6% in case of domestic booking and 1.2% in case of international booking [rule 6(7) of Cenvat Credit Rules]
Business Auxiliary Service in relation to processing of parts and accessories used in manufacture of cycle, cycle rickshaws and hand operated sewing machines	Tax on 70% of gross amount if gross amount is inclusive of cost of inputs and input services, whether or not supplied by the client (<i>Is it exemption or punishment?</i>)
Erection, Commissioning and installation contract for supply of plant, machinery, equipment or structures plus erection, commissioning and installation services	Tax on 33% of gross amount if gross amount includes value of material
Construction Service	Tax on 33% of gross amount if gross amount includes value of material
Goods Transport Agency (GTA)	Tax only on 25% amount in his invoice [Payment will be made by consignor/consignee who is actually paying freight]
Mandap keeper, hotels and convention services, providing full catering services	Tax on 60% gross amount charged

Outdoor caterer	Tax on 50% amount if he provides full and substantial meal
Pandal and shamiana Service	70% of gross amount charged if full catering service provided
Rent-a-cab operator	Tax payable on 40% of gross amount charged
Tour operator - Package tours ("package tour" means a tour wherein transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour).	Tax is payable only on 25% of gross amount charged w.e.f. 23-8-2007 (till 22-8-2007, tax was payable on 40% of gross amount)
Tour operator - providing services solely of arranging or booking accommodation for any person in relation to a tour (If Bill includes cost of accommodation)	Tax is payable only on 10% of gross amount charged
Tour operator – Other than package tours and other than service of booking accommodation where Bill includes cost of accommodation	Tax is payable only on 10% of gross amount charged
Transport of goods in container by rail	Tax payable on 30% of gross amount charged



Services provided to EOU - Services provided to EOU / EHTP / STP / BTP are **not** exempt from service tax. Para 6.11(c)(v) of Foreign Trade Policy (as amended on 7-4-2006) states that EOU / EHTP / STP / BTP units can avail Cenvat credit of service tax paid. The EOU units can claim rebate of service tax paid on their input services vide rule 5 of Cenvat Credit Rules (as amended on 14-3-2006). Procedure for claiming refund of service tax paid on input services and excise duty on inputs has been specified in notification No. 5/2006-CE(NT) dated 14-3-2006.

No service tax on service provided in J&K - Service tax provisions are not applicable in Jammu and Kashmir. Service tax will not be payable only if service is provided in J&K. If a person from J&K provides service outside J&K in any other part of India, that service will be taxable, as location where service is provided is relevant. Merely because office is situated in J&K does not mean that service is provided in J&K.

7.4 CLASSIFICATION OF SERVICE

There are various types of services on which service tax is payable. These are specified in various sub-clauses of section 65(105) of Finance Act, 1994. It is possible that a service may appear to be classifiable under more than one headings. It is necessary to specify the heading under which the service being provided is falling. This is termed as 'classification'. As per rule 4A(1) of Service Tax Rules, the invoice should indicate description and classification of service.

Principles of classification - The classification of services will be determined according to terms specified in various sub-clauses of section 65(105). [section 65A(1)]. If *prima facie*, a taxable service is classifiable under two or more sub-clauses of section 65(105), classification shall be effected as per following rules -

- The sub-clause which provides most specific description should be preferred over sub-clauses providing a more general description [section 65A(2)(a)]
- Classification should be as per essential character in case of composite services. Composite services are those consisting of combination of different services. In case of such services, if the service cannot be classified on the basis of specific description as per section 65A(2)(a) above, it shall be classified as if they consisted of a service which gives them their essential character [section 65A(2)(b)].
- Service which appears earlier in list, if service cannot be classified on above basis. If a service cannot be classified on basis of above provisions, the service should be classified under sub-clause which occurs first among the sub-clauses which equally merit consideration [section 65A(2)(c)].

Service which has been specifically excluded in definition of one service cannot be covered under another head - In *Dr. Lal Path Lab (P) Ltd. v. CCE* (2006) 5 STT 171 (CESTAT), it was held when there is a specific entry for an item in the tax code, same cannot be taxed under any other entry. If a service has been specifically excluded from definition of one service, it cannot be covered under another taxable service.

Introduction of new heading means earlier it was not taxable - In *Glaxo Smithkline Pharmaceuticals v. CCE* (2005) 1 STT 37 (CESTAT), it has been held that when an existing tariff definition remains same, introduction of new tariff entry would imply that the coverage under new Tariff was not covered by the earlier entry. When new category is introduced, it means that the service was not taxable under old category.

Service should be mainly or principally a taxable service - A composite contract cannot be vivisected and service portion cannot be subjected to tax – *Widia GMBH v. CCE* (2006) 5 STT 414 (CESTAT) * *Blue Star v. CCE* (2007) 7 STT 68 (CESTAT). In *Daelim Industrial Co. v. CCE* 2003 STT 438 = 7 STT 184 (CEGAT), it was held that a works contract cannot be vivisected and part of it subjected to tax.

7.5 PROCEDURES OF SERVICE TAX

Administration of service tax is under Central Excise department. The main procedures to be followed are - (a) Registration (b) Maintenance of records (c) Payment of service tax and (d) Half yearly return. There are no prescribed form of records. The records maintained by assessee including computerised data maintained by assessee in accordance with various other laws are acceptable [rule 5(1)].

Registration under Service Tax

A 'person liable for paying service tax' has to register with Superintendent of Central Excise under whose jurisdiction your premises fall. He should register within 30 days from date of commencement of the business of providing taxable service. The person will have to apply for registration in form ST-1. If a person is providing more than one taxable service, he may make a single application. He should mention in the application all the taxable services provided by him. [rule 4(4)].

Applicant should submit following at the time of filing application for registration - (a) copy of PAN (b) proof of residence and (c) constitution of applicant. If application is signed by authorised person, power of attorney would be required.

Most important document that is required is copy of Income Tax PAN number. Copy of memorandum of association or partnership deed and a list of partners / directors should be submitted.

The registration certificate will be granted by Superintendent of Central Excise in seven days in form ST-2.

STC code i.e. registration number - Registration No., also known as 'Service Tax Code (STC)' is a fifteen digit PAN based number. First 10 digits of this number are the same as the PAN of such person. Next two digits are 'ST'. Next three digits are serial numbers indicating the number of registrations taken by the service taxpayer against a common PAN – para 2.6 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.



Premises code - The registration certificate gives details of 'premises code' which is given on the basis of Commissionerate + Division + Range + Serial No. The number is given in the registration certificate ST-2 at Sl No. 5. This number is used for easy identification of location of registration of tax payer – para 2.6 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

Changes to be informed in form ST-1 within 30 days - Rule 4(5A) is inserted w.e.f. 1-3-2006 provides that if there is any change in information and details submitted in form ST-1 at the time of registration, the same should be informed to jurisdictional AC/DC within thirty days of such changes. The form ST-1 is both for new registration as well as amendment to existing registration certificate.

Cancellation/surrender of registration - If the assessee ceases to carry on the activity for which he is registered, he should surrender the registration certificate to the Superintendent of Central Excise [Rule 4(7)].

Assessee should file up-to-date returns and apply for cancellation. Registration may not be cancelled if any demands are pending.

Centralised Registration - In some cases, a person liable for paying service tax on a taxable service - (i) provides *such* service from more than one premises or offices (e.g. providing banking service or maintenance service from various branches / offices); or (ii) receives *such* service in more than one premises or offices (e.g. GTA services, sponsorship services provided to body corporate or firm located in India, mutual fund agent's service, insurance agent's service etc. where he is liable under reverse charge method); 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 (e.g. import of services where person receiving service is liable u/s 66A).

In such cases, such person can obtain Centralised Registration, **at his option**, if (a) he has centralised billing system or centralised accounting system in respect of such service, and (b) such centralised billing or centralised accounting systems are located in one or more premises.

He can register such premises or offices from where centralised billing or centralised accounting systems are located [Rule 4(2) as amended w.e.f. 2-11-2006].

More than one centralised registration of regional/zonal offices at various places is permissible as per MF(DR) circular No. B1/6/2005-TRU dated 27-7-2005 – confirmed in para 2.5 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

Centralised Registration will be granted by Commissioner in whose jurisdiction the premises or offices, from where centralised billing or accounting is done, are located [rule 4(3) as amended w.e.f. 2-11-2006].

Invoice by service provider

Assessee should prepare invoice in respect of his services. The Invoice should be prepared

within 14 days from date of completion of taxable service or receipt of payment towards the value of taxable service, whichever is earlier.

Details required to be shown in invoice/bill/challan - As per rule 4A(1), the invoice / challan / Bill should be signed by authorised person of provider of input services, should be serially numbered and should contain following details -

- (1) Name, address and registration number of person providing taxable service
- (2) Name and address of person receiving taxable service
- (3) Description, classification and value of taxable service provided or to be provided and
- (4) Service tax payable on the taxable service

The rule does not make mention of date, but actually, date should be mentioned.

Education cess and SAH education cess to be shown separately - Education cess and SAH education cess to be shown separately in the Invoice for complying with requirements of Cenvat Credit Rules to facilitate availment of Cenvat credit by recipient – para 5.1 CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

Relaxation in case of banking and financial services - In case of banking and financial services provided by banking company, FI, NBFC or a commercial concern, the invoice / challan need not be serially numbered and name and address of person receiving taxable service need not be contained on the invoice / challan [*proviso* to rule 4A(1) of Service Tax Rules]. This facility is also available to input service distributors of such type of service providers – para 5.3 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

Invoice in case of continuous service - In some cases, service is provided continuously for successive periods of time and value of such taxable service is determined or payable periodically. In such cases, the Invoice or challan shall be issued within 14 days from last date of the period [second proviso to rule 4A(1) of Service Tax Rules amended w.e.f. 16-6-2005].

Service like telephones or Annual Maintenance Services are provided on continuous basis. Billing is done periodically (usually monthly). In such case, invoice should be made within 14 days from close that period.

Invoice at end of billing period - In case of some services like services of commission agent, it is impractical to prepare invoice of commission for each sale. Billing is done at end of the agreed period (say month or quarter), which is termed as 'Billing Period'. In such cases, it can be argued that such services are provided on continuous basis and Billing at end of the period should be acceptable.

Rounding up of tax in each invoice not required – Section 37D of Central Excise Act, which is also made applicable to service tax, requires rounding up of tax. However, this is only while making monthly / quarterly payment to Government. Rounding up of duty in each Invoice is not envisaged in section 37D of Central Excise Act.



Advance payment from customers - After 13th May 2005, service tax will be payable as soon as advance is received, even if service is provided later. Thus, service tax is payable when advance is received. Invoice will have to be prepared.

Payment of tax

A person liable to pay tax shall pay the same in prescribed manner [section 68(1)]. The service tax is payable 5th (6th in case of e-payment) of the month following the month in which payments are received toward value of taxable services *except in March* [rule 6(1) of Service Tax Rules].

If the assessee is an individual or proprietary firm or partnership firm, the tax is payable on quarterly basis within 5 days (within 6 days if e-payment is made) at the end of quarter *except in March*. (rule 6). This facility is not available to HUF firm in view of clear wording of the provision.

Exception in March - Exception has been made in case of March. Service tax on value of taxable services received during month of March or quarter of March is required to be paid by 31st March.

Assessee may find it difficult to accurately estimate the amounts he is going to receive from his customers in last two days. Hence, he may pay excess amount upto Rs 50,000; which can be adjusted in subsequent month / quarter, as per rule 6(4B) inserted w.e.f. 1-3-2007.

Payment of tax on amounts actually received - Rule 6(1) makes it clear that the liability is to pay service tax on payments towards value taxable services actually received. Thus, service tax is not payable on amounts charged in the bills / invoice, but on amounts actually received.

Self Adjustment of excess tax paid in earlier period

Facility of self-adjustment of excess service tax paid has been allowed to all assessees vide rule 6(4A) subject to the following conditions prescribed in rule 6(4B) of Service Tax Rules inserted w.e.f. 1-3-2007.

Self adjustment only in case of reasons like calculation mistake, exact amount not known etc.

- Self-adjustment of excess credit is *not* allowed on account of reasons like interpretation of law, taxability, classification, valuation or applicability of any exemption notification [rule 6(4B)(i)]. In such cases, refund application should be filed and self adjustment is not permissible.

Thus, self adjustment is possible only in cases like – (a) Excess payment since exact amount to be paid could not be calculated (b) when tax is to be paid by 31st March and calculation of exact amount is practically impossible (c) calculation mistakes.

Adjustment upto Rs 1,00,000 only permissible - Excess amount paid and proposed to be adjusted should not exceed Rs. 1,00,000 for the relevant month or quarter [rule 6(4B)(iii)].

Adjustment in subsequent month/quarter - Adjustment can be made in the succeeding month or quarter [rule 6(4A)] [Rule does not say that adjustment can be made in subsequent month or

quarter *only*. As per section 13 of General Clauses Act, unless there is anything repugnant to the subject or context, the word singular includes plural and vice versa. Hence, it can be argued that adjustment can be made in any subsequent month /s or quarter /s].

Inform details of adjustment within 15 days - The details of self-adjustment should be intimated to the Superintendent of Central Excise within a period of 15 days from the date of adjustment [rule 6(4B)(iv)] [[It can be argued that this is directory provision and not mandatory provision, since in many cases, it is impossible to inform in 15 days. In such cases, information at the time of filing return should be sufficient].

Adjustment in case of service tax on renting of immovable property - In case of service tax on renting of immovable property, abatement is available in case of property tax paid to local authorities. If such tax is paid at a later date, self-adjustment in service tax payable is permissible within one year from date of payment of tax, without any monetary limit. Assessee should inform Superintendent within 15 days of making adjustment [rule 6(4C) of Service tax Rules].

Assessee having centralized registration - Assessee who have centralised registration can adjust the excess service tax paid on their own without any monetary limit provided the excess amount paid is on account of delayed receipt of details of payments from branch offices [rule 6(4B)(ii)].

Adjustment if service not provided partly or fully - If excess tax is paid, in respect of service which is not provided either wholly or partly for any reason, the excess service tax paid can be adjusted against service tax payable for subsequent period, if the value of services and tax thereon is refunded to the person from whom it was received. [rule 6(3)]. *Such adjustment is permissible only when refund is on account of services not provided.* Thus, if the person refunds on account of giving some discount to client, this provision does not apply.

Payment of service tax

The service tax is payable 5th of the month following the month (6th in case of e-payment) in which payments are received toward value of taxable services [rule 6(1) of Service Tax Rules]. Thus, service tax is *not* payable on basis of amounts charged in the bills / invoice, but only on amounts *actually received* during the relevant period.

Payment from Cenvat credit plus/GAR-7 - Assessee should first utilise Cenvat credit available. Balance amount is payable in cash.

Account code - The tax is payable by a GAR-7 Challan in the bank where excise duty is accepted in that Commissionerate. The major account head is '044'. In addition, separate accounting code has been given to each service. See next chapter pages for account head for each type of service.

TR-6 challan (in yellow colour in quadruplicate) is for payment in conventional mode while GAR-7 (one challan in yellow colour with counterfoil) is used when Bank is having 'EASIEST facility'. In both cases, payment is by cash or cheque.



The tax paid should be rounded off in rupees. Education cess and SAH education cess should be shown separately under separate account head in TR-6/GAR-7 challan.

Presentation of cheque on or before due date is sufficient - Rule 6(2A) provides that cheque of proper amount should be deposited with bank on or before due date. It will be deemed to have been paid on due date, even if the cheque is realised later. However, if cheque is not realised, service tax will not be deemed to have been paid.

If last date is a holiday - If last day of payment and filing return is a public holiday, tax can be paid and return can be submitted on next working day - CBE&C circular No. 63/12/2003-ST dated 14-10-2003.

Electronic Accounting System In Excise and Service Tax (EASIEST) - 'Easiest' has been developed to make payment of tax easy. The facility is available with some 28 banks. The payment is made by GAR-7 challan. Assessee has to make one copy of challan and its counterfoil.

Mandatory e-payment if annual service tax payment exceeds Rs 50 lakhs - e-payment is a mode of payment in addition to the conventional methods of payment offered by the banks under specific security norms of Reserve Bank of India. This scheme facilitates anytime, anywhere payment and an instant cyber receipt is generated once the transaction is complete. It provides the convenience of making online payment of Central Excise and Service Tax through Bank's Internet banking service. About 28 Banks are authorised for this purpose.

Proviso to rule 6(2) of Service Tax Rules makes e-payment mandatory for payment of duty by all assesseees who have paid Service tax of rupees 50 lakh or more in cash during the preceding financial year, w.e.f. 1-10-2006.

Mandatory interest for late payment of service tax - In case of delayed payment of service tax, there is mandatory payment of simple interest under section 75 for the period which the payment is delayed. The interest rate is 13% w.e.f. 10-9-2004, vide notification No. 26/2004-ST dated 10-9-2004 [Earlier interest @ 15% per annum from 11-5-2002. The interest rate was 24% upto 11-5-2002].

Returns

Every assessee has to submit half yearly return in form ST-3 in triplicate within 25 days of the end of the half-year. 'Half year' means 1st April to 30th September and 1st October to 31st March of financial year. The return should be accompanied by TR-6/GAR-7 challans, evidencing payment of duty. Details in respect of each service are to be provided separately. However, service tax payment details and Cenvat credit details are common and combined.

There is no column to show excess amount paid, if any. Presumably, this will have to be intimated by a separate letter and/or given in the ST-3 form as a 'remark' or 'note'.

Last date for filing return is a bank holiday - If last day of payment and filing return is a public holiday, tax can be paid and return can be submitted on next working day - CBE&C circular No. 63/12/2003-ST dated 14-10-2003.

Revised return - Rule 7B of Service Tax Rules has been inserted w.e.f. 1-3-2007 to allow an assessee to rectify mistakes and file revised return within 90 days from the date of filing of the original return. Rule 9(11) of Cenvat Credit Rules (inserted w.e.f. 1-3-2007) allows an assessee to rectify mistakes and file revised return within 60 days from the date of filing of original return. This provision applies only to service providers and not to manufacturers.

What is to be done if mistake comes to notice after 90 days? – There is no provision for submission of revised return after 90 days. In such cases, if assessee finds that he has made some mistake, he should pay the amount by TR-6/ GAR-7 challan and inform department suitably. If he has paid excess amount by mistake, he is required to file refund claim. He cannot adjust excess payment on his own, except in cases where it has been specifically permitted. If he has not taken Cenvat credit of certain inputs, input services or capital goods, he can avail it in subsequent period, since there is no time limit for availing Cenvat credit. This will be reflected in his return for that subsequent period, as in normal course.

Electronic filing of return - Department has introduced e-filing of service tax return on experimental basis from April, 2003. It is optional. The procedure has been described in CBE&C circular No. 52/1/2003-ST dated 11-3-2003. Guidelines are also issued in question answer form on CBE&C website. The facility is available to all service providers.

Late fee and penalty for filing late return - Section 70(1), as amended by Finance Act, 2007 w.e.f. 11-5-2007, makes provision for late filing of return with late fee which can be upto Rs 2,000. Late fee payable will be prescribed by Central Government by issuing a notification. The late fee payable is as follows – (a) Delay Upto 15 days – Rs 500 (b) Beyond 15 days and upto 30 days – Rs 1,000 (b) Delay beyond 30 days – Rs 1,000 plus Rs 100 per day of delay beyond 30 days, from 31st day maximum Rs 2,000- rule 7C inserted w.e.f. 12-5-2007.

Penalty can be waived if no tax was payable – Once a person is registered, he has to file return even if there is no tax liability. He should file Nil return if there was no service tax payable. However, if he does not file return, penalty can be waived / reduced if non-filing of return was for sufficient cause [rule 7C]

Department is required to accept late return even if late fee is not paid – In case of returns filed late, the appropriate late fees should be paid at the time of filing the return, without waiting for any communication or notice from the department. Mere non-submission of evidence of payment of late fee along with the return is, however, not a ground for refusal to allow filing of the return – para 6.4 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

Provisional assessment

Assessee can make request in writing for provisional assessment to Assistant/Deputy Commissioner. Provisions of Central Excise Rules in respect of provisional assessment are applicable, but there is no requirement of any bond [rule 6(4)].

Of course, reason has to be stated why he is not able to correctly determine his tax liability.



After such request is made, assessee has to submit memorandum in form ST-3A showing difference between service tax collected and deposited. Application for provisional assessment should be made to Assistant/Deputy Commissioner. Provisional assessment can be finalised by Assistant/Deputy Commissioner after calling further documents as may be necessary. - Rule 6(4), 6(5) and 6(6) of Service Tax Rules, 1994.

7.6 ADJUDICATION AND APPEALS

Central Excise Officers have been empowered to adjudicate in following -

- (a) Demand of service tax and its recovery - section 73.
- (b) Rectification of mistake by amending own order - section 74.
- (c) Imposition of penalty - section 83A
- (d) Refund of service tax - section 11B of Central Excise Act made applicable to Service Tax.

Time limit for issue of show cause notice - If it is found that assessee has paid less tax, department will issue a show cause notice cum demand.

If any service tax is not levied or not paid or short levied or short paid or erroneously refunded, Central Excise Officer shall issue a show cause notice for demand can be made within one year from 'relevant date' [section 73(1)].

If such short payment etc. was by reason of fraud, collusion, wilful mis-statement, suppression of facts or contravention of any provision of Finance Act, 1994 or rules, show cause notice can be issued within five years [*proviso* to section 73(1)]. After considering the representation, Central Excise Officer will determine the service tax payable. Such tax cannot be more than the amount specified in show cause notice. Thereupon, the person shall pay the amount so determined [section 73(2)].

Voluntary Payment before receipt of show cause notice - Assessee may pay such tax on the basis of his own ascertainment or on the basis of tax ascertained by Central Excise Officer, before issue of show cause notice. After payment of tax, assessee should inform the Central Excise Officer in writing about such payment, and then the central excise officer shall not issue any show cause notice under section 73(1) in respect of service tax so paid [section 73(3)].

Rectification - The Central Excise Officer who has passed order (of assessment or demand or penalty) can rectify any mistake apparent from the record, within two years of the date on which the order was passed. The mistake must be 'apparent from the records'.

Revision - The Commissioner of Central Excise can revise the orders passed by adjudicating authority subordinate to him. The revision order can be passed any time within two years of the original order, but not afterwards. No revision can be made if appeal against such order is pending with Commissioner (Appeals) [section 84]. Appeal against the order of Commissioner (after revision) lies with CESTAT under section 86.

Appeals

Appeal to Commissioner (Appeals) - Appeal to Commissioner (Appeals) can be made against order of any Central Excise Officer subordinate to Commissioner in respect of demand, interest or penalty or denial of refund of service tax. Appeal should be in prescribed form and duly verified. Appeal must be filed within three months from date of receipt of order. Delay upto three months can be condoned by Commissioner (Appeals). The procedures and powers will be similar to those under Central Excise. [section 85 of Finance Act, 1994].

Appeal to Tribunal - Appeal to CESTAT (Tribunal) can be made against order of Commissioner passed by him under section 73, 83A or 84 or order of Commissioner (Appeals) passed by him under section 85 [order in appeal from order of AC / DC] by assessee or the department. Appeal has to be filed within three months from date of receipt of order by assessee, Board or Commissioner as the case may be. [section 86 of Finance Act, 1996]. Tribunal can condone the delay in filing appeal on showing sufficient cause. Appeal has to be accompanied with prescribed fees, if appeal is by the assessee.

Tribunal is final fact finding authority.

Appeals to HC/SC – If issue involves classification or valuation, appeal lies with Supreme Court. If issue does not involve classification or valuation dispute, appeal lies with High Court only on substantial question of law.

Penalties

The penalties can be imposed by Central Excise Officers. There is no provision for prosecution under the Act.

Penalty for non-payment or delayed payment of service tax - If service tax is not paid or belatedly paid, penalty shall be imposed, which will be minimum Rs. 200 per day during which such failure continues or @ 2% per month, whichever is higher, starting with the first day after due date till date of actual payment of outstanding amount. Mercifully, the penalty cannot exceed the service tax which was payable. In addition, of course, service tax and interest is payable. [section 76 of Finance Act, 1994]. As per section 80, this penalty can be waived or reduced if proper cause is shown.

Penalty for contravention of Act or Rules - Penalty for contravention of any provision of the Chapter or Rules (of service tax) can be upto Rs. 1,000 [section 77]. The penalty can be waived under section 80, if assessee proves that failure was due to reasonable cause.

Penalty in case of fraud, suppression of facts etc. - Where any tax is not levied or paid or erroneously refunded, the person shall be liable to pay penalty which shall not be less than amount of service tax but can be upto twice the amount of service tax amount of service tax not levied or not paid or erroneously refunded [section 78]. The penalty can be waived under section 80, if assessee proves that failure was due to reasonable cause. [The penalty will be reduced to 25%, if tax, interest and penalty is paid within 30 days from date of receipt of order of Central Excise Officer].



7.7 EXPORT OF SERVICES

If service is exported, there is no service tax liability. If the service is exported, the Cenvat credit is not required to be reversed. Assessee can utilise credit for payment of service tax on other services. However, if this is not possible, he can get refund.

Service tax is required to be exempted only if there is actual export of service. 'Export of Services Rules, 2005' have been notified w.e.f. 15-3-2005. The rules make it clear that exemption from services / rebate of service tax and excise duty paid is admissible only if there is 'export of service' as defined in these rules. Mere receipt of payment in free foreign exchange will not be sufficient to treat the service as 'export service'.

Exemption or Rebate of Service tax - Exporter of service has three options -

- (a) Export without payment of service tax and utilise Cenvat Credit for payment of service tax on other services.
- (b) Export without payment of service tax and claim rebate of service tax paid on input services and excise duty paid on inputs (or forget about rebate as procedure is too complicated and impractical)
- (c) Pay service tax on exported services and claim rebate (by this, he can utilise his input credit)

Meaning of Export of taxable service - Following conditions are common in respect of *all* taxable services - (a) The service should be provided from India and used outside India [rule 3(2)(a) of Export of Service Rules] and (b) Payment for such service is received by the service provider in convertible foreign exchange [rule 3(2)(b) of Export of Service Rules].

In addition, further conditions apply to different categories of services. Rule 3 of Export of Service Rules classifies the taxable services in four categories –

- (i) Immovable property should be situated abroad [rule 3(i)]
- (ii) Service should be at least partly performed outside India [rule 3(ii)]
- (iii) Service can be provided from Indian but recipient should be located outside India and order should be received from outside India [rule 3(iii)]
- (iv) Services which not be treated as 'export of services' under any situation.

Services falling under each category are given in next chapter.

Rebate of service tax paid on exported services or tax paid on inputs/input services - Subsequent to issue of Export of Service Rules, 2005; two notifications have been issued making provisions for rebate.

- (a) Notification No. 11 / 2005-ST dated 19-4-2005, providing for rebate of service tax and education cess paid on taxable services exported i.e. tax paid on output services

- (b) Notification No. 12/2005-ST dated 19-4-2005, providing for rebate of excise duty paid on inputs and service tax paid on input services, which are used in providing exported taxable services.

Refund of input service tax and duty under Cenvat Credit Rules - Rule 5 of Cenvat Credit Rules has been amended w.e.f. 14-3-2006 to provide for refund of Cenvat credit when output service is exported. Procedure for claiming refund of service tax paid on input services and excise duty on inputs has been specified in notification No. 5/2006-CE(NT) dated 14-3-2006. Application should be submitted in Form 'A' to Assistant / Deputy Commissioner.

Application can be submitted every quarter. However, in following cases, refund can be claimed on monthly basis - (a) persons whose average export clearances are more than 50% of total clearances (b) EOU units. Refund of input service credit will be restricted to the extent of ratio of export turnover to the total turnover for the given period e.g. if total credit of input services is Rs. 100, total turnover is Rs. 500 and export turnover is Rs. 250, refund of input service tax credit will be only Rs. 50 (i.e. 50%, since export turnover is 50% of total turnover). The procedure seems to be simple. EOU is eligible to avail this procedure.

7.8 IMPORT OF SERVICES

The statutory provisions use the words 'Services provided from outside India and received in India'. However, generally, the tax is known as tax on 'Import of Services'.

Section 66A(1) (effective from 18-4-2006) provides that where any service specified in section 65(105) of Finance Act, is,— (a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and (b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India, such service shall, for the purposes of this section, be taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply.

Exemption to individual receiving the service - First *proviso* to section 66A(1) states that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply.

When service provider has establishment at more than one places - Second *proviso* to section 66A(1) states that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided. Thus, even if a service provider has office in India as well as in foreign country, the service will be treated as provided from foreign country, if service is provided from that country.



Two permanent establishments to be treated as two separate persons - As per section 66A(2), where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

Intention seems only to tax services received in India - Though section 66A is broadly worded and covers even services provided and consumed abroad, it appears that intention is to tax only services received in India. *If so, then only possible objection can be violation of DTA.*

Service provided from outside India and received in India - Though scope of section 66A is wide, it can be argued that service tax is payable only if the service falls within the definition of 'Service provided from Outside India and Received in India'.

Classification of services - The rules classify all taxable services in four categories, namely (i) Services in relation to immovable property – the property should be situated in India – rule 3(i) (ii) Services should be at least partly performed in India [rule 3(ii)] (iii) Services received by recipient located in India [rule 3(iii)] (iv) Services which will never be treated as import of service. The classification is same as per export of Service Rules.

Service receiver liable to pay service tax - As per rule 2(1)(d)(iv) of Service tax Rules, person liable for paying the service tax means - in relation to any taxable service provided or to be provided by any person from a country other than India and received by any person in India under section 66A of the Act, the recipient of such service.

Thus, person receiving service in India will be liable to pay service tax. He will have to register under Service tax provisions and submit returns. Service receiver was made liable to pay service tax on services provided by non-resident by amending rules on 16-8-2002. In cases prior to that, it was held that service receiver cannot be made liable to pay service tax in case of services provided by non-resident.

Tax to be paid in cash without Cenvat credit - Rule 5 of Taxation of Services (Provided from outside India and Received in India) Rules, 2006 clarifies that the taxable service will not be treated as output service of the recipient for purpose of availing of Cenvat credit of duty of excise paid on inputs or service tax paid on any input services. Thus, the recipient of service has to pay the service tax in cash by TR-6/ GAR-7 challan. He cannot utilise his Cenvat credit for payment of this amount, as it is not his 'output service', though he is liable to pay service tax.

Service receiver avail Cenvat credit of service tax paid by him - Though the person receiving the service is liable to pay service tax, the service is his 'input service'. Para 4.2-13 of MF(DR) circular No. B1/4/2006-TRU, dated 19-4-2006 confirms as follows 'Where such service is used as an input for providing any taxable output, the service tax paid on such service can be taken as input credit' (The TRU letters have not been withdrawn even when all other circulars have been withdrawn on 23-8-2007. Hence, TRU letters are still valid) [There is some controversy on this issue]