

PAPER – 8 : INDIRECT TAXES

QUESTIONS

1. MTZ Ltd. purchases edible vegetable oil from the open market and refines it. Refined edible vegetable oil falls in Chapter 15 of the First Schedule to the Central Excise Tariff. MTZ Ltd. claims that the process undertaken by it does not amount to manufacture as there is no Chapter Note or Section Note which specifies that refining of edible vegetable oil amounts to manufacture.

You are required to advise with reference to the present position of law in this regard.

2. XYZ Ltd. manufacturing excisable goods files a classification list classifying its products under Tariff Item, say '1'. However, the Central Excise Officer insists that the classification of its goods must be under Tariff Item, say '2' and that the same cannot be cleared until they are so classified. XYZ Ltd., therefore, agrees to classify the goods under Tariff Item '2' under protest. Subsequently, a Circular is issued by the Board clarifying that the said goods are classifiable under Tariff Item '1'. Thus, XYZ Ltd. starts clearing their goods under Tariff Item '1' without filing a fresh classification list. However, a show cause notice is issued to them demanding duty on the ground that they cleared the goods without filing a fresh classification list.

You are required to examine the situation with the help of case law, if any.

3. Infotech systems manufactured mini computer processing systems with floppy drive, keyboard, and CPU. In around 30% of cases, Infotech Systems bought duty paid monitors and printers from the market and supplied to customers on their request. A classification list which did not include monitors and printers was filed by Infotech systems and was approved.

Chapter Note 5 to Chapter 84 specifies that a monitor or printer has to be classified along with the computer. Therefore, by virtue of this Chapter Note the Central Excise Officer took a view that the value of monitors and printers should be included in the value of the computers.

Give your opinion on the issue with the help of decided case laws, if any.

4. The refund of an encashed bank guarantee for all or part of the disputed excise duty, pursuant to an order of the Court, is governed by the provisions of section 11B. Discuss the correctness or otherwise of the statement with the help of decided case law, if any.
5. With reference to CENVAT Credit Rules, 2004, discuss giving reasons whether the following statements are true or false:
 - (a) Motor vehicles are eligible capital goods both for manufacturers and all output service providers.
 - (b) An input service distributor has to furnish a half yearly statement in the form specified by the Board to the jurisdictional Superintendent of Central Excise.
 - (c) Cenvat credit shall be allowed on inputs which are sent to the job worker for the manufacture of intermediate goods necessary for the manufacture of final products, if they are received back in the factory within 180 days of their being sent to the job worker.
 - (d) Where the capital goods are cleared as waste and scrap, the manufacturer has to pay an amount equal to the duty leviable on transaction value. Such amount paid can be availed as CENVAT credit.
 - (e) Credit of basic excise duty can be utilized for payment of education cess whereas the *vice versa* is not possible.

6. Tasty Biscuits Ltd. manufactures biscuits under the brand name of "Tasty" on its own account and under the brand name of "Chocopie" on job work basis, on behalf of M/s. Excellent Confectioners. Tasty Biscuits Ltd. has been availing the benefit of SSI exemption for the goods cleared under its own brand name. Tasty Biscuits Ltd. now files an application for availing the Cenvat benefit in respect of "Chocopie" brand biscuits manufactured by it on job work basis. However, the Central Excise Officer rejects the application. Is the stand taken by the Central Excise Officer correct?

Examine the case with the help of decided case laws, if any.

7. Answer the following questions relating to export of excisable goods under Rule 18 of the Central Excise Rules, 2002 to countries other than Nepal or Bhutan?
 - (i) Should a bond be executed in such export? Support your answer with proper reason.
 - (ii) What is the form for clearance of excisable goods in such export?
 - (iii) How can the rebate of duty on the exports be claimed? Is there any time limit for the same?
 - (iv) Is there any duty limit below which the rebate of duty cannot be granted? If yes, then, what is the limit? Is there any other restriction on the grant of rebate?
 - (v) Which duties of excise are eligible for rebate under Rule 18?
 - (vi) Is it necessary that in order to claim rebate, excise duty should be paid in cash?
8. Write short notes on the following:
 - (a) Powers of a Central Excise Officer in respect of access to a registered premises
 - (b) Audit under section 14AA of the Central Excise Act, 1944
9. What do you mean by payment of excise duty under protest? Explain the procedure that has to be followed by an assessee who opts to pay duty under protest.
10. Can all cases of disputed excise duty be settled in a Settlement Commission? If no, then enlist the exceptions?
11. With reference to the provisions of the Customs Act, 1962, explain the following briefly:
 - (i) Ad hoc exemptions
 - (ii) Entry outward
 - (iii) Warehousing stations
12. ASC Ltd. entered in to technical collaboration with MSC Ltd. of Netherlands and imported drawings and designs in paper form through professional courier and post parcels. ASC Ltd. declared the value of these drawings and designs at a very nominal value. However, the Assistant Commissioner of Customs valued these drawings and designs at a high value and levied duty on them. ASC Ltd. contended that customs duty cannot be levied on drawings and designs as they do not fall in the definition of goods under the Customs Act, 1962.
Do you feel the stand taken by the ASC Ltd. is tenable in law? Support your answer with a decided case law, if any.
13. How will you determine the customs duty where imported goods consist of articles liable to different rates of duty?
14. Write short notes on:
 - (a) Export General Manifest
 - (b) Boat Note (or restriction on goods being water borne)
15. 'M' imported second-hand machinery from Singapore and filed the classification list. 'M' claimed that the machinery was fully exempt from payment of customs duty under a Notification. However, the Assistant Commissioner of Customs, the authority in original, passed an order-in-original holding that the machinery imported by 'M' was classifiable under a different heading and chargeable to customs duty. Consequently, 'M' had to furnish the bank guarantee for the duty payable under that heading in order to release the machinery.
Subsequently, the Assistant Commissioner of Customs ordered to encash the bank guarantee executed by 'M' to realise the customs duty. No sooner the aforesaid order-in-original was issued to 'M', the Customs Department invoked the bank guarantee by sending an intimation-cum-request to the Bank to pay to them the amount of bank guarantee. 'M' contended that the order of the Assistant Commissioner was an appealable order and since the statutory period of filing an appeal was yet to expire, the Department's action was not correct.
Do you think the stand taken by the Customs Department is tenable in law? Discuss.

16. ABC Ltd. imported certain products and filed a bill of entry. The amount of duty payable was assessed but was not acceptable to ABC Ltd. and hence the same was paid by it under protest. Subsequently, a refund claim was filed by ABC Ltd. on the ground that the duty had been wrongly levied. However, the claim was rejected by the Department on the ground that since no appeal had been filed against the assessment order, the refund claim was not maintainable.

ABC Ltd. contended that according to section 27 of the Customs Act, 1962 a claim for refund could be made by any person who had paid duty in pursuance of an order of assessment or a person who had borne the duty. It was submitted that the words "in pursuance of assessment" necessarily implied that a claim for refund could be made without challenging the assessment in an appeal. Further, if the assessment was not correct, a party could file a claim for refund and the correctness of the assessment order could be examined whilst considering the claim for refund.

Give your opinion on the issue with the help of decided case laws, if any.

17. Two trucks are intercepted by the Customs Department. The officers of the Customs Department conduct search of the vehicle in the presence of witnesses and it is found that one of the trucks has a secret compartment and 175 Kgs. of heroine and 39 Kgs. of opium of foreign origin are concealed in that chamber. During the course of investigation, the statement of 'P', the registered owner of the vehicle, is taken under section 108 of the Customs Act and 15 witnesses are examined. However, 'P' completely denies his culpability in the crime. He contends that though the vehicle is registered in his name but he has sold the truck much before the contraband goods are recovered therefrom.

You are required to examine the situation with the help of case law, if any.

18. Answer the following questions:
- (i) Does service tax law provide for any exemption to small service providers? If yes, then what is the quantum of such exemption?
 - (ii) Discuss the provisions governing the registration of premises of service providers who have centralized billing or centralized accounting system.
 - (iii) 'A Ltd.' enters in to an advertising contract with 'B Ltd.' for a sum of Rs.15,000.00 on 05.11.2005. A Ltd. receives an advance of Rs.10,000.00 on 06.11.2005 and the balance amount on the completion of services on 12.12.2005. Compute the service tax payable by A Ltd. in the month of December and January.
 - (iv) State the conditions for availing the exemption from payment of service tax in respect of production or processing of goods for or on behalf of the client.
19. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:
- (i) Maintenance services provided in respect of shopping malls.
 - (ii) Service provided by goods transport agency in respect of transport of fruits, vegetables, eggs or milk.
 - (iii) Service provided by individual videographer.
 - (iv) Bottling services provided by a commercial concern.
 - (v) Disinfecting services provided in relation to agriculture.
20. (i) Discuss the provisions governing levy of service tax on import of services.
- (ii) Who can apply for an advance ruling for service tax matters?

SUGGESTED ANSWERS/HINTS

1. The definition of manufacture inter alia provides that “manufacture includes any process, which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture.”

Finance Act, 2005 has inserted a Note in Chapter 15 of Central Excise Tariff to provide that in relation to refined edible vegetable oils falling under Headings 1507 to 1515, the process of refining shall amount to manufacture. In this context, the process of refining shall include treatment of crude oil with alkali, bleaching and deodorisation. This Chapter note has been given retrospective effect from 1.03.1986.

Therefore, in the current position of law the process of refining of edible vegetable oil undertaken by MTZ Ltd. shall amount to manufacture.

Note: *This matter had come up before the Supreme Court in the case of Shyam Oil Cake Ltd. v. CCEx., Jaipur, 2004 (174) E.L.T. 145 (S.C.). The Apex Court stated that merely setting out a process in tariff entry would not be sufficient to hold that the particular process resulted in manufacture. If the process was indicated in the Tariff Entry, without specifying that the same would amount to manufacture, then the indication of the process was merely for the purpose of identifying the product and the rate which was applicable to that product. The Apex Court emphasised that for a deeming provision to come in to play it must be specifically stated that a particular process would amount to manufacture. In the absence of it being so specified, the commodity would not become excisable merely because a separate Tariff Item existed in respect of that commodity.*

It was observed by the Supreme Court that neither the Section Note nor the Chapter Note nor the Tariff Item gave any indication that the process indicated would amount to manufacture. The product remained edible vegetable oil even after the processing/refining. It was held by the Apex Court that as actual manufacture had not taken place, deeming provision could not be invoked in the absence of a specific statement that the process would amount to manufacture.

However, in view of the above-mentioned amendment made by Finance Act, 2005 this judgment does not hold good anymore.

2. The facts of the case are similar to that of the *General Rubber Company Pvt. Ltd. v. Commissioner of Central Excise, Delhi-II 2005 (181) E.L.T. 366 (S.C.)*. In this case, the Apex Court observed that the classification list had been revised under protest. It was stated by the Supreme Court that once the Board clarified that those goods were classifiable under a particular Tariff Item, the assessee became entitled to clear the goods under that Tariff Item. The Supreme Court held that at the most, penalty could be imposed for not filing a fresh classification list. However, the demand was not sustainable.

Same analogy can be applied in the present case also. Thus, demand of duty from XYZ Ltd. does not hold good in law.

3. This issue was taken up by the Supreme Court in the case of *CCEx., Mumbai v. C.M.S. Computers P. Ltd. 2005 (182) E.L.T. 20 (S.C.)*. The facts of the given situation are similar to that of the above-mentioned case.

In this case, the Apex Court opined that a monitor or a printer is not an essential part of the computer. It is a peripheral item which may be required along with a computer. Merely because a Tariff Entry may also include a monitor or printer, it would not lead to the conclusion that a monitor or printer is an essential part of a computer. All that the Chapter Note indicates is that not only the computer but a monitor and a printer are also excisable products. However, the monitor and/or printer would be excisable only in the hands of their manufacturer. The assessee did not manufacture the monitor or the printer. The Supreme Court observed that in approximately 70% of the cases monitors and printers were not supplied along with the computer sold by the assessee. Thus, it could be concluded that the assessee did not sell their computer as a unit including a monitor and a printer. Therefore, Apex Court held that as monitor and printer were not essential parts of the computer their value could not be included in the value of computer.

However, it was clarified by the Supreme Court that the situation may be different where a manufacturer sells a computer with a monitor and a printer as a unit.

Therefore, in view of the above-mentioned case law the stand taken by the Central Excise Officer is not correct.

4. Supreme Court in the case of *Oswal Agro Mills Ltd. v. Assistant Collector of C.Ex., Ludhiana 1994 (70) ELT 48 (SC)* has held that refund of an encashed bank guarantee for all or part of the disputed excise duty pursuant to an order of the Court is not governed by the provisions of section 11B, since furnishing of a bank guarantee is not equivalent to payment of excise duty.

The Supreme Court stated that section 11B applies when an assessee claims refund of excise duty. A claim for refund is a claim for repayment. It presupposes that the amount of the excise duty has been paid over to the excise authorities. It is then that the excise authorities would be required to repay or refund the excise duty.

The Apex Court explained that a bank guarantee is a security for the Revenue for recovering the dues in the event the Revenue succeeds in the dispute concerning the duty. However, if the bank refuses to honour its guarantee the revenue or the principal administrative officer of the Court (where the bank guarantee is in his favour) has to file a suit against the bank for the amount due upon the bank guarantee. Therefore, the amount of the disputed tax or duty that is secured by a bank guarantee cannot be considered as having been paid to the Revenue. Thus, there arises no question of its refund and hence provisions of section 11B would not be attracted.

5. (a) *False.* Rule 2(a) defines capital goods to mean

(A) the following goods, namely:-

- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.02 and sub-heading No. 6801.10 of the First Schedule to the Central Excise Tariff Act;
 - (ii) pollution control equipment;
 - (iii) components, spares and accessories of the goods specified at (i) and (ii);
 - (iv) moulds and dies, jigs and fixtures;
 - (v) refractories and refractory materials;
 - (vi) tubes and pipes and fittings thereof; and
 - (vii) storage tank,
- used-

- (1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or
- (2) for providing output service;

- (B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act.

Motor Vehicles fall under Chapter 87. Thus, the manufacturers cannot avail credit on motor vehicles. However, in case of taxable services credit on motor vehicles can be availed in case of abovementioned specific output services. These services are:

- (1) Courier services
- (2) Tour operator's services
- (3) Rent-a-cab scheme operator's services
- (4) Cargo handling agency's services
- (5) Goods transport agency's services
- (6) Outdoor caterer's services

(7) Pandal or shamiana contractor's services

- (b) *False.* With effect from 16.06.2005, rule 9(10) has been substituted by a new sub-rule vide *Notification No. 28/2005 CE (N.T.), dated 07.06.2005*. The new sub-rule 10 provides that the input service distributor shall furnish a half yearly **return** in the form specified by the Board to the jurisdictional Superintendent of Central Excise.
 - (c) *True.* Rule 4(5) lays down that Cenvat credit shall be allowed on goods (being inputs or capital goods) sent to the job worker for further processing, testing, repair, reconditioning or any other purpose, if they are received back in the factory within 180 days of their being sent to the job worker. In case they are not returned within 180 days the credit on such goods has to be reversed. However, credit can be retaken once the goods come back. This sub-rule has been amended vide *Notification No. 27/2005 CE (N.T.) 16.05.2005* to provide that credit shall also be allowed on goods which are sent to the job worker for the manufacture of intermediate goods necessary for the manufacture of final products. The condition that the goods should be returned to the factory within 180 days shall apply to such goods as well.
 - (d) *True.* After rule 3(5), a new sub-rule (5A) has been inserted in rule 3 vide *Notification No. 27/2005 CE (N.T.) 16.05.2005*. The new sub-rule (5A) provides that if the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value. Rule 3(6) has also been amended to provide that the amount paid under sub-rule (5A) shall also be eligible as Cenvat credit [just like amount paid under sub-rule (5)] as if it was duty paid by the person who removed such goods under sub-rule (5A).
 - (e) *True.* As per rule 3(4) read with rule 3(1) and rule 3(7)(b), the Cenvat credit of basic excise duty, special excise duty, service tax and AED(GSI) can be utilised for payment of **any** duty or service tax as credit of all duties together is known as 'Cenvat credit'. Hence, credit of basic excise duty can be utilised for payment of education cess on excisable goods. However, as per rule 3(7)(b), credit of education cess paid on excisable goods can be utilised only for payment of education cess on excisable goods or taxable services.
6. The facts of the given case are similar to those of *CCEx. Ahmedabad v. Ramesh Food Products 2004 (174) ELT 310 (SC)*. In this case, the Supreme Court observed that the *Notification No.175/86-C.E.*, clearly demarcated the two categories of manufacturers. A clear-cut distinction was explicit between a manufacturer availing Modvat credit under Rule 57A (new Rule 3 of Cenvat Credit Rules, 2004) and another not opting for the Modvat scheme. Input duty relief was given under the scheme to the manufacturers who had opted to operate under the scheme by applying for it in the prescribed manner. Ultimately, the manufacturers had the choice of choosing one of the two concessions, i.e. either the Modvat scheme or *Notification 175/86-C.E.* It was held by the Apex Court that since there was no one to one correlation between the inputs and final products under Modvat Scheme, it would not be possible to allow the manufacturer to simultaneously avail Modvat for some products and avail full exemption for others under small-scale exemption scheme.
- The same analogy can be applied in the present case too. *Notification No.8/2003* also differentiates between manufacturer availing Cenvat credit under Rule 3 of Cenvat Credit Rules, 2004 and the one not opting for the Cenvat scheme. Thus, here also simultaneous availment of Cenvat for some products and full exemption for others under the scheme of small-scale exemption shall not be permissible. Thus, the stand taken by the Central Excise Officer is correct.
7. Under Rule 18 of Central Excise Rules, 2002, the rebate of excise duty paid on exported goods is granted. Procedures and conditions for export of excisable goods under claim of rebate to countries other than Nepal or Bhutan are specified in *Notification No.19/2004 C.E. (N.T.) dated 06.09.2004*. Answers to each part of the question are as follows:
- (i) There is no need to execute a bond in such a case as the goods are exported under claim of rebate after full payment of duty under an invoice.
 - (ii) Export under claim for rebate should be made under ARE-1 form.
 - (iii) A claim of rebate of duty paid, along with the original copy of the ARE-1, shall be lodged with

the Assistant/Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case maybe, the Maritime Commissioner. As per section 11B of the Central Excise Act, 1944, the claim must be filed within one year from the date of export.

- (iv) The rebate will not be granted if amount of rebate of duty is less than Rs.500. Further, the rebate will also not be granted if the market price of the excisable goods at the time of exportation is less than the amount of rebate.
 - (v) Following duties are eligible for rebate:
 - (a) duties of excise collected under the Central Excise Act, 1944;
 - (b) duties of excise collected under the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
 - (c) duties of excise collected under the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978;
 - (d) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001, as amended from time to time;
 - (e) special excise duty collected under a Finance Act;
 - (f) additional duty of excise as levied under section 157 of the Finance Act, 2003;
 - (g) education cess on excisable goods levied under Finance (No.2) Act, 2004;
 - (h) additional duty of excise leviable on pan masala and specified tobacco products under Finance Act, 2005.
 - (vi) No. It is not necessary that rebate can be obtained only if duty is paid in cash. Duty on final products can be paid either through cash or PLA or Cenvat credit [CBE&C Circular No. 262/96/96-CX 6 dated 06.11.96].
8. (a) Rule 22 of Central Excise Rules, 2002 governs the provisions in respect of powers of a Central Excise Officer regarding access to a registered premises in the following manner:
- (1) An officer empowered 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, and first stage and second stage dealer shall furnish to the officer empowered under sub-rule (1), a list in duplicate, of-
 - (i) all the records prepared and maintained for accounting of transaction in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods, as the case may be;
 - (ii) all the records prepared and maintained for accounting of transaction in regard to payment for input services and their receipt or procurement; and
 - (iii) all the financial records and statements including trial balance or its equivalent.
 - (3) Every assessee, and first stage and second stage dealer 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, -
 - (i) the records maintained or prepared by him in terms of sub-rule (2);
 - (ii) the cost audit reports, if any, under section 233B of the Companies Act, 1956 ; 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 audit party, as the case may be.

It has been clarified that for the purposes of this rule, “first stage dealer” and “second stage

dealer” shall have the meanings assigned to them in CENVAT Credit Rules, 2004.

- (b) Section 14AA of the Central Excise Act, 1944 prescribes a special audit in cases where credit of duty availed or utilized is not within the normal limits etc. The Commissioner of Central Excise may call for an audit if he has reason to believe that the credit of duty availed of or utilized by a manufacturer of any excisable goods –

- (a) is not within the normal limits having regard to the nature of the excisable goods produced or manufactured, the type of inputs used and other relevant factors, as he may deem appropriate;
- (b) has been availed of or utilized by reason of fraud, collusion or any willful mis-statement or suppression of facts.

The Commissioner shall direct such manufacturer to get the accounts of his factory, office, depot, distributor or any other place, as may be specified by him, audited by a Cost Accountant nominated by him. Cost Accountant shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959.

The Cost Accountant so nominated shall submit the duly signed and certified audit report within the period specified by the Commissioner of Central Excise. He shall also mention in the report such other particulars as may be prescribed by the Commissioner. This audit shall be in addition to any other audit under any other law for the time being in force or otherwise.

The manufacturer shall be given an opportunity of being heard in respect of any material gathered on the basis of the audit and proposed to be utilized in any proceeding under the Central Excise Act or rules made thereunder.

9. Sometimes it happens that the classification and assessable value of goods determined by the excise authorities are not agreeable to or acceptable to the assessee. In such cases, the assessee can file an appeal and in the meanwhile he can pay duty under protest if no stay is obtained from Appellate Authorities.

Section 11B of the Central Excise Act, 1944 provides that the time limit of one year for claiming refund of excise duty shall not apply where the duty has been paid under protest.

As per the Supplementary Instructions issued by Central Board of Excise and Customs, any assessee who desires to pay duty under protest, may do so by following the procedure mentioned below:

- (a) The assessee shall inform the Superintendent or Inspector of Central Excise in writing giving reasons for paying duty under protest and dated acknowledgement will be given to him.
- (b) The assessee shall mark invoices or monthly/quarterly returns indicating the goods on which duty is paid ‘under protest’. If it is a lump-sum duty payment in respect of past demand, he may record the fact of duty payment under protest in the Personal Ledger Account, CENVAT Account and the Daily Stock Account.
- (c) If a case is appealed against by the assessee or where the appeal period for further appeal is available, he may continue to pay duty under protest. However, if decision is not in his favour and he exhausts the appellate remedy or does not appeal within stipulated period, he shall not have any right to pay duty under protest.

10. No, all cases of disputed excise duty cannot be settled in Settlement Commission. As per proviso to section 32E of the Central Excise Act, 1944, the following cases cannot be settled in Settlement Commission:

- a. where the applicant has not filed returns showing production, clearance and central excise duty paid;
- b. where the applicant has not received a show cause notice;
- c. where the case is pending before the Appellate Tribunal or any Court;

- d. where the dispute relates to interpretation of classification of excisable goods;
- e. in case of seizure of excisable goods/books/documents, if the application for settlement has been made before the expiry of 180 days from the date of such seizure;
- f. where the additional amount of duty accepted in the application does not exceed Rs.2,00,000.

11. (i) Ad hoc exemptions -

Ad hoc exemption is granted by issue of a special order in exceptional circumstances by the Central Government under section 25(2) of the Customs Act, 1962. The Central Government grants such exemption only when it is satisfied that such exemption is necessary for the public interest. The order should specify the exceptional circumstances for granting such ad hoc exemption.

(ii) Entry Outward -

Entry outward is a general permission granted by Customs Department to the master of the vessel to load export cargo. The master of the vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry outwards to such vessel. Further, the export goods can be loaded only after the exporter hands over a shipping bill or bill of export, duly passed by the Customs officer to the person-in-charge of the conveyance.

(iii) Warehousing Stations -

As per section 2(45) of the Customs Act, 1962, a warehousing station means a place declared as a warehousing station under section 9. As per section 9 of the Customs Act, Central Board of Excise and Customs (CBE&C) may by notification in the Official Gazette declare places to be warehousing stations at which alone public warehouse may be appointed or private warehouse may be licensed.

The law makes a clear distinction between public warehouses and private warehouses. The public warehouse is owned and managed by a government body. In most of the cases it is Central Warehousing Corporation. A private warehouse is licensed in places where there is no public bonded warehouse. An important point to be remembered is the liability of the warehouse keeper. Normally such warehouses are kept under double lock one that of the warehouse keeper, and the other of the customs department. Further, in the case of the private bonded warehouse the licensee has to pay for and acquire the services of a customs officer (on cost recovery basis) to be posted and stationed in the private warehouse.

12. This issue has been settled by the Supreme Court in the case of *Associated Cement Companies Ltd. v. CC 2001 (128) ELT 21 (SC)*. The Apex Court observed that though technical advice or information technology are intangible assets, but the moment they are put on a media, whether paper or cassettes or diskettes or any other thing, they become movable and are thus, goods. Therefore, the Supreme Court held that drawings, designs, manuals and technical material are goods liable to customs duty.

Therefore, the stand taken by the ASC Ltd. is not correct in law.

13. Section 19 of the Customs Act, 1962 prescribes the method for determination of duty where goods consist of articles liable to different rates of duty. It lays down that where goods consist of a set of articles, duty shall be calculated as follows :-

- (a) articles liable to duty with reference to quantity shall be chargeable to that duty;
- (b) articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;
- (c) articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b) :

However:

- (a) accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;
- (b) if the importer produces evidence to the satisfaction of the proper officer regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

These provisions are subject to anything provided otherwise in any law for the time being in force.

14. (a) Export General Manifest contains a complete list of the cargo exported in a conveyance under the control of person-in charge of such conveyance. As per section 41 of the Customs Act, 1962, the person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest, and in the case of a vehicle, an export report, in the prescribed form.

The person delivering the export manifest or export report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

If the proper officer is satisfied that the export manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented.

- (b) In case the vessel arriving at the port does not get a berth, the import cargo is taken from the ship to the shore and the export cargo from shore to the ship, in boats. Section 35 of the Customs Act stipulates that no imported goods shall be water borne for being landed from any vessel, and no export goods which are not accompanied by a shipping bill, shall be water-borne for being shipped, unless the goods are accompanied by a boat-note in the prescribed form.

However, the Board may, by notification in the Official Gazette, give general permission, and the proper officer may in any particular case give special permission, for any goods or any class of goods to be water-borne without being accompanied by a boat-note.

The form and content of the boat note is prescribed under the Boat Note Regulations, 1976. These regulations specify that normally the boat note should be issued by the proper officer. However, in a special case, the Commissioner of Customs, may authorize an exporter or his authorized agent to issue a boat note. Every person, who is so authorised by the Commissioner shall maintain proper account of boat notes issued by him and furnish to the proper officer such information as may be specified by the Commissioner. The boat note should be of such dimension and colour as is indicated in the prescribed forms. They should be maintained in duplicate and machine numbered. Separate forms have been prescribed for export cargo, import cargo, and transshipment cargo.

15. Similar situation was addressed to by the High Court in the case of the *Ocean Driving Centre Ltd. v. Union of India 2005 (180) E.L.T. 313 (Bom.)*. In this case, the petitioner contended that he had a statutory right of appeal before the Appellate Authority and at the same time, he also had a right to move an application to get the pre-deposit waived in terms of section 129E of the Customs Act, 1962. He further submitted that he had an arguable case on classification. The debatable question had resulted in the release of goods subject to the furnishing of the bank guarantee at the stage of the provisional assessment. Had it not been a debatable issue, he would not have been allowed to claim release of the goods on furnishing the bank guarantee. The bank guarantee was furnished to secure dues of Department. The same was valid and should have been kept alive till the dispute was finally resolved. According to him, order of assessment as on date was not final and conclusive.

The High Court observed that it was not in dispute that the appeal period was yet to expire and that the order was an appealable order. Further, as per the policy engrafted in the Circular No. 396/29/98-CX., dated 2nd June 1998 the Department was expected not to resort to coercive

action so long as the appeal period was not over. Hence, the action of Department was contrary to their own policy. The High Court held that it was not proper on the part of the Department to encash the bank guarantee before the expiry of the statutory period provided for filing appeal.

In the given case also 'M' had a statutory right to file an appeal and get the pre-deposit waived. Thus, extending the ratio of the above decision, it can be inferred that the stand taken by the Department is not tenable in law.

16. The Supreme Court in the case of *Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive) 2004 (172) E.L.T 145 (S.C.)* has stated that once an order of assessment has been passed, the duty would be payable as per that order. Unless that order of assessment has been reviewed under section 28 and/or modified in an appeal, that order would be enforceable. So long as the order of assessment is effective, the duty would be payable as per that order of assessment. A refund claim is not an appeal proceeding. The officer considering a refund claim cannot sit in appeal over an assessment made by a competent officer. The officer considering the refund claim can also not review an assessment order.

The Apex Court clarified that as the words "in pursuance of assessment order" come after the words "Any person claiming refund of any duty and interest, if any, paid on such duty paid by him", they only indicate the party/person who can make a claim for refund. Thus, these words must be understood in the limited context only. They enable a person who has paid duty in pursuance of an order of assessment to claim refund. These words does not lead to the conclusion that a claim for refund can be maintained without modifying the order of assessment in an appeal or reviewing the same under section 28. The Supreme Court held that a refund claim cannot be filed against an assessment order, which has not been modified in an appeal or reviewed under section 28.

The ratio of the abovementioned decision can be applied in the present case also. Therefore, the stand taken by the Department is correct.

17. The facts of the case are similar to the facts of the case of *Balwinder Singh v. Asstt. Commissioner, Customs & Central Excise 2005 (181) E.L.T. 203 (S.C.)*. In this case, the Supreme Court stated that the registered owner of the vehicle was convicted solely for the reason that he was the registered owner of the vehicle. There was no evidence to prove that he knowingly allowed any person to use the vehicle for any illegal purpose. There was also no evidence to prove the conspiracy set up by the prosecution. The Apex Court held that though the articles were recovered from the truck, there was no evidence to show that the appellant had any control over the vehicle nor was he in possession of those drugs. Therefore, the registered owner of the vehicle was acquitted of all charges framed against him.

In the given case also, there is no evidence against 'P', the registered owner of the vehicle, and thus he shall not be prosecuted.

18. (i) An exemption scheme for small service providers has been prescribed by the Central Government vide *Notification No.6/2005 ST, dated 1.3.2005*. The exemption scheme has been made applicable from 1st April 2005.

The taxable services of "aggregate value not exceeding Rs.4,00,000" in any financial year have been exempted from the whole of service tax leviable thereon. The exemption is however, subject to certain conditions.

- (ii) An assessee having a centralized billing system or centralized accounting system in respect of a taxable service may provide such service from more than one premises or office. If such centralized billing or centralized accounting systems are located in one or more offices or premises, the assessee may at his option register such premises or offices from where such centralized billing or centralized accounting systems are located.

Such registration shall be granted, -

- (a) by the Chief Commissioner/Commissioner of Central Excise, as the case may be, in whose jurisdiction all the premises or offices providing taxable service and the premise or office from where centralized billing or centralized accounting is done, are located;

and

(b) in cases other than (a) above, by such authority, as may be specified by the Board.

However, such provisions shall not be applicable for the registrations granted to the premises or offices having such centralized billing or centralized accounting systems, prior to 1st day of April, 2005.

(iii) Service tax for the month of November payable on 5th of December:

10.2% (service tax + education cess) on Rs.10,000 = Rs.1,020.00

Service tax for the month of December payable on 5th of January:

10.2% (service tax + education cess) on Rs.5,000 = Rs.510.00

(iv) *Notification No. 8/2005 S.T., dated 1.03.2005* has exempted the taxable service of production or processing of goods for or on behalf of the client from service tax subject to the following conditions:

- (i) goods are produced or processed using raw material or semi-finished goods supplied by the client;
- (ii) the goods so produced or processed are returned back to the said client for use in or in relation to the manufacture of any other goods (goods falling under the First Schedule of the Central Excise Tariff Act, 1985) on which "appropriate excise duty is payable" i.e., the final product should not be wholly exempt or subject to 'Nil' rate of duty.

In this context, the expression "production or processing of goods" means working upon raw materials or semi-finished goods so as to complete part or whole of production or processing, subject to the condition that such production or processing does not amount to manufacture within the meaning of clause (f) of section 2 of the Central Excise Act, 1944.

19. (i) With effect from 16.06.2005 scope of maintenance or repair services has been expanded by the Finance Act, 2005 to include maintenance or management of immovable properties. Thus, maintenance services provided in respect of shopping malls shall be liable to service tax under the category of maintenance or repair services.
 - (ii) With effect from 01.01.2005 *Notification No. 33/2004, ST, dated 03.12.2004* has exempted the taxable service provided by a goods transport agency to a customer, in relation to transport of fruits, vegetables, eggs or milk by road in a goods carriage, from the whole of service tax leviable thereon.
 - (iii) *Notification No. 7/2001-S.T., dated 09.07.2001* exempted the taxable service provided to a client by an individual professional videographer in relation to video tape production from the whole of the service tax leviable thereon. However, the said notification has been rescinded vide *Notification No.20/2005 ST, dated 07.06.2005* with effect from 16.06.2005 thereby withdrawing the exemption granted to an individual professional videographer.
 - (iv) Packaging services have been brought under the service tax net with effect from 16.06.2005 by Finance Act, 2005. Bottling services fall under the category of packaging services and thus, will be liable to service tax.
 - (v) Cleaning services other than in relation to agriculture, horticulture, animal husbandry or dairying has been brought under the service tax net with effect from 16.06.2005 by Finance Act, 2005. Disinfecting service, though a cleaning service, shall not be liable to service tax in this case as the service is rendered in relation to agriculture.
20. (i) Finance Act, 2005 has inserted an explanation in section 65(105) defining taxable service so as to bring import of services within the tax net. As per the Explanation, any service provided or to be provided from outside India 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 received or to be received by a person who has his place of business, fixed establishment, permanent address or, as the case may be, usual place of residence, in India shall be deemed to be

taxable service. In other words, service provided from outside India to a person in India shall be taxable if such service is received in India.

- (ii) As per section 96A(b) the following applicants can apply for an advance ruling:
- (i) (a) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or
 - (b) a resident setting up a joint venture in India in collaboration with a non-resident; or
 - (c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company,
- who or which, as the case may be, proposes to undertake any business activity in India;
- (ii) a joint venture in India; or
 - (iii) a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf,
- and which or who, as the case may be, makes application for advance ruling under sub-section (1) of section 96C.

IMPORTANT NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2005 TO 31.10.2005

Students may note that the Study Material for Indirect taxes contains all the relevant amendments made by Finance Act, 2005. Further, Circulars/Notifications issued up to 30.04.2005 have also been incorporated therein. The following are the amendments which have been made till 31.10.2005. It may carefully be noted that for the students appearing in May 2006 the amendments made by Notifications, Circulars etc. up to 31.10.2005, as detailed hereunder, are relevant.

CENTRAL EXCISE

Following changes have been made in **Cenvat Credit Rules, 2004**:

- (i) An additional duty of excise was levied on pan masala and tobacco products vide clause 85 of the Finance Bill, 2005. Rule 3(1) of Cenvat Credit Rules, 2004 was accordingly amended so as to allow Cenvat credit on such duty. The Finance Bill, 2005 became the Finance Act, 2005 on 13.05.2005 when it got the assent of the President of India. Thus, consequential amendment has been made in Rule 3(1) vide **Notification No. 22/2005 CE (N.T.) dated 13.05.2005** with effect that now the Cenvat credit can be availed on additional duty of excise leviable on pan masala and tobacco products under section 85 of the Finance Act, 2005. Similar amendment has been made in rule 3(4) and 3(7)(b).
- (ii) After sub-rule (5) in rule 3, a new sub-rule (5A) has been inserted vide **Notification No. 27/2005 CE (N.T.) 16.05.2005**. The new sub-rule (5A) provides that if the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value. Rule 3(6) has also been amended to provide that the amount paid under sub-rule (5A) shall also be eligible as Cenvat credit [just like amount paid under sub-rule (5)] as if it was duty paid by the person who removed such goods under sub-rule (5A).
- (iii) Rule 4(5)(a) lays down that Cenvat credit can be availed even if any inputs or capital goods as such or after being partially processed are sent to the job worker for further processing, testing, repair, reconditioning or any other purpose. However, such goods must be received back in the factory within 180 days of their being sent to the job worker. In case the goods are not returned within 180 days the credit on such goods has to be reversed. However, credit can be retaken once the goods come back. This sub-rule has been amended vide **Notification No. 27/2005 CE (N.T.) 16.05.2005** to provide that credit can also be availed on goods which are sent to the job worker for the manufacture of intermediate goods necessary for the manufacture of final products. The condition of return of the goods back to the factory within 180 days shall apply to such goods as well.
- (iv) Rule 4(6) allows direct despatch or clearance of final products from job worker's premises subject

to the approval of the Commissioner, having jurisdiction over the factory of the manufacturer of the final products who has sent the inputs to the job worker's premises, in each such case of removal. This approval can be granted on an annual basis to each job worker. However, such permission will now be granted by the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be [**Notification No. 27/2005 CE (N.T.) 16.05.2005**].

- (v) Rule 6(2) prescribes the maintenance of separate set of books of accounts in cases where a manufacturer or provider of output service avails of Cenvat credit in respect of any inputs or input services, except inputs intended to be used as fuel, and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services. The manufacturer or the provider of output service may maintain separate accounts for receipts, consumption and inventory of inputs meant for use in the manufacture of dutiable final products or in providing taxable output service and the quantity of inputs meant for use in the manufacture of exempted goods or services. He may then take Cenvat credit only on that quantity of inputs or input services which are intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable.

Notification No. 27/2005 CE (N.T.) dated 16.05.2005 has deleted the words "except inputs intended to be used as fuel," in the said sub-rule. Thus, now even for all inputs whether or not they are used as fuel, separate set of books of accounts may be maintained if the inputs are used for manufacturing such final products or providing such output service which are chargeable to duty or tax as well as exempted goods or services.

- (vi) Rule 6(3)(a) enlists certain exempted goods in respect of which a manufacturer, who produces dutiable and exempted goods from common inputs or input services and does not maintain separate accounts for the same, has to pay an amount equivalent to the CENVAT credit attributable to the inputs and input services used in, or in relation to, the manufacture of such goods at the time of their clearance from the factory. **Notification No. 20/2005 CE (N.T.) dated 02.05.2005** has amended one item viz. LPG of that list. Prior to this amendment, only the LPG which was covered under Heading 2711 19 00 of the First Schedule and used for supplying to household consumers was included in the list. However, now LPG falling under tariff items 2711 12 00 and 2711 13 00 is also covered under the list. Further, the restriction of supply to household consumers has also been removed. The amended clause now reads as under:

"Liquefied Petroleum Gases (LPG) falling under tariff items 2711 12 00, 2711 13 00 and 2711 19 00 of the said First Schedule".

- (vii) In sub-rule (3) of rule 6, after Explanation II, Explanation III has been inserted. Explanation III clarifies that the credit shall not be allowed on inputs and input services used exclusively for the manufacture of exempted goods or exempted services [**Notification No. 27/2005 CE (N.T.) dated 16.05.2005**].
- (viii) Rule 9(1) allows a manufacturer or the provider of output service or input service distributor to avail Cenvat credit on the basis of certain documents. A challan evidencing payment of service tax by the person liable to pay service tax under sub-clauses (iii) and (iv) of clause (d) of rule (2)(1) of the Service Tax Rules, 1994 is one such document on the basis of which credit of service tax paid can be taken. With effect from 16.06.2005, rule 9(1) has been amended vide **Notification No. 28/2005 CE (N.T.) dated 07.06.2005** so as to include a challan evidencing payment of service tax by the person liable to pay service tax under clause (v) of rule 2(1)(d) of Service tax Rules, 1994 amongst the eligible documents for availing Cenvat credit. Clause (v) lays down that the person liable to pay service tax in case of goods transport agency is the person who pays freight when the consignor or the consignee of the goods is any of the specified entities.
- (ix) With effect from 16.06.2005, rule 9(10) has been substituted by a new sub-rule vide **Notification No. 28/2005 CE (N.T.) dated 07.06.2005**. The new sub-rule (10) provides that the input service distributor shall furnish a half yearly **return** in the form specified by the Board to the jurisdictional Superintendent of Central Excise. The details of credit received and distributed during the said

half year should be given in such return. Such return should be furnished by the last day of the month following the half year period.

SERVICE TAX

Notification No.15/2005 ST, dated 07.06.2005 has notified **16.06.2005** as the date from which the new services introduced by the Finance Act, 2005 and the modified existing services have become effective.

Exemptions

1. With effect from 16.06.2005, the commercial or industrial construction service [section 65(105)(zzq)] provided to any person by a commercial concern in relation to construction of port or other port has been exempted from the whole of service tax leviable thereon vide **Notification No. 16/2005 ST, dated 07.06.2005**.
2. With effect from 16.06.2005, the site formation and clearance, excavation and earthmoving and demolition and such other similar activities [section 65(105)(zza)] provided to any person by any other person in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, ports or other ports have been exempted from the whole of service tax leviable thereon vide **Notification No. 17/2005 ST, dated 07.06.2005**.
3. With effect from 16.06.2005, 67% of the value of the taxable service provided to any person by any other person in relation to construction of complex [section 65(105)(zzh)] has been exempted from the service tax leviable thereon vide **Notification No. 18/2005 ST, dated 07.06.2005**.

However, this exemption shall not apply in cases where –

- (i) the credit of duty paid on inputs or capital goods used for providing such taxable service has been taken under the provisions of the CENVAT Credit Rules, 2004; or
- (ii) the service provider has availed the benefit under *Notification No. 12/2003-ST, dated 20.06.2003* or
- (iii) the taxable services provided are only completion and finishing services in relation to residential complex, referred to in sub-clause (b) of clause (30a) of section 65 of the Finance Act.

The “gross amount charged” shall include the value of goods and materials supplied or provided or used for providing the said taxable service by the said service provider.

4. With effect from 16.06.2005, the taxable service of production or processing of goods for, or on behalf of, the client under the category of business auxiliary service [section 65(19)(v)] provided by a commercial concern in the course of manufacture of,-
 - (a) cut and polished diamonds and gem stones; or
 - (b) plain and studded jewellery of gold and other precious metals,
 falling under Chapter 71 of the Central Excise Tariff Act, 1985 has been exempted from the whole of service tax leviable thereon [**Notification No.21/2005 ST, dated 07.06.2005**].
5. With effect from 16.06.2005, the following taxable services provided and consumed outside India by a non-resident person, in the course of sailing of a ship have been exempted from payment of service tax:
 - (i) any taxable service provided or to be provided to a client, by a Custom house agent in relation to the entry or departure of conveyances or the import or export of goods - Section 65(105)(h)
 - (ii) any service provided or to be provided to a shipping line, by a steamer agent in relation to a ship's husbandry or dispatch or any administrative work related thereto as well as the booking, advertising or canvassing of cargo, including container feeder services - Section 65(105)(i)
 - (iii) any service provided or to be provided to a client, by a clearing and forwarding agent in

relation to clearing and forwarding operations, in any manner - Section 65(105)(j)

- (iv) any service provided or to be provided to any person, by a port or any person authorised by the port, in relation to port services, in any manner - Section 65(105)(zn)
- (v) any service provided or to be provided to any person by other port or any person authorised by that port in relation to port services, in any manner – Section 65(105)(zzi)
- (vi) any service provided or to be provided to any person, by a cargo handling agency in relation to cargo handling services - Section 65(105) (zr)
- (vii) any service provided or to be provided to any person by a storage or warehouse keeper in relation to storage and warehousing of goods - Section 65(105)(zza)
- (viii) any service provided or to be provided to a customer, by any person in relation to maintenance or repair - Section 65(105)(zzg)
- (ix) any service provided or to be provided to any person by a technical inspection and certification agency, in relation to technical inspection and certification - Section 65(105) (zzi)

The exemption shall be available only if the ship is:

- (a) registered as an Indian ship under the Merchant Shipping Act, 1958;
- (b) registered under the Coasting Vessels Act, 1838;
- (c) registered under the Inland Vessels Act, 1917; or
- (d) chartered and licenced under the Merchant Shipping Act, 1958,

and such ship is owned or chartered, as the case may be, by,-

- (i) a citizen of India;
- (ii) a company or a body established by or under any Central Act or State Act which has its principal place of business in India; or
- (iii) a co-operative society which is registered or deemed to be registered under the Co-operative Societies Act, 1912 or any other law relating to co-operative societies for the time being in force in any State.

However, the said exemption shall apply only in such cases where the said taxable services are provided in relation to,-

- (a) handling of ships in a port outside India;
- (b) handling or storage of goods carried in a ship in a port outside India; or
- (c) any other services related to the handling of ships or goods carried in a ship.

Explanation.- For the purposes of this notification, “non-resident person” means 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 [**Notification No.22/2005 ST, dated 07.06.2005**].

- 6. With effect from 16.06.2005, **Notification No.25/2005 ST, dated 07.06.2005** has exempted any taxable service received and consumed by an individual outside India from the whole of service tax leviable thereon. However, such service should not be used in the course or furtherance of commerce or industry or any other business.
- 7. **Notification No.29/2005 ST, dated 15.07.2005** has exempted the taxable service provided to any person, by an aircraft operator, in relation to transport of export goods by aircraft, from the whole of the service tax leviable thereon.

Withdrawal of exemptions

- 8. **Notification No.6/2001-S.T., dated 09.07.2001** as amended by **Notification No. 13/2001-S.T., dated 27.12.2001** exempted taxable service provided to a customer in relation to still photography by a photography studio or agency other than a commercial concern from the whole of the service

tax leviable thereon. The said notification has been rescinded vide **Notification No.20/2005 ST, dated 07.06.2005** with effect from 16.06.2005 thereby withdrawing the exemption granted to a photography studio or agency other than a commercial concern.

9. *Notification No. 7/2001-S.T., dated 09.07.2001* exempted the taxable service provided to a client by an individual professional videographer in relation to video tape production from the whole of the service tax leviable thereon. The said notification has been rescinded vide **Notification No.20/2005 ST, dated 07.06.2005** with effect from 16.06.2005 thereby withdrawing the exemption granted to an individual professional videographer.
10. The taxable service provided by a beauty parlour in relation to hair dyeing has been exempted from service tax since 16.08.2002 vide *Notification No.11/2002 S.T., dated 1.08.2002*. The said notification has been rescinded vide **Notification No.20/2005 ST, dated 07.06.2005** with effect from 16.06.2005 thereby withdrawing the exemption granted to a beauty parlour in relation to hair dyeing.
11. The taxable service provided to a customer in relation to erection commissioning or installation by a commissioning and installation agency other than a commercial concern has been exempt from service tax leviable thereon since 21.08.2003 vide *Notification No. 18/2003-S.T. dated 21.08.2003*. The said notification has been rescinded vide **Notification No.20/2005 ST, dated 07.06.2005** with effect from 16.06.2005 thereby withdrawing the exemption granted to a commissioning and installation agency other than a commercial concern.
12. Taxable services provided in relation to commercial training or coaching by, -
 - (a) a vocational training institute;
 - (b) a recreational training institute;

to any person are exempt from the whole of the service tax leviable thereon vide *Notification No. 24/2004-S.T., dated 10.09.2004*. **Notification No. 19/2005 ST, dated 07.06.2005** has added a proviso to the said notification with effect from 16.06.2005. The proviso lays down that the exemption contained in the said notification shall not apply to the taxable services provided in relation to commercial training or coaching by a computer training institute. Computer training institute has been defined as a commercial training or coaching centre which provides coaching or training relating to computer software or hardware.

Other amendments

13. *Notification No. 13/2003 dated 20.6.2003* exempts business auxiliary services provided by commission agents in relation to agricultural produce from payment of service tax. The Explanation to the Notification defined the commission agent as a person who causes sale or purchase of goods, on behalf of another person for a consideration which is based on the quantum of such sale or purchase.

With effect from 16.06.2005, an Explanation defining commission agent has been inserted in the definition of business auxiliary service by Finance Act, 2005. Hence, **Notification No. 19/2005 ST, dated 07.06.2005** has deleted the Explanation defining commission agent in the *Notification No.13/2003* with effect from 16.06.2005.
14. *Notification No. 14/2004-ST, dated 10.09.2004* exempts taxable service provided to a client by a commercial concern in relation to the business auxiliary service, in so far as it relates to:
 - (a) procurement of goods or services, which are inputs for the client;
 - (b) production of goods on behalf of the client;
 - (c) provision of service on behalf of the client; or
 - (d) a service incidental or auxiliary to any activity specified in (a) to (c) above.

from the whole of the service tax leviable thereon. Provided that nothing in this notification shall apply to,-

 - (i) a factory registered under or governed by the Factories Act, 1948 (63 of 1948);

- (ii) a company established by or under the Companies Act, 1956 (1 of 1956);
- (iii) a partnership firm, whether registered or not registered;
- (iv) a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;
- (v) a co-operative society established by or under any law;
- (vi) a corporation established by or under any law; or
- (vii) a body corporate established by or under any law,

unless such factory, company, partnership firm, society, co-operative society, corporation or body corporate, as the case may be, provides any business auxiliary service in respect of any activity specified in (a) to (d) above in relation to agriculture, printing, textile processing or education.

Notification No. 19/2005 ST, dated 07.06.2005 has amended the above notification with effect from 16.06.2005 in the following manner: (The changes are given in italics)

The taxable service provided to a client by a commercial concern in relation to the business auxiliary service, in so far as it relates to:

- (a) procurement of goods or services, which are inputs for the client;
- (b) *production or processing of goods for, or on behalf of, the client;*
- (c) provision of service on behalf of the client; or
- (d) a service incidental or auxiliary to any activity specified in (a) to (c) above.

and provided in relation to agriculture, printing, textile processing or education, has been exempted from the whole of the service tax.

The proviso in the notification has been omitted. Thus, exemption provided to the job work done by individuals, that is other than factory, company, partnership firm, society, co-operative society, corporation or body corporate, as the case may be has been withdrawn. Now, for all kind of entities only the business auxiliary services provided in relation to agriculture, printing, textile processing or education will be exempt from the payment of service.

15. **Notification No. 15/2004-S.T., dated 10.09.2004**, exempts 67% of the value of taxable construction services from the service tax leviable thereon. However, this exemption does not apply in cases where:

- (i) the credit of duty paid on inputs or capital goods has been taken under the provisions of the Cenvat Credit Rules, 2004; or
- (ii) the commercial concern has availed the benefit under the **Notification No. 12/2003-S.T., dated 20.06.2003**

As, Finance Act, 2005 has renamed the “construction service” as “commercial or industrial construction service”, the construction service referred to in the above notification has also been renamed as commercial or industrial construction service vide **Notification No. 19/2005 ST, dated 07.06.2005**. Further, a third condition has been added to the existing two conditions which disqualify the commercial or industrial construction service from the said exemption. The third condition lays down that the said exemption would not be available in cases where the taxable services provided are only completion and finishing services in relation to building or civil structure, referred to in sub-clause (c) of clause (25b) of section 65 of the Finance Act, 1994. These amendments have come in to effect from 16.06.2005.

16. **Notification No. 8/2005 S.T., dated 01.03.2005** exempts the taxable service of ‘production of goods’ on behalf of the client (under business auxiliary service) from service tax when raw materials are supplied by the client and the resultant goods returned to him. The said notification has been amended vide **Notification No.19/2005 ST, dated 07.06.2005** with effect from 16.06.2005 to substitute ‘production of goods’ with ‘*production or processing of goods*’ and ‘on behalf of the client’ with ‘*for, or on behalf of, the client*’. This substitution has been done in tune with the change in the definition of business auxiliary service made by the Finance Act, 2005.

17. Section 68(2) provides that in respect of any taxable service notified by the Central Government in the Official Gazette the service tax thereon shall be paid by such person in such manner as may be prescribed at the specified rate. The Central Government had notified following taxable services vide *Notification No. 36/2004 ST, dated 31.12.2004* for the purposes of the said sub-section.

(A) the services,-

- (i) in relation to a telephone connection or pager or a communication through telegraph or telex or a facsimile communication or a leased circuit;
- (ii) in relation to general insurance business;
- (iii) in relation to insurance auxiliary service by an insurance agent; and
- (iv) in relation to transport of goods by road in a goods carriage, where the consignor or consignee of goods is,-
 - (a) any factory registered under or governed by the Factories Act, 1948;
 - (b) any company established by or under the Companies Act, 1956;
 - (c) any corporation established by or under any law;
 - (d) any society registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India;
 - (e) any co-operative society established by or under any law;
 - (f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 or the rules made thereunder; or
 - (g) any body corporate established, or a partnership firm registered, by or under any law
- (v) in relation to business auxiliary service of distribution of mutual fund by a mutual fund distributor or an agent, as the case may be (this clause is effective from 1.04.2005).

(B) any taxable service provided by a person who is a non-resident or is from outside India, does not have any office in India.

With effect from 16.06.2005, the said notification has been amended by **Notification No. 24/2005 ST, dated 07.06.2005**. In the said notification,-

- (i) in paragraph (A), in sub-paragraph (iv), in item (b), for the words “established by or under”, the words “formed or registered under” have been substituted;
- (ii) for paragraph (B), the following paragraph has been substituted, namely:-

“any taxable service 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 such service provider does not have any office in India.”

18. Application for registration is to be made by every person liable for paying the service tax in Form ST-1 within 30 days from the date on which service tax is levied or within 30 days from the date of commencement of business, whichever is later, to the concerned Superintendent of Central Excise. Section 69(2) provides that the Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed.

In exercise of the powers conferred by sub-section (2) of section 69 of the Finance Act, 1994, the Central Government has specified vide **Notification No.26/2005 ST, dated 07.06.2005** the following person or class of persons who shall make an application for registration under the provisions of the said sub-section, namely:-

- (i) an input service distributor; and

- (ii) any provider of taxable service whose aggregate value of taxable service in a financial year exceeds Rs.3,00,000.

Explanation 1 - For the purposes of this clause, where a provider of taxable service provides one or more taxable services from one or more premises, the aggregate value of all such taxable services and from all such premises and not separately for each services or each premises shall be taken into account for computation of aggregate value of taxable service.

Explanation 2 - For the purposes of this notification,-

- (a) "input service distributor" has the meaning assigned to it in clause (m) of rule 2 of the CENVAT Credit Rules, 2004;
- (b) "aggregate value of taxable service" means the sum total of first consecutive payments received during a financial year towards the gross amount, as prescribed under section 67 of the said Finance Act, charged by the service provider towards taxable services but does not include payments received towards such gross amount which are exempt from the whole of service tax leviable thereon under section 66 of the said Finance Act under any notification other than *Notification No. 6/2005-Service Tax, dated the 1st March, 2005*.

This notification has come in to effect from 16.06.2005.

19. Section 83A provides that where any person is liable to a penalty, such penalty may be adjudged by the Central Excise Officer conferred with such power as the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963, may, by notification in the Official Gazette, specify. **Notification No. 30/2005 ST, dated 10.08.2005** has conferred on the Central Excise Officer specified in column (2) of the Table below, such powers as specified in the corresponding entry in column (3) of the said Table, for the purposes of adjudging a penalty.

S.No	Central Excise Officer	Amount of service tax or CENVAT credit specified in a notice for the purpose of adjudication under section 83A
(1)	(2)	(3)
1.	Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise	Not exceeding Rs. 5 lakhs
2.	Joint Commissioner of Central Excise	Above Rs. 5 lakhs but not exceeding Rs. 20 lakhs
3.	Additional Commissioner of Central Excise	Above Rs. 20 lakhs but not exceeding Rs. 50 lakhs
4.	Commissioner of Central Excise	Without limit.

However, these provisions shall not apply where a decision or order passed under Chapter V of the said Finance Act or the rules made thereunder has been referred back to any authority which passed such decision or order, with such directions, for a fresh adjudication or decision, as the case may be. This notification shall come into force on the date of its publication in the Official Gazette.

Amendments in Rules

20. With effect from 16.06.2005, the following changes have been made in **Service Tax Rules, 1994** vide **Notification No.23/2005 ST, dated 07.06.2005**:

- (i) Rule 2(1)(d)(iv) which provides that in case of a non-resident who does not have any office in India, the service tax is paid by the person receiving taxable service in India has been amended.

The amended sub-clause provides that in relation to any taxable service 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
- such service provider does not have any office in India,

the service tax shall be paid by the person who receives such service and has his place of business, fixed establishment, permanent address or, as the case may be, usual place of residence, in India. This amendment has been made in view of the Explanation inserted in section 65(105) by the Finance Act, 2005.

- (ii) Rule 2(1)(d)(v)(b) *inter alia* provides that in case of service provided by a goods transport agency, if the consignor or the consignee of the goods is a company *established by or under* the Companies Act, 1956, service tax is paid by the person who pays the freight. The words “established by or under” in the above rule have been substituted by the words “*formed or registered under*”. Thus, now if the consignor or the consignee is a company *formed or registered* under the Companies Act, 1956, service tax shall be paid by the person who pays the freight.
- (iii) Rule 4A(1) provides that every person providing taxable service shall issue an invoice, or a bill, or a challan signed by such person or a person authorized by him in respect of such taxable service provided or to be provided. Such an invoice should be issued within fourteen 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. A third proviso has been inserted in the rule which lays down that where any payment towards the value of taxable service is not received and such taxable service is provided continuously for successive periods of time and the value of such taxable service is determined or payable periodically, an invoice, a bill, or as the case may be, a challan shall be issued by the person providing such taxable service, not later than 14 days from the last day of the said period.
- (iv) Rule 6(4) provides for provisional assessment in case of service tax. A new sub-rule 4A has been inserted after sub-rule 4. The new sub-rule applies only to those assesses who have opted for registration under Rule 4(2). Rule 4(2) provides for registration in cases where the assessee provides a taxable service from more than one premises or offices and has centralized billing systems or centralized accounting systems in respect of such service and such centralized billing or centralized accounting systems are located in one or more offices or premises. Rule 6(4A) lays down that if the assessee [registered under Rule 4(2)] 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/quarter for the reason of not receiving details of payments received towards the value of taxable services at his other premises or offices, the assessee may adjust such excess amount so paid as service tax by him against his service tax liability for the subsequent period. The details of such adjustment shall be intimated to the jurisdictional Superintendent of Central Excise within a period of 15 days from the date of such adjustment. The provisions of Rule 6(4A) are not subject to the provisions of Rule 6(4).

21. With effect from 16.06.2005, the following changes have been made in **Export of Services Rules, 2005 vide **Notification No. 28/2005, ST dated 07.06.2005**:**

- (i) (a) As per Rule 3(1) certain services rendered in relation to an immovable property are eligible for exemption as ‘export of service’ only when the immovable property is situated abroad. The following new services have been added in this category:

Clause of section 65(105)	Service covered
(zzza)	Site preparation and clearance, excavation, earth moving and demolition services
(zzzb)	Dredging services of rivers, ports, harbours, backwaters and estuaries
(zzzc)	Survey and map making services other than by

	government departments
(zzzh)	Construction services in respect of residential complexes

(b) A proviso has been inserted at the end of this sub-rule. The proviso lays down that for the purposes of this sub-rule, any taxable service provided shall be treated as export of service only if-

- (a) such service is delivered outside India and used in business or for any other purpose outside India; and
- (b) payment for such service provided is received by the service provider in convertible foreign exchange.

(ii) (a) As per Rule 3(2) certain services are eligible for exemption as 'export of services' only if they are performed outside India. The following new services have been added in this category:

Clause of section 65(105)	Service covered
(zzzd)	Cleaning services other than in relation to agriculture, horticulture, animal husbandry or dairying
(zzze)	Services in respect of Membership of clubs or associations
(zzzf)	Packaging services

(b) A second proviso has been added after the first proviso in this sub-rule. The second proviso lays down that for the purposes of this sub-rule, any taxable services provided shall be treated as export of services only if-

- (a) such service is delivered outside India and used in business or for any other purpose outside India; and
- (b) payment for such service provided is received by the service provider in convertible foreign exchange.

(iii) Rule 3(3) covers the remaining services. These remaining services are eligible for exemption as 'export of services' when the recipient of such services are located outside India. The following new services are included in this category:

Clause of section 65(105)	Service covered
(zzzc)	Survey and map making services other than by government departments (other than immovable property)
(zzzg)	Mailing list compilation and mailing services

22. Service Tax (Registration of Special Category of Persons) Rules, 2005

In exercise of the powers conferred by sub-sections (1) and (2) of section 94 of the Finance Act, 1994 the Central Government has notified the Service Tax (Registration of Special Category of Persons) Rules, 2005. These rules have come in to effect from 16.06.2005. The Central Government has been given empowered to make rules under section 94.

Rule 2 – Definitions

In these rules, unless the context otherwise requires,-

- (a) "Act" means the Finance Act, 1994;
- (b) "aggregate value of taxable service" means the sum total of first consecutive payments received during a financial year towards the gross amount, as prescribed under section 67 of

the Act, charged by the service provider towards taxable services but does not include payments received towards such gross amount which are exempt from the whole of service tax leviable thereon under section 66 of the Act under any notification other than *Notification No. 6/2005-Service Tax, dated the 1st March, 2005*.

- (c) “input service distributor” shall have the meaning assigned to it in clause (m) of rule 2 of the CENVAT Credit Rules, 2004.

Rule 3 – Registration

- (1) The input service distributor shall make an application to the jurisdictional Superintendent of Central Excise in such form as may be specified, by notification, by the Board, for registration within a period of 30 days of the commencement of business or the 16th day of June, 2005, whichever is later.
- (2) Any provider of taxable service whose aggregate value of taxable service in a financial year exceeds Rs.3,00,000 shall make an application to the jurisdictional Superintendent of Central Excise in such form as may be specified, by notification, by the Board, for registration within a period of 30 days of exceeding the aggregate value of taxable service of Rs.3,00,000.
- (3) The provisions of sub-rules (2) to (7) of rule 4 of Service Tax Rules, 1994 shall be applicable to the persons or class of persons who make an application for registration under the provisions of these rules, with such modifications and alterations as may be prescribed by the Board.

Rule 4 - Furnishing of returns

The input service distributor shall furnish a return to the jurisdictional Superintendent of Central Excise in such form and at such frequency as prescribed under sub-rule (10) of rule 9 of CENVAT Credit Rules, 2004.

BUDGET 2005 -2006 - ISSUES PERTAINING TO SERVICE TAX (M.F. (D.R.) LETTER F.NO.B1/6/2005-TRU DATED 27.07.2005)

The above clarification explaining the amendments made by the Finance Act, 2005 has been issued by the CBE&C. The clarification is given below for the information of the students:

In the Budget for 2005-2006, proposals were incorporated to levy service tax on nine new services and to expand the scope of twelve existing taxable services [refer clauses (a) and (b) of section 88 of the Finance Act, 2005]. Certain other important legislative changes have also been made relating to,-

- (a) taxable services received from abroad;
- (b) linking payment of service tax with receipt of payment for the taxable services provided or to be provided; and
- (c) issue of show cause notices and adjudication.

The Finance Act, 2005 (hereinafter referred as the Finance Act) has come into force with effect from 13th May, 2005. Provisions relating to levy of service tax on new services and proposed expansion in the scope of existing services made by amending sections 65 and 66 of the Finance Act, 1994 have been made effective from 16th June, 2005 (refer *Notification No. 15/2005-Service Tax dated 7/6/2005*). Certain other amendments relating to service tax in the Finance Act, 1994 are effective from the date of enactment of the Finance Act. The scope of these changes is explained in the following paragraphs.

New services

1. Transport of goods through pipeline or other conduit

Transportation of goods, other than water, through pipeline or conduit is generally employed to transport petroleum and other petroleum products, natural gas, LPG, chemicals, coal slurry and other similar products. Such transport services are liable to service tax under sub-clause (zzz) of section 65(105) of the Finance Act, 1994. Consideration for the said transportation service

provided may be payable periodically or from time to time. The service provider is required to pay service tax as and when payment is received for the services provided or to be provided.

2. Site formation and clearance, excavation, earth moving and demolition services

Any service provided or to be provided to any person, by any other person, in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities is leviable to service tax under sub-clause (zzza) of section 65(105) of the Finance Act, 1994. "Site formation and clearance, excavation and earthmoving and demolition" has been defined in clause (97a) of section 65 of the Finance Act, 1994.

The definition of site formation and clearance, excavation and earthmoving and demolition is an inclusive definition and the activities specifically mentioned are indicative and not exhaustive. Prior to construction of buildings, factory or any civil structure, activity of mining or laying of cables or pipes, preparation services of site formation and clearance, excavation and earthmoving or leveling are normally undertaken for a consideration to make the land suitable for such activities. Such services include blasting and rock removal work, clearance of undergrowth, drilling and boring, overburden removal and other development and preparation services of mineral properties and sites, and other similar excavating and earthmoving services. Demolition of structures, buildings, streets or highways is also undertaken for a consideration as a preparatory activity for subsequent construction activity or for clearing the site for any other purpose. All such activities fall within the scope of this service.

However, site formation and clearance, excavation and earthmoving and demolition services when provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies are specifically excluded and not within the scope of this service.

Notification 17/2005-ST dated 7/6/2005 exempts this service provided in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams and major and minor ports.

3. Dredging services

Any service provided or to be provided to any person, by any other person, in relation to dredging is leviable to service tax under sub-clause (zzzb) of section 65(105) of the Finance Act, 1994. 'Dredging' has been defined under clause (36a) of section 65 of the Finance Act, 1994.

This taxable service covers dredging which is generally undertaken for removal of material such as silt, sediments, rocks etc. of rivers, ports, harbour, backwater or estuary for providing adequate draught for ships and other vessels and to maintain shipping channels. Service tax is leviable only on dredging of river, port, harbour, backwater or estuary and dredging in any other cases does not attract service tax. The definition of dredging is an inclusive definition and the activities specified are only indicative and not exhaustive.

4. Survey and map making

Any service provided or to be provided to any person, by any other person, other than by an agency under the control of, or authorised by, the Government, in relation to survey and map-making is taxable under sub-clause (zzzc) of section 65(105) of the Finance Act, 1994. 'Survey and map-making' has been defined under clause (104b) of section 65 of the Finance Act, 1994.

This service covers geological, geophysical, geochemical and other prospecting services by studying the properties of the earth and rock formation and structures. It also includes services providing information on sub-surface earth formations by different methods such as seismographic, gravimetric, magnetometric methods or other sub-surface surveying methods.

Further, it covers surface surveying, services of gathering information on the shape, position or boundaries of a portion of earth's surface by methods such as transit, photogrammetric, or hydrographic, for the purpose of preparing maps. It also includes surveying or collection of data by satellites.

'Survey and exploration of minerals', which is a taxable service under sub-clause (zzv) of section

65(105) since 2004, covers specified services rendered in relation to location or exploration of deposits of mineral, oil or gas. The new taxable service of 'survey and map-making' classifiable under sub-clause (zzzc) of section 65(105) of the Finance Act, 1994, covers other such activities excluding "survey and exploration of minerals" classifiable under sub-clause (zzv) of section 65(105) since 2004.

Map making consists of preparation or revision of maps of all kinds such as topographic, hydrographic, roads, planimetric, cadastral, city maps etc. using various information sources.

However, survey and map-making services rendered by an agency under the control of the Government or authorised by the Government, such as 'Survey of India' are specifically excluded and are outside the scope of this service.

5. Cleaning services

Any service provided or to be provided to any person, by any other person, in relation to cleaning activity is taxable under sub-clause (zzzd) of section 65(105) of the Finance Act, 1994. "Cleaning activity" has been defined under clause (24b) of section 65 of the Finance Act, 1994.

Generally contracts / agreements are entered into for cleaning of commercial complexes such as multiplexes, shopping complexes, office complexes, industrial buildings etc. The contracts/agreements may be in writing or may be unwritten. The gross amount charged for such cleaning would be leviable to service tax. This taxable service includes,-

- (i) specialized cleaning services such as disinfecting and exterminating, sterilization of objects, etc. Such cleaning services would be taxable when performed for commercial or industrial buildings and their premises, factories, plant and machinery, tank or reservoir of such buildings;
- (ii) Disinfecting, exterminating insects, rodents and other pests and fumigation services in respect of specified premises would be liable to service tax. In respect of multi-storeyed commercial buildings, window cleaning is a specialized service. Window cleaning services, including exterior window cleaning using swing stages would be liable to service tax;
- (iii) Floor cleaning and waxing, wall cleaning etc. performed on the premises of commercial or industrial buildings;
- (iv) Specialized cleaning services such as cleaning services for computer rooms, cleaning of machinery or plant, reservoirs and tanks of commercial or industrial buildings, furnace and chimney cleaning services and similar services.

However, such cleaning services in relation to agriculture, horticulture, animal husbandry or dairying would be excluded from the purview of service tax. Further, such cleaning services in respect of non-commercial buildings and premises thereof would not be covered within the purview of service tax under this category.

6. Membership of Clubs or Associations

Any service provided or to be provided to its members by any club or association in relation to provision of services, facilities, or advantages for a subscription or any other amount is taxable under sub-clause (zzze) of section 65(105) of the Finance Act, 1994. "Club or association" has been defined under clause (25a) of section 65 of the Finance Act, 1994.

Various clubs or associations provide services, facilities or advantages to their members for a subscription or a charge. This taxable service covers within its ambit the charges recovered by such clubs or associations for membership and providing various services. However, exclusions have been made in respect of specific clubs or associations which will not be covered within the ambit of clubs or associations for the purpose of levy of service tax.

These exclusions cover any body established or constituted by or under any law, trade unions, clubs or association formed for promotion of agriculture, horticulture or animal husbandry, clubs or association which are non profit making bodies and are engaged in any activity which are in the nature of public service and are of a charitable, religious or political nature, clubs or associations associated with press or media.

Legally, bodies which are established or constituted “under a statute” are different from bodies which are “formed and registered” under a statute. Companies and Societies registered under the respective Acts are merely bodies “formed and registered” under these Acts and cannot be treated as “established or constituted” under these Acts. Therefore companies or societies would fall outside the scope of clause (25a)(i) of Section 65 of Finance Act. In other words, any body formed and registered as a company or society which provides services, facilities or advantages for a subscription or any other amount to its members is liable to pay service tax under section 65(25a) of the Finance Act, 1994.

Taxable services are defined as services provided to members by clubs or associations in relation to provision of services, facilities or advantages for a subscription or any other amount. Facilities or advantages are provided to members in return for a subscription or other consideration. The scope of the term any other amount is the amount paid by members, apart from membership fee or recurring subscription fee, such as amounts paid for provisions of services to the guests of a member, amount paid for get-togethers and functions charged over and above the subscription amount. This will also be liable to service tax. However, amount charged by club to its members for sale of items such as food or beverages would not be taxable provided the documents evidencing such sale are available.

Any additional fee should be treated in the same way as subscription. Life membership fees must be treated in the same way as subscription. In certain professions, persons cannot practice unless they are registered with a statutory body and have paid fees which are prescribed by law. In such cases, the organization is not providing any service in the course of its business and it is merely carrying statutory functions. Since no service is provided, the question of levy of service tax does not arise. However, if there is no statutory requirement, service tax is liable to be paid.

7. Packaging services

Any service provided or to be provided to any person, by any other person, in relation to packaging activity is taxable under sub-clause (zzzf) of section 65(105) of the Finance Act, 1994. “Packaging activity” has been defined under clause (76b) of section 65 of the Finance Act, 1994.

This taxable service would cover packaging activity undertaken by a person for any other person. These kinds of packaging services may be done for pharmaceuticals (aseptic packaging), fragile goods, heavy machinery and hardware, using variety of automated or manual packaging techniques, including blister forming, and packaging, shrink or skin wrapping, form filling and sealing, pouch filling, bottling or aerosol packaging. This service also includes labeling or imprinting of the package. However, packaging activity which amounts to manufacture within the definition of section 2(f) of Central Excise Act, 1944 would not be liable to service tax. Service tax would be leviable on the gross amount charged for rendering the packaging services.

8. Mailing list compilation and mailing

Any service provided or to be provided to any person, by any other person, in relation to mailing list compilation and mailing is taxable under sub-clause (zzzg) of section 65(105) of the Finance Act, 1994. “Mailing list compilation and mailing” has been defined under clause (63a) of section 65 of the Finance Act, 1994.

Business establishments such as banks, insurance companies, companies listed on stock exchanges, real estate agents and other similar commercial entities engage the services of persons who compile and provide lists of names, addresses and other information from telephone directories, internet or any other source of information for the benefit of the business. Some agencies also provide services of sending documents, materials, information or any other goods by addressing, stuffing, sealing, metering or mailing the envelope or packet for or on behalf of the client. Such services are taxable under this category of service. Mail order business companies may engage the services of mailing companies to despatch goods to customers. Such mailing companies are also covered under this service.

9. Construction of residential complexes

Any service provided or to be provided to any person, by any other person, in relation to

construction of complex is taxable under sub-clause (zzzh) of section 65(105) of the Finance Act, 1994. "Construction of complex" has been defined under clause (30a) of section 65 of the Finance Act, 1994. 'Residential complex' has been defined under clause (91a) of section 65 of the Finance Act, 1994.

Construction of new building or civil structures used for commercial or industrial purposes and repair, alteration or restoration activities of such buildings or civil structures is liable to service tax since 2004. In this year's budget the construction of new residential complex or a part thereof is also covered under service tax. The term "construction of complex" is defined under section 65(30a) of the Finance Act 1994. It covers,-

- (i) construction of a new residential complex
- (ii) completion and finishing services in relation to a residential complex, whether or not new
- (iii) repair, alteration, etc. in relation to residential complex, whether or not new.

This service would generally cover construction services in respect of residential complexes developed by builders, promoters or developers. Such residential complexes are normally constructed after obtaining approval of the statutory authority for their layout. For the purpose of this levy, residential complex means,-

- (i) a building or buildings located within a premises;
- (ii) total number of residential units within the said premises are more than twelve;
- (iii) having common area;
- (iv) having common facilities or services; and
- (v) layout of the premises has been approved by the appropriate authority.

Common area would include roads, staircases and other similar areas where residents of the residential complex have easement rights. The list of facilities prescribed is merely illustrative and not exhaustive. Some residential complexes may also contain other facilities such as market or shopping complex, schools, security, banks, gymnasium, health club, sports facilities, power back up and the like.

However, residential complex having only 12 or less residential units would not be taxable. Similarly, residential complex constructed by an individual, which is intended for personal use as residence and is constructed by directly availing services of a construction service provider, is also not covered under the scope of the service tax and not taxable.

Post construction, completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry and similar services done in relation to a residential complex, whether or not new, would be included as part of the construction activity of residential complexes for the purpose of levy of service tax.

The taxable service is the service provided in relation to construction of a residential complex. Service tax would be payable only on the gross amount charged by the service provider for the construction service provided and it would not include the cost of land and stamp duty paid for registration of land. However, *Notification No. 18/2005 –ST dated 7/6/05* provides option to avail abatement and pay service tax only on 33% of the gross amount charged, subject to fulfillment of conditions specified in the notification.

Repair, alteration, renovation or restoration of residential complexes would also be liable to service tax. Such services provided in relation to residential complexes which are in existence before the levy has come into force and are not new would also be liable to be taxed.

Existing taxable services whose scope has been expanded:

1. Commercial or Industrial Construction Service

Construction of new buildings or civil structures used for commercial or industrial purposes and repair, alteration or restoration activities of such buildings and civil structures was already liable to service tax since 2004. In this year's budget, such construction service has been renamed as

'commercial and industrial construction service' under section 65(25b) of the Finance Act 1994 and renovation of a commercial or industrial building or civil structure has now been specifically included within the purview of service tax.

Post construction completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, especially if undertaken as an isolated or stand alone contract, are also specifically included. Thus post construction completion and finishing services are specifically included in the definition of commercial or industrial construction services.

Construction of pipeline or conduit has been included within the purview of service tax. Thus, the construction of long distance pipeline which was earlier excluded from the coverage of construction services would now be liable to service tax. Repair, alteration, renovation or restoration of pipeline or conduit would now be liable to service tax. This levy would also be applicable for such activities performed on the old pipeline or conduits constructed before this levy has come into force.

At present, services rendered for construction of commercial or industrial buildings is taxable. However, construction of roads is not liable to service tax. A point has been raised that if a commercial complex is constructed which also contains roads whether the value of construction of roads would be liable to service tax.

If the contract for construction of commercial complex is a single contract and the construction of road is not recognized as a separate activity as per the contract, then the service tax would be leviable on the gross amount charged for construction including the value of construction of roads.

When services provided under a contract consist of a number of different elements, a view has to be taken on the basis of the facts and circumstances of each case as to whether the service provider has made a single overall supply or a supply of different services which are to be treated differently.

2. Erection, commissioning or installation services

Erection, commissioning or installation of plant, machinery or equipment is already covered under service tax. The scope of this taxable service has been expanded by including specified installation services such as installation of electrical and electronic devices including their wirings and fittings, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work, and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases and travelators [refer clause (39a) of section 65].

3. Maintenance or repair service

Maintenance or repair services are liable to service tax under section 65(105)(zzg) of the Finance Act 1994. "Maintenance or repair" is defined under section 65(64) of the Finance Act, 1994.

Prior to 16/6/2005, such services covered maintenance or repair or servicing of any goods or equipment, excluding motor vehicles. However, since 16/6/2005, services relating to maintenance or management of immovable property (such as roads, airports, railways, buildings, parks, electrical installations and the like) have also been covered under the purview of service tax. Such services would be taxable when provided under a contract or an agreement by any person or by a manufacturer or any person authorized by a manufacturer.

Maintenance is to keep a machine, building etc. in a good condition by periodically checking and servicing or repairing. While repair is a one time activity, maintenance is a continuous process of which repairing may be incidental or ancillary.

Prior to 16/6/2005, maintenance or repair carried out under a maintenance contract or agreement was covered under service tax. Repair or servicing carried out under a contract other than a maintenance contract or agreement was not covered within the purview of service tax. Maintenance or repair, including reconditioning or restoration or servicing of any goods or

equipment, except motor vehicle (which is taxable under the category of authorized service station), undertaken as part of any contract or agreement (not necessarily maintenance contract or agreement) is now liable to service tax under this category of taxable service. To attract service tax under this category, the contract or agreement need not necessarily be a maintenance contract/agreement.

4. Broadcasting services

In the case of radio or TV broadcasting services, the services are subject to tax where the services are effectively used and enjoyed. Multi System Operators (MSOs) are permitted to receive signals from the broadcasting agencies on payment of prescribed amount. Cable operators transmit programmes to customers through cable network after receiving signals from the multisystem operators (MSOs). Prior to 16/6/2005, service tax was leviable on services provided by cable operators to their customers and multisystem operators to cable operators. In this year's budget, the charges recovered by the broadcasting agencies from the multisystem operator for providing the signals have been specifically made liable to service tax. This completes the service tax chain from the customer to the broadcaster.

In view of the advent of set top boxes, the customers can now access the signals directly without the interface of MSO and cable operators. Service tax is leviable on provision of direct to home (DTH) signals by the broadcasting agencies to the customers. The liability for payment of service tax in case of broadcasting agencies or organizations having their head office outside India would be on the branch office, subsidiary or any representative or any agent appointed by such agency or organization in India.

5. Sound Recording

Recording of sound on a magnetic storage device and its editing were already covered under the ambit of service tax. This taxable service has been expanded to include recording of sound on any media or device such as digital recording and also include services rendered in relation to recording of sound or any audio post production activity.

6. Video-tape production

Service tax is already leviable on recording of any programme, event or function on a magnetic tape and includes its editing by a video production agency. This taxable service has been expanded to include recording of any programme, event or function on any media or device such as digital recording and includes services relating thereto and video post-production services.

7. Authorised Service Station

Prior to 16/6/2005, the definition of authorized service station covered only service or repair of motor cars, two-wheeled and light motor vehicles by service stations or centres authorized by the manufacturers. A number of motor vehicle manufacturers provide a scheme by which the old vehicles are sold to the customers after reconditioning or restoration. For this purpose, old vehicles are reconditioned or restored by such authorized service stations or centres. Such reconditioning or restoration of an old vehicle was not explicitly covered as a taxable service. Amendments have been made to specifically include reconditioning or restoration of motor cars, two-wheeled and light motor vehicles carried out by the authorized service stations or centers under this service tax.

Taxable services rendered by authorized service stations in relation to motor cars or two-wheeled motor vehicles was covered under clause (zo) of section 65 (105), while such taxable services performed in relation to light motor vehicles were covered under clause (zzj) of section 65 (105). Amendments have been made in clause (zo) so that taxable services rendered by authorized service stations in respect of motor cars, light motor vehicles or two-wheeled motor vehicles would now be taxable under this clause. Consequently, clause (zzj) has been omitted.

8. Beauty Parlour Service

Amendments have been made in the definition of 'beauty treatment' so as to cover comprehensively all services provided by beauty parlours including hair cutting, hair dressing and

hair dyeing within the purview of service tax.

9. Manpower Recruitment Service

Prior to 16/6/ 2005, service tax was leviable on services provided by manpower recruitment agencies in relation to recruitment of manpower. Amendments have been made to levy service tax on temporary supply of manpower by manpower recruitment or supply agencies.

A large number of business or industrial organizations engage the services of commercial concerns for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. Services rendered by commercial concerns for supply of such manpower to clients would be covered within the purview of service tax.

In these cases, the individuals are generally contractually employed by the manpower supplier. The supplier agrees for use of the services of an individual employed by him to another person for a consideration. The terms of the individual's employment may be laid down in a formal contract or letter of appointment or on a less formal basis. What is relevant is that the staff are not contractually employed by the recipient but come under his direction.

Service tax is to be charged on the full amount of consideration for the supply of manpower, whether full-time or part-time. The value includes recovery of staff costs from the recipient e.g. salary and other contributions. Even if the arrangement does not involve the recipient paying these staff costs to the supplier (because the salary is paid directly to the individual or the contributions are paid to the respective authority) these amounts are still part of the consideration and hence form part of the gross amount.

Gem and Jewellery Export Promotion Council have represented seeking clarification that hiring of skilled artisans for making jewellery does not constitute supply of manpower taxable under "manpower recruitment services". When the artisans are hired by any organisation or business, directly, without engaging the services of any other person in any manner, in such cases, the artisans are contractually employed by the company. There is no intermediary and hence no consideration is paid to or payable to any intermediary. The service tax would be leviable only when the services of a person are engaged for recruitment or supply of artisans.

10. Franchise Service

Prior to 16/6/2005, franchise services were liable to service tax only when the agreement between the franchisor and the franchisee satisfies **all** of the following conditions [as mentioned in section 65(47)]:

- (i) Franchisor grants representational right to franchisee to sell or manufacture goods or provide service identified with the franchisor;
- (ii) Franchisor provides expertise in business operation, know how, quality control etc. to the franchisee;
- (iii) Franchisee pays fees to the franchisor;
- (iv) The franchisee is under an obligation not to engage in selling goods or providing services identified with any other person.

To make the coverage of franchise service more comprehensive, effective from 16/6/2005, amendments have been made to define "franchise" as an agreement by which the franchisor grants representational rights to franchisee to sell or manufacture goods or provide service or undertake any process identified with the franchisor, by any symbol such as a trade mark, service mark, trade name or logo. No other condition is required to be fulfilled for levy of service tax.

In view of the amended definition, License Production Agreements where principal allows production of goods bearing his brand name by another person would be covered under the purview of service tax under this category. Similarly, if rights are granted for rendering services identified with the principal on his behalf, such services by the principal to the service recipient would be taxable. Details of franchisees may be obtained from Yellow Pages, website <http://franchiseindia.com/> and other advertisements. Field formations may undertake a survey and suitably advise the potential tax payers.

11. Business Auxiliary Service

One of the taxable activities prior to amendment by Finance Act, 2005 under business auxiliary service was 'production of goods on behalf of the client'. The activities that amount to manufacture within the Central Excise Act were not covered within the scope of the taxable service. Amendments have been made to define this taxable activity as 'production or processing of goods for, or on behalf of, the client'. The condition that only such activities would be liable to service tax which do not amount to manufacture under Central Excise Law would, however, continue.

A point was raised whether 'production of goods on behalf of the client' covers situations where the service provider undertakes job work for the client. In view of the amendment, production or processing (not amounting to manufacture) done either for the client or on behalf of the client would be liable to service tax.

Another taxable activity covered under business auxiliary service is 'procurement of goods or services, which are inputs for the client'. In this case, the term 'inputs' had not been specifically defined in the Finance Act, 1994. The scope of the term input has been clarified by defining input (under Explanation in section 65(19) of the Finance Act, 1994) for the purpose of this taxable activity as 'inputs' means all goods or services intended for use by the client. Thus, services rendered for procurement of any goods or services intended for use by the client would be taxable. This definition of input is different from the definition of input under Cenvat Credit Rules.

Services provided by commission agents are specifically included within the scope of business auxiliary service. However, the term 'commission agent' was not defined in the Finance Act, 1994. Definition of 'commission agents' has been provided in Explanation (a) in section 65(19) of the Finance Act.

12. Outdoor Catering Service

Service tax is already leviable on the services provided by an outdoor caterer. Prior to 16/6/05, outdoor caterer was defined as a caterer providing catering services "at a place other than his own". Doubts were expressed about the scope of the term "at a place other than his own" where the caterer provides catering service from a premises provided by the recipient of the service, on rent. In such cases, whether the place is to be treated as the place owned by the caterer and therefore the services are not subject to service tax or the place is to be treated as not owned by the caterer and therefore subject the services to service tax. To remove the doubt, the present definition of "outdoor caterer" has been modified so as to provide that "outdoor caterer" includes caterer engaged in providing services in connection with catering at a place provided by way of tenancy or otherwise by the person receiving such services.

Important Legislative Changes

1. An Explanation has been inserted in section 65(105) of Finance Act, 1994 as follows:

"Explanation.- For the removal of doubts, it is hereby declared that where any service 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 such service is received or to be received by a person who has his place of business, fixed establishment, permanent address or, as the case may be, usual place of residence, in India, such service shall be deemed to be taxable service for the purposes of this clause".

According to rule 2(1)(d)(iv) of Service Tax Rules, 1994 taxable services received from a non-resident were taxable in the hands of the recipient receiving such taxable services in India. The explanation pertains to provision of taxable services by a person who belongs in a country other than India and received by a person in India. In other words, the service provider does not belong to India and the service recipient belongs to India. In such cases, the recipient of taxable services himself is treated as the provider of the taxable services and the services are taxed in the hands of the recipient.

For this purpose, the service provider should have established his business or has a fixed

establishment from which the service is provided or has his permanent address or usual place of residence in a country other than India. Consequently, the recipient of service should have his place of business, fixed establishment, permanent address or usual place of residence in India. The business establishment is the principal place of business, usually head office or headquarters or the seat from which business is run. There can be only one such place. A business may have headquarters in one country but branches in many other countries. A company may be incorporated in one country but does the business entirely from a head office in another country. In such cases, business establishment is treated to be in a country where the business is entirely done from the head office.

A fixed establishment is an establishment other than the business establishment. It should have both the technical and human resources necessary for providing or receiving services permanently present. A business may have several fixed establishments including a branch. If there is no business or other fixed establishment in any country and the business is a limited company or other corporate body, it belongs wherever it is legally constituted.

Individuals receiving services are treated as belonging in the country where they have their usual place of residence. An individual has only one usual place of residence at any point in time. Individuals are normally resident in the country where they have set up home with their family and are in full time employment. If either the provider of services or recipient of services have establishments in more than one country, the establishment most directly connected with the particular service would be the deciding factor. These provisions are intended to take care of taxable services where the service provider is located outside India and the recipient of service is located in India.

Rule 2(1)(d)(iv) of Service Tax Rules, 1994 has been amended in view of the above Explanation vide notification No. 23/2005-Service Tax, dated 7th June, 2005.

Charging service tax from the recipient when the service is provided by a non-resident is a well accepted international practice. This was enunciated in Rule 2(1)(d)(iv). In this year's budget, for removal of doubts, suitable explanation has been made in section 65(105) of the Finance Act in this regard.

In cases where services are provided by a service provider who is situated outside India to the recipient of such service who is based in India, such services would be taxable at the hands of the recipient. In such cases, the service is deemed to be provided by the service recipient having his place of business or place of permanent establishment in India. However, *Notification no 25/2005-ST dated 7/6/2005* exempts taxable services received and consumed outside India by an individual, not in the course of commerce or industry or any other business.

2. Amendments have been made in section 65(105), section 67 and rule 6 of Service Tax Rules, 1994 to link payment of service tax with the receipt of payment for the taxable services provided or advance payment received towards taxable services to be provided in future. When payments relating to taxable services are received during the course of provision of service, service tax is liable to be paid to the extent of receipt of payment. In other words, a person is liable to pay the tax as soon as the consideration towards the taxable services is received.

In case of continuous supply of services (such as construction services) which are provided for a period of time and the consideration (payment), the whole or part of it, is determined as payable, periodically from time to time, the services are treated as provided separately and successively each time the payment is due or each time the payment is received by, the service provider.

However, when advance payment is received for a service which is non-taxable at the time of receipt of payment but becomes taxable during the course of provision of service, such payments would have to be apportioned appropriately between the two periods and that part of service provided on or after the service becomes taxable service, is only liable for service tax. Similarly, when payment is received in advance for services to be provided but subsequently the services are not actually provided, then in such cases service tax paid is liable to be refunded.

3. Prior to amendment of sections 69 and 70 by the Finance Act, 2005, only the 'person liable to pay

the service tax' was required to get registered with the Department and required to submit periodical returns submit statutory returns. Thus, a person who was not liable to pay service tax was not required to get registered with the Department. It was felt that in certain instances, though the person may not be liable to pay service tax, for the sake of accountability, such person needs to get registered with the Department.

Amendments have been made in sections 69 and 70 to incorporate the enabling provisions for registration and filing of return by Input Service Distributors and small service providers whose aggregate value of taxable service exceeds Rs.3,00,000 pa. Rule making power in this regard has also been taken under section 94 of the Finance Act.

4. Amendments in Service Tax Rules

An assessee has to register all locations from where taxable services are provided, or opt for one single registration. Amendments have been made to Rules 4(2) and 4(3) of the Service Tax Rules, 1994 to facilitate more than one centralized registration, i.e. more than one office of an assessee such as his zonal or regional office depending upon their centralized billing or accounting systems.

In view of the amendment, if a bank has its head office at Mumbai and regional offices at Bhopal, Jaipur and Bangalore and the bank has centralized billing or centralized accounting facilities available at each of these regional offices, then the bank, at its option, can get each of these regional offices registered (and not only the Mumbai office) for the purpose of discharging the service tax liability.

The centralized registration granted to such premises or offices prior to 1.4.2005 would not be affected by this amendment unless an assessee at his option wants an amendment to the registration scheme opted by him.

If an assessee does not have a centralized billing or centralized accounting system, he would be required to get each of his premises registered for discharging the service tax liability.

Prior to the amendment, the Commissioner of Central Excise was empowered to grant registration in cases of centralized accounting system, provided he is satisfied that such registration would not be detrimental to the interest of revenue. This led to procedural difficulties as the Commissioner of Central Excise found it difficult to grant centralized registration to service providers who had their sub-ordinate offices outside his jurisdiction, while at the same time ensuring that the interest of revenue is safeguarded.

Now the authority to grant such centralized registration has been clearly spelt out. The Commissioner of Central Excise would grant centralized registration only if all the premises or offices, including the premises or office from where centralized accounting or centralized billing is done and all its sub-ordinate offices (for which such centralized accounting or centralized billing is done) are located within the jurisdiction of such Commissioner of Central Excise. If these offices or premises are outside the jurisdiction of Commissioner of Central Excise but within the jurisdiction of Chief Commissioner of Central Excise, in those cases, the jurisdictional Chief Commissioner would grant centralized registration. Further, if these offices or premises fall within the jurisdiction of more than one Chief Commissioner of Central Excise, the centralized registration would be granted by the Director General of Service Tax, Mumbai.

5. Miscellaneous Issues

A threshold exemption scheme has been introduced in this year's budget (effective from 1.4.2005) exempting from service tax aggregate value of taxable services not exceeding Rs.4,00,000 received by the service provider during a financial year. A point has been raised whether payments received after 1.4.2005 towards the services provided prior to 1.4.2005 would be included while computing this threshold value of Rs.4,00,000.

The exemption is related to first payments received in a financial year irrespective of the actual date of provision of services. Thus, the payments received after 1.4.2005 even if they relate to taxable services provided prior to 1.4.2005, will be taken into account for the purpose of computation of the threshold limit.

At present exemption from the gross amount charged (abatement) has been prescribed for certain taxable services such as construction and transport of goods by road. However, abatement scheme is not applicable to other than specified taxable services.

A point has been raised about application of abatement scheme in case of single provision of service which consists both category of taxable services, in such cases, what portion of the gross contract would get the benefit of abatement.

In all such cases, it is required to take a view as to whether the taxable service provided is a single service or multiple supply of services and thereafter classify the service provided as per the provisions of section 65A of the Finance Act, 1994 which lays down principles for classification of services. The benefit for abatement would be extended only if the taxable service is classifiable under the category for which abatement scheme is applicable.

6. Goods Transport Agency

An abatement of 75% in taxable service of goods transport by road is available on the condition that the goods transport agency has not availed credit on inputs and capital goods used for providing taxable service and has also not availed benefit of *Notification No. 12/2003-Service Tax dated 20.6.2003* (vide *Notification No. 32/2004-Service Tax, dated 3.12.2004*). It has been requested that in cases where liability for tax payment is on the consignor or consignee, the procedure as to how it should be confirmed by such consignor or consignee that the goods transport agency has not availed credit or benefit of *Notification No. 12/2003-Service Tax* may be prescribed. In such cases it is clarified that a declaration by the goods transport agency in the consignment note issued, to the effect that neither credit on inputs or capital goods used for provision of service has been taken nor the benefit of *Notification No. 12/2003-Service Tax* has been taken by them may suffice for the purpose of availment of abatement by the person liable to pay service tax.

7. Exemption to gem and jewellery sector

Notification No.21/2005-Service Tax, dated 7.6.2005 exempts the taxable services of “production or processing of goods for, or on behalf, of a client” referred to in sub-clause (v) of clause (19) of section 65 of the Finance Act, 1994, provided by a commercial concern, in the course of manufacture of cut and polished diamonds and gem stones or plain and studded jewellery of gold and other precious metals. However, other taxable services, such as, supply of manpower, banking and other financial services, other business auxiliary services, provided in the course of manufacture of cut and polished diamonds and gem stones or plain and studded jewellery of gold and other precious metals, are leviable to service tax and no exemption for these services is provided. All taxable services received from abroad by an Indian recipient in relation to these goods are held to be liable to be taxed under “Reverse Charge” norms.

8. Taxable Services received from abroad

Taxable services received from abroad by a person belonging to India are taxed in the hands of the Indian recipient. Relevant provisions are section 65(105) of the Finance Act, 1994 and rule 2(1)(d)(iv) of the Service Tax rules. In such cases, the Indian recipient of taxable services is deemed to be the service provider.

9. Exemption to shipping industry

Indian Ship Owners Association sought exemption from the levy of service tax on all taxable services received and consumed outside India by the shipping sector. *Notification No.22/2005-ST, dated 7.6.2005* exempts only certain specified taxable services provided by a non-resident person, outside India and consumed outside India in the course of sailing of a ship. For this purpose, the ship should have been registered as an Indian ship under the Merchant Shipping Act, 1958 or registered under the Coasting Vessels Act, 1838 or Inland Vessels Act, 1917. In the case of chartered ship, it should have been licensed under the Merchant Shipping Act, 1958. The ships so registered or licensed should be owned or chartered by a citizen of India or a company or a body established by or under any Central or State Act, which has its principal place of business in India or a cooperative society which is registered under the Cooperative Societies Act

or any other law relating to cooperative societies.

The exemption is applicable only to those specified taxable services provided in relation to handling of ships in a port outside India or handling or storage of goods carried in a ship in a port outside India or any other services related to handling of ships or goods carried in a ship. The scope of the term 'non-resident person' has been explained in the notification.

It may be noted that there is a distinction between a vessel and a ship. Vessel includes any ship, boat, sailing vessel or other description of vessel used in navigation. However, ship does not include a sailing vessel. Barges and rigs are only sailing vessels and do not fall under the category of ships. The term ship is defined in the Merchant Shipping Act, 1958. The exemption is applicable only to ships and not for vessels other than ships. Vessels going outside the country for dry-docking (maintenance or repairs) are not eligible for the exemption.

In the case of chartered ships, ships are used by the charterer but not owned by the charterer. Indians, chartering ships, are required to take licenses, unless specifically exempted, under section 406 of the Merchant Shipping Act, 1958. Vessels registered under the Coasting Vessels Act, 1838 or Inland Vessels Act, 1917 are also authorized to touch any ports in neighbouring countries. The benefit of exemption is available in such cases also.

It may be noted that the service tax is leviable on taxable services, other than specifically mentioned in the notification, received by the Indian shipping companies from abroad, under the reverse charge method from the Indian recipient of taxable services.

10. To avail relief from service tax on export of taxable services, taxable services exported are to be delivered outside India and used outside India and payment for the services exported should have been received by the service provider in convertible foreign currency. Amendments to this effect have been made in sub-rules (1) and (2) of rule 3 of Export of Services Rules, 2005. Newly introduced services have also been categorized for the purposes of export of services. *Notification No. 28/2005-ST dated 7/6/05* amends Export of Service Rules accordingly.
11. Service providers who have opted for centralized registration may, at times, have difficulty in accurately computing their tax liability by the due date of payment. Facility has been extended to such service providers to make *suo moto* adjustments of the excess amount paid, if any, and utilize the excess amount for payment of service tax for the subsequent period. Rule 6 of the Service Tax Rules, 1994 is amended for this purpose vide *Notification No. 23/2005-ST dated 7/6/2005*.
12. The above explanation of various changes and provisions of law is only for purpose of guidance to facilitate understanding and implementation of various provisions. It is not a part of the law and does not override it. Adequate care may be taken to carefully read the relevant provisions of law.

CIRCULAR NO. 81/2/2005-ST DATED 07.10.2005

The Board has issued the above Circular regarding leviability of service tax on maintenance or repair of software.

Supreme Court in the case of *Tata Consultancy Services vs State of Andhra Pradesh* (Civil Appeal no 2582 Of 1998) has observed that all the tests required to satisfy the definition of goods are possible in the case of software and in computer software the intellectual property has been incorporated on media for the purpose of transfer and software and media cannot be split up. Therefore, sale of computer software falls within the scope of sale of goods. Supreme Court has also observed that they are in agreement with the view that there is no distinction between branded and unbranded software.

Branded software, also known as canned software, sold off the shelf, is transferred in a media and is sold as such and the Supreme Court has decided that such branded software falls within the definition of goods. In the case of unbranded/customized software, the supplier develops the software and thereafter transfers the software so developed in a media and it is taken to the customer's premises for loading in their system. Thus, in the case of unbranded/customized

software also, the intellectual property namely software is incorporated in a media for use. Supreme Court has held that software in a media is goods.

Any service provided to a customer by any person in relation to maintenance or repair is leviable to service tax under section 65(105) (zzg) of the Finance Act, 1994. "Maintenance or repair" is defined under section 65(64) of the said Act. Accordingly, "maintenance or repair" means any service provided in relation to maintenance or repair or servicing of any goods or equipment.

Software, being goods, any service in relation to maintenance or repair or servicing of software is leviable to service tax under section 65(105)(zzg) read with section 65 (64) of the Finance Act, 1994.

RECENT AMENDMENTS IN DIRECT TAXES AND INDIRECT TAXES

Students are advised to study thoroughly the Supplementary Study Paper-2005 on Direct taxes and Indirect taxes for the Final Course. This contains the amendments made by the Finance Act, 2005 as well as the relevant Notifications/Circulars. This Supplementary Study Paper is available at various branch and regional sales counters of the Institute. This is very important since considerable weightage is being given to the latest amendments in the examinations.

Students may note that the Board of Studies has come out with a publication "Select Cases in Direct and Indirect Taxes [2005] – An Essential Reading for Final Course". This contains important recent judgements of Supreme Court, High Court and Appellate Tribunal in both Direct Taxes and Indirect Taxes.