

PAPER – 8 : INDIRECT TAXES

QUESTIONS

1. Explain briefly whether "assembly" would tantamount to "manufacture" under the Central Excise Act, 1944.
2. Alpha Ltd. is engaged in the activity of cutting/slitting of jumbo rolls of toilet paper of a width exceeding 36 cms. The jumbo rolls are purchased on payment of excise duty from various suppliers. The process undertaken by Alps Ltd. reduces the width of the jumbo rolls to less than 36 cms. The rolls with width exceeding 36 cms and with width less than 36 cms fall under different tariff headings. The excise department contends that such reduction of width amounts to manufacture. The excise department has assessed and demanded duty from Alps Ltd. on the basis of the heading covering jumbo rolls of width less than 36 cms.

You are required to examine the situation with the help of a decided case law.

3. Discuss whether classification of goods can be altered by the central excise department.
4. Beta Ltd. has sold refractories to Omega Steel Plant under a contract at a particular price. For the supply of refractories, Beta Ltd. has availed the duty exemption scheme contained in the Export and Import Policy. In order to enable Beta Ltd. to avail the duty exemption scheme, Omega Steel Plant has surrendered the advance licences held by them for import of refractories.

Against such surrender, advance intermediate licences for import of inputs have been issued to Beta Ltd. Consequently, Beta Ltd. has imported the inputs without payment of customs duty as well as got them at a lower price than what they would have paid had they purchased the same in India. The excise department has claimed that the benefit derived by Beta Ltd. under the advance intermediate licence, issued to them as a result of surrender of licence by Omega Steel Plant, is additional consideration towards the value of the refractories and that this additional consideration forms part of the price of the refractories for purposes of excise duty.

Do you think that the stand taken by the excise department is correct in law? Discuss.

5. Discuss the provisions relating to information on principal inputs in context of CENVAT Credit Rules, 2004.
6. Does the central excise law has any mechanism for removal of goods at concessional rate of duty for manufacture of excisable goods? If yes, elucidate the provisions thereof.
7. Explain the manner of payment of duty under Central Excise Rules, 2002.
8. Discuss the provisions regarding issue of demand notice under section 11A of the Central Excise Act, 1944. Is it possible to obtain waiver of such notice? If yes, explain the procedure.
9. Answer the following questions with reference to *Notification No. 8/2003-CE dated 01.03.2003* relating to small scale units:
 - (i) What is the eligible turnover for claiming exemption under the said notification?
 - (ii) How will the turnover be computed when the manufacturer has more than one factory?
 - (iii) What does 'value' mean for the purposes of the said notification?
 - (iv) Comment on the availability of CENVAT credit on capital goods under the said notification.
 - (v) What is the treatment in respect of 'clearances of excisable goods without payment of duty' as specified in the said notification?
10. Describe the criteria required to be satisfied for grant of stay/waiver of pre-deposit and admission of appeal under section 35F of the Central Excise Act, 1944.
11. X, an importer (other than 100% EOU) imported some goods and deposited them in the warehouse on 12.04.2006. These goods were re-exported on 15.08.2006 without payment of duty. With reference to the Customs Act, 1962, discuss whether any interest is payable by 'X'?

12. Explain briefly the meaning of the following with reference to the Customs Act, 1962:
 - (i) Rules and Regulations
 - (ii) Dutiable goods and Imported goods
13. State the provisions of transshipment of goods without payment of duty under section 54 of the Customs Act, 1962.
14. Vaikunth, a non-resident intends to import certain goods, but has entertained some doubts about their classification. Vaidehi, Vaikunth's friend, has obtained an 'Advance Ruling' under Chapter VB of the Customs Act, 1962 from the Authority for Advance Rulings on an identical point. Vaikunth proposes to adopt the same ruling in his case. Vaikunth has sought your advice as his consultant whether he could adopt the ruling given in the case of Vaidehi.
Explain with reasons.
15. What do you understand by first appraisement and second appraisement systems under the Customs Act 1962?
16. What is residual method of valuation? Discuss with reference to the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988.
17. With reference to the Customs Act, 1962, explain the circumstances under which refunds will not be credited to the Consumer Welfare Fund.
18. With reference to service tax return answer the following questions:
 - (i) Which documents are to be submitted along with the first return?
 - (ii) When should the return be filed if the due date happens to be a public holiday?
 - (iii) 'X', an individual, has not provided any services in the half year period April to September. Should he file any return for this period? Give your opinion.
19. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:
 - (i) Survey and map-making services provided by 'Survey of India'.
 - (ii) Construction services provided in respect of a residential complex having 12 residential units.
 - (iii) Membership fee paid by chartered accountants to the Institute of Chartered Accountants of India.
 - (iv) 'XY' Ltd. provides service of sending documents and materials by addressing, sealing and mailing the envelope for or on behalf of 'AB' Ltd., its client.
 - (v) Floor and wall cleaning performed on the premises of non-commercial buildings.
20. What percentage of abatement is available from the gross amount charged in respect of the following services? State the necessary conditions for availing such abatements.
 - (i) Commercial or industrial construction service
 - (ii) Services in relation to pandal or shamiana in any manner, including services rendered as a caterer
 - (iii) Catering services
 - (iv) Services provided by a tour operator providing services solely of arranging or booking accommodation in relation to a tour
 - (v) Erection, commissioning or installation under a contract for supplying a plant, machinery or equipment and erection, commissioning or installation of such plant, machinery or equipment.

SUGGESTED ANSWERS/HINTS

1. Assembly is a process of putting together a number of items or parts of an item to make a product or item. From a general point of view, not all cases of assembly would amount to manufacture in as much as an already manufactured item may be assembled to be put in a readily usable form. The assembly may take place before the sale or after the sale of manufactured goods and again at the factory gate of the manufacturer or at the customer's site. It may be done by the manufacturer/buyer/intermediary/technician. In all such cases, the questions that arise are -

1. Whether such assembly is manufacture?
2. Do new goods emerge as a result of assembly?

In *Narne Tulaman manufacturers Pvt. Ltd. v. CCE 1988 (38) ELT 566 (SC)*, it was held that as the Tribunal had found that the appellant had fitted a platform, loaded cells and indicator system which in the assembled form became a weigh bridge, there was a commercial commodity, having a distinct name, character and use resulting in manufacture. The aspect whether the resultant product would become an immovable property was not argued or considered.

In *BPL India Ltd. v. CCE 2002 (143) ELT 3*, the Supreme Court held that assembly of imported kits of VTR with colour monitor, imported in disassembled condition, amounted to manufacture since the end product had a distinct character and use and the process of assembly was done by technical experts or skilled persons.

Therefore, the general proposition would be that if the assembly results in new commercial commodity with a distinct name, character and use, then it would amount to manufacture.

2. The facts of the problem are similar to that of the case of *CCEx. New Delhi – I v. S.R. Tissues Pvt. Ltd. 2005 (186) ELT 385 (SC)*. In this case, the Supreme Court has held that slitting/cutting of jumbo rolls of plain tissue paper into smaller size does not amount to manufacture as its character and end-use viz., household purposes, do not undergo any change on account of winding, cutting/slitting and packing. Further, slitting and cutting of toilet paper cannot be termed as deemed manufacture as the said process is not treated as manufacture by legislature under any of the Section/Chapter Notes of the Central Excise Tariff.

The Apex Court has elaborated that mere mention of a product in a tariff heading does not necessarily imply that said product is obtained by process of manufacture. Just because raw material and finished product come under two different headings, it cannot be presumed that process of obtaining finished product from such raw material automatically constitute manufacture. Therefore, slitting/cutting of jumbo rolls of toilet tissue paper into various shapes and sizes shall not amount to manufacture merely because tissue paper in jumbo roll of size exceeding 36 cms. fall in one entry and toilet roll of a width not exceeding 36 cms. fall in a different entry. The Supreme Court further explained that value addition on account of transport charges, sales tax, distribution and selling expenses and trading margin without any change in name, character or end-use by mere cutting/slitting of jumbo rolls cannot constitute the criteria to decide what is "manufacture".

In view of the abovementioned decision, the contention of the excise department does not hold good.

3. While it is open to the department to review classification matters, it is not open to the department to arbitrarily change the classification of goods if they had been classified under a particular heading for a long time. Though there is no estoppel in taxation matters, changes in classification can be made only if there are cogent reasons.

In *J.K Synthetics Ltd. v. U.O.I. 1981 (8) ELT 328*, the Delhi High Court has held that an authority can depart from his earlier stand only for cogent reasons, such as fresh facts are brought on record or the process of manufacture has changed or the relevant Tariff Entry has undergone modification or, subsequent to earlier decision, there has been pronouncement of a High Court or the Supreme Court which necessitates the reconsideration of the issue. Thus, review/reopening of a classification list may only be done for cogent reasons.

Abrupt changes in classification, without any cogent reasons, are not justified, if the construction of a Tariff entry has continued unchallenged for a considerable length of time, it should not be disturbed.

However, a classification list can be changed or modified by the department, when material facts were not disclosed in the classification list and they came to the notice or knowledge of the department subsequently. In *Sanatha Engg. Industrials v. Superintendent of CEx. 1991 (52) ELT 376* it was held that once the classification list filed by the assessee had been accepted by the adjudicating authority, he cannot direct the assessee to file a revised classification list in the absence of initiation of proceedings for cancellation of the earlier sanction.

When out of two possible headings, goods are classified by the department under one of them, such a classification cannot be subsequently changed without notice to party. An approved classification list can only be reopened when fresh facts are brought on record or when there is a change in the statute. Approved classification lists cannot be changed arbitrarily or capriciously or without sufficient cause.

4. The facts of the problem are similar to that of the case of *CCEx. Bhubaneshwar-II v IFGL Refractories Ltd. 2005 (186) ELT 529 (SC)*. In this case, the Supreme Court has held that surrendering of licences by buyer and as a result thereof, assessee getting licences has nothing to do with any Import and Export policy. This is directly a matter of contract between two parties which has resulted in additional consideration by way of "advance intermediate licence" flowing from buyer to the assessee. The Apex Court stated that had the seller procured the advance intermediate licence on its own i.e. without buyer having to surrender its licence for the purposes of the contract, then there would have been no additional consideration. However, since the licence is obtained in pursuance of the contract of sale, there is directly a flow of additional consideration from the buyer to seller. Thus, the Supreme Court held that the value thereof has to be added to the price of the refractories.

The Apex Court further clarified that where parties take advantage of policies of Government and benefits flow therefrom, then such benefit can be said to be an additional consideration.

In view of the abovementioned decision, the stand taken by the excise department holds good.

5. Rule 9A of the CENVAT Credit Rules, 2004 contains the provisions relating to information on principal inputs. The provisions of Rule 9A are discussed below:
 - (1) A manufacturer of final products has to furnish to the Superintendent of Central Excise a declaration in the prescribed Form (ER 5) in respect of the principal inputs and the quantity of such principal inputs required for use in the manufacture of unit quantity of each of the excisable goods manufactured or to be manufactured by him. Such declaration has to be filed annually by 30th April of each Financial Year.
 - (2) If a manufacturer of final products intends to make any alteration in the information so furnished he shall furnish information to the Superintendent of Central Excise together with the reasons for such alteration before the proposed change or within 15 days of such change in the prescribed Form.
 - (3) Further, a manufacturer of final products has to submit, a monthly return in the prescribed Form (ER 6), in respect of information regarding the receipt and consumption of each principal input with reference to the quantity of final products manufactured by him. Such return shall be furnished within ten days from the close of each month, to the Superintendent of Central Excise.
 - (4) The Central Government may, by notification and subject to such conditions or limitations, as may be specified in such notification, specify manufacturers or class of manufacturers who may not be required to furnish such declaration or monthly return.
 - (5) Here, principal inputs means any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of raw-materials for the manufacture of unit quantity of a given final product.

6. Yes, central excise law has a separate set of rules for removal of goods at concessional rate of duty for manufacture of excisable goods known as Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. The provisions of these rules are discussed below:

Under Rule 3 of the said Rules, a manufacturer who intends to receive the specified goods at concessional rate of duty, is required to make an application in quadruplicate in the specified form to the jurisdictional central excise authorities. However, he is required to make separate application in respect of each supplier of subject goods.

Further, the manufacturer is required to execute a general bond with surety or security to cover the recovery of duty liability estimated to be involved at any given point of time.

The application shall be countersigned by the jurisdictional authorities certifying that the manufacturer has executed the required bond.

Of the four copies of application, one copy shall be forwarded to the jurisdictional range superintendent of the manufacturer of the subject goods, two copies shall be handed over to the applicant manufacturer and one copy shall be retained by the Assistant/Deputy Commissioner of Central Excise. Out of the two copies handed over to the applicant manufacturer, one copy shall be forwarded by the applicant manufacturer to the manufacturer of the subject goods.

Under Rule 4, the manufacturer of the goods can avail the exemption from duty based on the above referred application. The manufacturer of the subject goods shall record on the application the removal details such as number and date of invoice, description, quantity and value of subject goods and amount of excise duty paid at concessional rate.

The manufacturer receiving the above goods is required to maintain the simple account indicating the quantity and value of subject goods received, consumed and quantity remaining in stock. Further, he is also required to submit a monthly return in the specified form by the 10th of the following month.

If the material received at concessional rate of duty is not used for intended purpose, manufacturer is liable to pay differential duty along with interest. Provisions of section 11A and section 11AB shall apply mutatis mutandis for effecting such recoveries.

If the manufacturer on receiving the subject goods finds them to be defective or damaged or unsuitable or surplus to his needs, he may return the subject goods to the original manufacturer of the goods. Such returned goods shall be added to the non duty paid stock of the manufacturer of the subject goods and dealt with accordingly.

If the goods are lost or destroyed by natural causes or by unavoidable accident during transport from place of procurement to the manufacturer's premises or from manufacturer's premises to the place of procurement (if goods are returned) or during handling or storage in the manufacturer's premises, it will not be treated as used for intended purpose. Consequently, differential duty and interest will become payable.

7. Rule 8 of the Central Excise Rules, 2002 prescribes the manner of payment of duty as under:
- (i) The duty on the goods shall be paid by the 5th day of the month following the month of removal except for the month of March.
 - (ii) In case of removal of goods during the month of March, the duty shall be paid by the 31st day of March.
 - (iii) If an assessee is availing the exemption under a notification based on the value of clearances in a financial year, the duty shall be paid by the 15th day of the following month except in case of removal of goods in March for which the duty shall be paid by the 31st day of March.
 - (iv) The duty liability shall be deemed to have been discharged, only if the amount payable is credited to the account of the Central Government by the specified date.

(v) If the assessee deposits the duty by cheque, the date of presentation of the cheque, in the bank designated by the Central Board of Excise & Customs for this purpose, shall be deemed to be the date on which the duty has been paid subject to the realisation of that cheque.

8. Section 11A of the Central Excise Act, 1944 provides that when any duty of excise:

- ◆ has not been levied or paid, or
- ◆ has been short-levied or short-paid, or
- ◆ erroneously refunded,

a Central Excise Officer may, within 1 year from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

However, where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of

- ◆ fraud, collusion or
- ◆ any willful mis-statement or
- ◆ suppression of facts, or
- ◆ contravention of any of the provisions of the Central Excise Act, 1944 or of the rules made thereunder

with intent to evade payment of duty, by such person or his agent, the show cause notice can be served within five years from the relevant date.

Here, "relevant date" means,—

- (a) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid—
 - (A) where under the rules a periodical return, showing particulars of the duty paid on excisable goods removed during the period to which the said return relates, is to be filed by a manufacturer or a producer or a licensee of a warehouse, as the case may be, the date on which such return is so filed;
 - (B) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;
 - (C) in any other case, the date on which the duty is to be paid;
- (b) in a case where duty of excise is provisionally assessed, the date of adjustment of duty after the final assessment thereof;
- (c) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund.

Yes, an assessee can obtain waiver of such notice. Section 11A provides a mechanism for the same in order to facilitate early dispute resolution. Section 11A *inter alia* lays down that issue of show cause notice can be waived if the assessee deposits the duty on the basis of his own ascertainment of such duty or on the basis of duty ascertained by a Central Excise Officer, along with interest, before service of notice and informs the Central Excise Officer in writing. However, this waiver is possible only in respect of such cases where such non-levy/short levy or non-payment/short payment or erroneous refund of duty is by reason other than suppression of facts, fraud, collusion or willful misstatement with intent to evade payment of duty.

Normally, a proceeding starts with the issue of a show cause notice to the assessee and giving him an opportunity of representing his case.

9. (i) The eligible turnover for claiming exemption under the said notification is Rs.400 lakhs. The units whose value of clearances computed in accordance with *Notification No.8/2003* is less than or equal to 400 lakhs (4 crores) in the previous financial year are eligible for the benefit of exemption in the current financial year.
- (ii) When a manufacturer clears the goods from one or more factories, the turnover of all the factories have to be aggregated for the purpose of claiming exemption under the said notification.
- (iii) The value for the purposes of the said notification would mean the value fixed under section 4 or section 4A or the tariff value fixed under section 3(2).
- (iv) The units availing the benefit of said notification cannot avail CENVAT credit on inputs. However, they can avail CENVAT credit on capital goods but the same can be utilized for payment of duty on final products only after the turnover reaches Rs. 100 lakhs.
- (v) Paragraph 3A of the said notification lays down that for computing the value of clearances of all excisable goods for home consumption (Rs.400 lakhs), the following 'clearances of excisable goods without payment of duty' shall not be taken into account, namely-
 - (a) to a unit in the Free Trade Zone
 - (b) to a unit in the Special Economic Zone
 - (c) to a 100% Export Oriented Undertaking
 - (d) to a unit in the Electronic Hardware or Software Park
 - (e) supplies to United Nations or an international organization for their official use or supplied to projects funded by them on which exemption of duty is available in terms of *Notification No.108/95-CE dated August, 28, 1995*.

10. Section 35F of Central Excise Act provides that person desirous of appealing against the order shall, pending the appeal deposit the duty demanded or penalty levied. However, the appellate authority is empowered to waive such deposit if it is of the opinion that the deposit of duty or penalty will cause undue hardship to the person.

The hardship can be any hardship and not only financial hardship. The Apex Court in *ITO Cannanore v. M.K. Mohammed Kunhi (1969) 71 ITR 815 (SC)* has held that power of stay should be exercised when a strong prima facie case is made out. The principles for waiver of condition of pre-deposit, well settled by a catena of decisions of Supreme Court and High Courts are:

- (i) whether there is a prima facie case in favour of assessee
- (ii) the balance of convenience qua the deposit or otherwise
- (iii) irreparable loss, if any, to be caused in case stay is not granted
- (iv) safeguarding public interest

Even if a company is declared as sick company under BIFR, it has to obtain stay order as per requirements of section 35F – *Uptron India Ltd. v. CCE 1995 (76) ELT 77(T)*.

If goods are in the custody of revenue and have not been released, there is no justification for pre-deposit of duty and interest demanded – *Banwari Lal v. CC 2000 (122) ELT 383(T)*.

In *Asstt. CCE v. Dunlop India Ltd. 1985 (19) ELT 22 (SC)*, it was observed: 'Grant of stay should be an exception and not a rule'.

11. As per section 61(2)(ii) of the Customs Act, 1962, if goods (belonging to importer other than 100% EOU) are kept in the warehouse beyond a period of 90 days, interest shall be payable @15% p.a. on the amount of duty payable at the time of clearance of the goods. The interest shall be payable after the expiry of the said 90 days till the date of payment of duty.

In *Pratibha Processors v. UOI 1996 (88) ELT 12 (SC)*, the Apex Court has held that when goods at the time of removal from warehouse are wholly exempted from payment of duty, the liability to pay interest cannot be saddled on a non-existing duty. Liability to pay interest under section

61(2) of the Customs Act is solely dependant upon the exigibility or actual liability to pay duty. In case the liability to pay duty is nil, then, the interest will also be nil.

Further, *Circular No. 38/2005-Customs dated 28.09.2005* clarifies that if no duty is payable on clearances from the warehouses, then no interest is payable thereon.

Therefore, since in this case the goods have been re-exported without payment of duty, no interest is payable by 'X'.

12. (i) Rules and Regulations

Under section 156 of Customs Act, 1962, Central Government has been empowered to make rules and under section 157 Board (CBE&C) has been empowered to make regulations consistent with the provisions of the Act, to carry out the purposes of the Act. Various rules and regulations have been framed under these powers.

Rules have to be placed before the Parliament, while regulations framed by CBE&C are not required to be placed before the Parliament. However, it may be noted that both rules and regulations have statutory force. Both are 'subordinate legislations' and are legally valid and enforceable.

(ii) Dutiable goods and Imported goods

'Dutiable goods' means any goods which are chargeable to duty and on which duty has not been paid [Section 2(14) of the Customs Act, 1962]. Goods continue to be 'dutiable' till they are not cleared from the port. If duty rate specified in the Customs Tariff Act is 'Free', no duty is payable on such goods and hence these are not dutiable goods.

'Imported goods' means any goods brought into India from a place outside India but does not include goods that have been cleared for home consumption [Section 2(25) of the Customs Act, 1962]. Once goods are cleared by Customs authorities from customs area, they are no longer 'imported goods'.

13. Section 54 provides that:

- (1) where any goods imported into a customs station are intended for transshipment, the person-in-charge of conveyance will have to present a bill of transshipment to the proper officer in the prescribed form;
- (2) where any goods imported in to a customs station are mentioned in the import manifest or import report, as for transshipment to any place outside India, such goods will be allowed to be so transhipped without payment of duty. However, the goods should not have been prohibited under section 11 of the Customs Act.
- (3) where any goods imported into a customs station are mentioned in the import manifest or import report for transshipment to any major port (as defined in the Indian Ports Act, 1908) or to customs airport or to any other customs port or customs airport (as notified by the Board) or to any other customs station and the proper officer is satisfied about the bona-fide intention for transshipment of the goods to such customs station, the proper officer may allow the goods to be transhipped, without payment of duty.

14. According to section 28J of the Customs Act, 1962 the advance ruling shall be binding only on the applicant who has sought it.

In the given problem, in view of the aforesaid provision, Vaikunth cannot make use of the advance ruling pronounced in the identical case of his friend, Vaidehi. Vaikunth should obtain a ruling from the Authority of Advance Ruling by making an application under section 28(H)(3) along with a fee of Rs.2,500.

15. Section 17 of the Customs Act, 1962 stipulates that after Bill of Entry or Shipping Bill has been presented the proper officer may examine and test the goods. After such examination and testing, the proper officer will assess the duty leviable on such goods.

Under the first appraisalment system, the goods are examined first and then they are assessed. The appraiser normally resorts to this method if he is not able to make assessment on the basis

of declaration made in the Bill of Entry or Shipping Bill and the documents submitted along with them and deems that inspection is necessary. The importer himself may also request 'first check procedure', if he cannot give all required details regarding description/value of goods. He has to make request for first check examination at the time of filing of Bill of Entry

Under the second appraisalment system, the information and documents furnished by the importer are adequate to determine the correct tariff nomenclature, tariff classification and valuation of the goods for purposes of assessment. In such a situation, physical examination of the goods or their weighment or testing is only a confirmatory check. Under this system, such an examination is carried out after assessment and collection of duty.

16. Rule 8 of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 prescribes residual method of valuation. This rule is used when the value of imported goods cannot be determined under the provisions of any other rule. According to this rule, the value of imported goods should be determined using reasonable means consistent with the principles and general provisions of these rules and section 14(1) of the Customs Act and on the basis of the data available in India.

While determining the value under this method, the following should not be considered -

- (i) the selling price in India of the goods produced in India
- (ii) a system of accepting the highest of the two alternative values
- (iii) price of goods in the domestic market in the country of export
- (iv) the cost of production other than the computed value of identical goods or similar goods as determined in rule 7A
- (v) the price of the goods for export to a country other than India
- (vi) minimum customs values
- (vii) arbitrary or fictitious values

Thus, the value of imported goods determined in accordance with the provisions of Rule 8 should to the greatest extent possible, be based on previously determined customs values.

17. The refund of duty is paid to the applicant only when he has not passed on the burden of duty. In a case where the burden of duty is passed on, the refund amount is credited to the Consumer Welfare Fund. In the following circumstances the amount of duty and interest, if any, paid on such duty shall not be credited to the Consumer Welfare Fund, but shall be paid to the applicant:
 - (i) the amount of duty and interest, if any, paid on such duty (hereinafter referred to as amount) has been paid by the importer, but not passed on to the customer.
 - (ii) the amount has been paid on import by individuals for personal use. (The importer is not a trader. The goods are meant for his personal use.)
 - (iii) the amount has been borne by the buyers, but not passed on. (The applicant is not the importer. He bought the goods from the importer. The duty passed on by the importer has been borne by the buyer; but the latter has not passed it on to his customer).
 - (iv) the amount pertains to export duty refundable under section 26 to the exporter who has paid the duty. (Import duty paid by the importer is passed on to the Indian consumer whereas question of passing the burden of 'export duty' on to Indian consumer does not arise.)
 - (v) the amount pertains to drawback under section 74 and 75. (Drawback is an export incentive where the duty paid on import is paid back. Here also, by very nature, the question of passing on drawback to Indian consumer does not arise.)
 - (vi) the amount pertains to import duty borne by notified classes of buyers.
18. (i) Along with the first return following documents should be attached:
 - (i) copies of TR-6 challans which indicate the payment of service tax for the months/quarter covered in the half-yearly return;

- (ii) a memorandum in form ST-3A giving full details of the difference between the amount of provisional amount of tax deposited and the actual amount payable for each month. Form-ST-3A is to be attached only when the assessee opts for provisional payment of service tax.

Further, in case of first return, every assessee should furnish to the Superintendent of Central Excise, at the time of filing first half yearly return i.e. ST-3, a list of all accounts maintained by him in relation to service tax including memoranda received from his branch office.

- (ii) In case the due date of the filing of return i.e., either 25th October or 25th April falls on a public holiday, the assessee can file the return on the immediately succeeding working day.
 - (iii) Even if no services have been provided during a half year and no service tax is payable, the assessee has to file a Nil return within the prescribed time limit. Thus, 'X' should file a 'Nil' return for the half year April-September by 25th of October.
19. (i) Scope of survey and map-making service includes 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. Thus, survey and map-making services provided by 'Survey of India', a government body shall not be liable to service tax.
- (ii) Residential complex for the purpose of taxable construction services *inter alia* means any complex comprising of a building or buildings, having more than twelve residential units. Therefore, construction services provided in respect of a residential complex having 12 residential units shall not be liable to service tax.
- (iii) As per *M.F. (D.R.) Letter F.No.B1/6/2005-TRU dated 27.07.2005*, 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. Thus, membership fee paid by chartered accountants to the Institute of Chartered Accountants of India shall not be liable to service tax.
- (iv) Services provided by agencies 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 are within the scope of taxable mailing list compilation and mailing service. Thus, services provided by 'XY' Ltd. to 'AB' Ltd. shall be liable to service tax.
- (v) The taxable cleaning service does not include cleaning services in respect of non-commercial buildings and premises thereof. Thus, floor and wall cleaning performed on the premises of non-commercial buildings shall not be liable to service tax.
20. (i) 67%
- (ii) 30%
- (iii) 50%
- (iv) 90%
- (v) 67%

The exemption in all the above five cases shall be available only if:

- (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of CENVAT Credit Rules, 2004; and
- (ii) the service provider has not availed the benefit under the *Notification No. 12/2003 ST, dated 20.06.2003*.

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 30.04.2006. It may carefully be noted that for the students appearing in November 2006 the amendments made by Notifications, Circulars etc. up to 30.04.2006, as detailed hereunder, are relevant.

I. CENTRAL EXCISE

1. The excise duty payable in cases where goods produced by a hundred per cent export-oriented undertaking (EOU) are sold in domestic tariff area (DTA) is the aggregate of the customs duties which would be leviable under the Customs Act, 1962 on like goods produced or manufactured outside India, if imported into India. *Notification No. 23/2003 CE dated 31.03.2003* exempted 50% of such aggregate customs duties. However, *Notification No. 22/2006 CE dated 01.03.2006* has amended the above Notification so as to change the excise duty structure on production cleared from EOU/EHTP/STP to DTA.

Now, 75% of basic customs duty will be exempted but full CVD shall be payable. Additional duty of customs leviable under section 3(5) of the Customs Tariff Act shall also be exempt. However, if the goods cleared into DTA are exempt from payment of sales tax/VAT, additional customs duty under section 3(5) would be levied.

2. Following changes have been made in CENVAT Credit Rules, 2004:

- (i) The explanation occurring at the end of rule 2(p) defining output service has been omitted vide *Notification No. 8/2006 CE (N.T.) dated 19.04.2006*. The explanation clarified that if a person liable for paying service tax does not provide any taxable service or does not manufacture final products, the service for which he is liable to pay service tax shall be deemed to be the output service.
- (ii) 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).
- (iii) 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).
- (iv) Consequent to the amendment made in the excise duty structure on production cleared from EOU/EHTP/STP to DTA (*discussed in point 1 above*), a corresponding amendment in Rule 3(7)(a) of CENVAT Credit Rules, 2004, which prescribes the formula for calculating eligible credit in case of removal of goods from EOUs to DTA, has been made.

A proviso has been inserted in the said rule which lays down that the CENVAT credit in respect of inputs and capital goods cleared on or after 01.03.2006 from an export oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park to DTA, shall be equal to:

$$X \times \{(1 + \text{BCD}/400) \times (\text{CVD}/100)\}$$

where X is the assessable value, BCD is the basic customs duty and CVD is the additional duty of customs. [*Notification No. 6/2006 CE (N.T.) dated 20.03.2006*].

- (v) 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.
- (vi) 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*].

- (vii) Rule 5 of CENVAT Credit Rules, 2004 relating to refund of CENVAT credit has been substituted by the following rule:

Where any input or input service is used in the manufacture of final product which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported, the CENVAT credit in respect of the input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service towards payment of,

- (i) duty of excise on any final product cleared for home consumption or for export on payment of duty; or
- (ii) service tax on output service,

and where for any reason such adjustment is not possible, the manufacturer or the provider of output service shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.

However, no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Export of Service Rules, 2005 in respect of such tax.

Further no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act shall be utilised for payment of service tax on any output service.

Explanation: For the purposes of this rule, the words 'output service which is exported' means the output service exported in accordance with the Export of Services Rules, 2005 [*Notification No. 04/2006 CE (N.T.) dated 14.03.2006*].

- (viii) 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 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.

- (ix) 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".

- (x) 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*].
- (xi) 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.

Rule 9(1) has been amended so as to include a challan evidencing payment of service tax by the person liable to pay service tax under sub-clause (v) of rule 2(1)(d) of Service tax Rules, 1994 amongst the eligible documents for availing CENVAT credit. Sub-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 [*With effect from 16.06.2005 vide Notification No. 28/2005 CE (N.T.) dated 07.06.2005*].

- (xii) 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.

3. The safeguards, conditions and limitations, subject to which the refund under Rule 5 of CENVAT Credit Rules, 2004 shall be granted, are as follows:
 1. The final product or the output service is exported in accordance with the procedure laid down in the Central Excise Rules, 2002, or the Export of Services Rules, 2005, as the case may be.

2. The claims for such refund are submitted not more than once for any quarter in a calendar year. However, where,-
 - (a) the average export clearances of final products or the output services in value terms is 50% or more of the total clearances of final products or output services, as the case may be, in the preceding quarter; or
 - (b) the claim is filed by Export Oriented Unit,
 the claim for such refund may be submitted for each calendar month.
3. The manufacturer or provider of output service, as the case may be, submits an application in the prescribed Form to the Deputy/Assistant Commissioner of Central Excise, as the case may be, in whose jurisdiction,-
 - (a) the factory from which the final products are exported is situated, along with the Shipping Bill or Bill of Export, duly certified by the officer of customs to the effect that goods have in fact been exported; or
 - (b) the registered premises of the service provider from which output services are exported is situated, along with a copy of the invoice and a certificate from the bank certifying realization of export proceeds
4. The refund is allowed only in those circumstances where a manufacturer or provider of output service is not in a position to utilize the input credit or input service credit allowed under rule 3 of the said rules against goods exported during the quarter or month to which the claim relates (hereinafter referred to as 'the given period').
5. The refund of unutilised input service credit will be restricted to the extent of the ratio of export turnover to the total turnover for the given period to which the claim relates i.e.

$$\text{Maximum refund} = \frac{\text{Total CENVAT credit taken on input services during the given period} \times \text{export turnover}}{\text{Total turnover}}$$

Illustration: If total credit taken on input services for a quarter = Rs. 100

Export turnover during the quarter = Rs 250

Total Turnover during the quarter = Rs 500

Refund of input service credit under Rule 5 of the CENVAT Credit Rule, during the quarter = $100 \times 250 / 500$ i.e. Rs 50

Explanation: For the purposes of condition no.5,-

1. "Export turnover" shall mean the sum total of the value of final products and output services exported during the given period in respect of which the exporter claims the facility of refund under this rule.
2. "Total turnover" means the sum total of the value of,-
 - (a) all output services and exempted services provided, including value of services exported;
 - (b) all excisable and non excisable goods cleared, including the value of goods exported;
 - (c) the value of bought out goods sold, during the given period.
6. The application in the prescribed form along with the prescribed enclosures and the relevant extracts of the records maintained under the Central Excise Rules, 2002, CENVAT Credit Rules, 2004, or the Service Tax Rules, 1994, in original, are filed with the Deputy/Assistant Commissioner of Central Excise, as the case may be, before the expiry of the period specified in section 11B of the Central Excise Act, 1944.
7. The refund of excise duty or service tax is allowed by the Deputy/Assistant Commissioner of Central Excise, as the case may be [Notification No. 05/2006 - CE (N.T.) 14.03.2006].

4. *Circular No. 813/10/2005-CX dated 25.04.2005* has laid down that value of samples distributed free as part of marketing strategy or as gifts or donations shall be determined under Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.
5. Clarification provided by *Circular No. 827/4/2006-CX dated 12.04.2006* in respect of deduction of cost of transportation for the return journey has been revised. As per Rule 5 of the Valuation Rules, the actual cost of transportation from the place of removal up to the place of delivery is only to be excluded. The old clarification provided that if the assessee is recovering an amount from the buyer towards the cost of return fare of the empty vehicle from the place of delivery, this amount will not be available as a deduction. If, however, only the cost of transportation has been indicated in the invoice without any break-up for the forward and return journey, normally it should be accepted as the cost of transportation from the place of removal to the place of delivery.

The revised clarification now provides that unless it is specifically mentioned in the invoice that the transportation charges indicated therein do not include cost of transportation for the return journey of the empty truck/vehicle, the deduction of the said transportation charges will not be admissible.

II. CUSTOMS

Amendments in Customs and Central Excise Duties Drawback Rules, 1995

- (i) In the Customs and Central Excise Duties Drawback Rules, 1995 after rule 8, rule 8A has been inserted which prescribes an upper limit of drawback money or rate. The drawback amount or rate determined under rule 3 should not exceed one third of the market price of the export product.
- (ii) Rule 12 has been amended to provide that in respect of duties of customs and central excise paid on the containers, packing materials and materials used in the manufacture of the export goods on which drawback is being claimed, no separate claim for rebate of duty under the Central Excise Rules, 2002 has been or will be made to the Central Excise authorities.
- (iii) Rule 16A has been amended to provide that if the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Deputy/Assistant Commissioner of Customs shall issue a notice to the exporter to produce evidence of realisation of export proceeds within 30 days. [*Notification No. 10/2006-Cus (N.T.) 15.02.2006*].

III. 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)(zzza)] 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)(zzzh)] 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.

Note: *Notification No. 18/2005* has been rescinded vide *Notification No. 1/2006 ST, dated 01.03.2006*. However, the exemption and the conditions for availing this exemption are still intact vide *Notification No. 1/2006* with one extra condition. Please refer point no. 25 for details.

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. *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.
6. Exemption from service tax has been provided to financial leasing services including equipment leasing and hire-purchase from so much of the service tax as is equivalent to the service tax calculated on 90% of an amount, forming or representing interest. In other words service tax shall be payable only on 10% of the interest. The interest is the difference between the installment paid towards repayment of the lease amount and the principal amount contained in such installment.

This exemption shall not apply to any amount, other than an amount forming or representing as interest, charged by the service provider such as lease management fee, processing fee, documentation charges and administration fee [*Notification No. 4/2006-ST, dated 01.03.2006*].

7. *Notification No. 6/2006 ST, dated 01.03.2006* has exempted service provided or to be provided to any person, by a Government owned State or District level laboratory in relation to testing and analysis of water quality, from the whole of service tax leviable thereon.
8. *Notification No. 7/2006 ST, dated 01.03.2006* has exempted taxable services, provided or to be provided to any person, by Reserve Bank of India, from the whole of service tax leviable thereon.

Withdrawal of exemptions

9. *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.
10. *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.

11. 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.
12. 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.
13. 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.
14. Exemptions provided to the following taxable services from service tax, have been withdrawn vide *Notification No. 2/2006 ST, dated 01.03.2006*:
 - (a) The Chartered Accountants, Cost Accountants and Company Secretaries who are in practice were granted exemption from service tax in respect of services other than the services specified in *Notification No. 59/98-ST, dated 16.10.1998* (i.e. accounting, auditing and statutory certification services). This exemption has been withdrawn and thus, all services provided or to be provided by these professionals in their professional capacity will attract levy of service tax.
 - (b) Exemption granted to call centres or a medical transcription centre vide *Notification No. 8/2003-ST, dated 20.06.2003* has been withdrawn.
 - (c) *Notification No. 11/2003-ST, dated 20.06.2003* has been rescinded thereby withdrawing the exemption granted to maintenance or repair of any goods or equipment excluding motor vehicle under a maintenance contract or agreement which was entered into prior to 01.07.2003.
 - (d) Exemption granted to service provided by a management consultant in respect of Enterprise Resource Planning Software System vide *Notification No. 16/2004-ST, dated 10.09.2004* has been withdrawn.
 - (e) Exemption granted to catering services provided on a railway train by an outdoor caterer vide *Notification No. 19/2004-ST, dated 10.09.2004* has been withdrawn.
 - (f) *Notification No. 21/2004-ST, dated 10.09.2004* has been rescinded thereby withdrawing exemption granted to catering services provided within the premises of an academic institution or medical establishment by an outdoor caterer.
15. Exemptions granted vide *Notification No.3/94 ST, dated 30.06.1994* in relation to general insurance where-
 - (i) Premium is received from re-insurance both domestic and overseas; and
 - (ii) All business for which premium is booked outside India

have been withdrawn. The withdrawal of exemption in these two cases paves the way for bringing in to the tax net, insurance business carried on outside India as well as services provided

by reinsurers. The necessary amendments for this purpose have already been made by the Finance Act, 2006 [*Notification No. 3/2006 ST, dated 01.03.2006*].

Other amendments

16. *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.

17. *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;
- (ii) a company established by or under the Companies Act, 1956;
- (iii) a partnership firm, whether registered or not registered;
- (iv) a society registered under the Societies Registration Act, 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 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.

18. *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.

Note: *Notification No. 15/2004* has been rescinded vide *Notification No. 1/2006 ST, dated 01.03.2006*. However, the exemption and the conditions for availing this exemption are still intact vide *Notification No.1/2006* with one extra condition. Please refer point no. 25 for details.

19. *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.
20. 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.

The following amendment has been made in the above notification:

- (i) With effect from 16.06.2005, in the said notification, 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 [Notification No. 24/2005 ST, dated 07.06.2005].
21. 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.

22. 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	Not exceeding Rs. 5 lakhs

	Central Excise or Deputy Commissioner of Central Excise	
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.

23. Revised Forms ST-1 (application for registration), ST-2 (certificate of registration) and ST-3 (half-yearly return) have been notified vide *Notification No. 31/2005 ST, dated 20.10.2005*. The same Form ST-1 has also been specified vide *Notification No. 32/2005-ST, dated 20.10.2005* for the purpose of registration under rule 3 of the Service Tax (Registration of Special Category of Persons) Rules, 2005. Format of Certificate of Registration (ST-2) is common for all categories of persons. Further, the same Form ST-3 has been specified for the purpose of furnishing return under sub-rules (9) and (10) of rule 9 of the CENVAT Credit Rules, 2004 vide *Notification No 33/2005-CE (N.T.) dated 20.10.2005*.

24. CBE&C has issued *Circular No. 81/2/2005-ST dated 07.10.2005* regarding leviability of service tax on maintenance or repair of software. It provides:

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.

25. In case of certain specified taxable services, the service provider has the option to avail abatement of service tax up to a prescribed percentage of the service tax calculated in the normal manner. The specified taxable services and the prescribed percentage of abatement are tabulated below:

Sl. No.	Taxable service	Sub-clause of clause (105) of section 65	Notifications granting abatement	% of abatement
1.	Mandap keeper's service	(m)	(i) 21/97 ST, dated 26.06.1997 as amended (ii) 12/2001 ST, dated 20.12.2001 as amended	40 40
2.	Tour operator's service	(n)	(i) 39/97 ST, dated 22.08.1997 as amended (ii) 40/97 ST, dated 22.08.1997 as amended (iii) 2/2004 ST, dated 05.02.2004 as amended	60 90 60
3.	Rent a cab scheme operator's service	(o)	9/2004 ST, dated 09.07.2004 as amended	60
4.	Convention services	(zc)	10/2004 ST, dated 09.07.2004 as amended	40
5.	Erection, commissioning or installation services	(zzd)	19/2003 ST, dated 21.08.2003 as amended	67
6.	Goods transport agency's services	(zzp)	32/2004 ST, dated 03.12.2004	75
7.	Commercial or industrial construction service	(zzq)	15/2004 ST, dated 10.09.2004 as amended	67
8.	Outdoor catering service	(zzt)	20/2004 ST, dated 10.09.2004	50
9.	Pandal or shamiana contractor's service	(zzw)	22/2004 ST, dated 10.09.2004	30
10.	Construction service in respect of residential complex	(zzzh)	18/2005 ST, dated 07.06.2005	67

In respect of all these services, the abatement of service tax is admissible only if certain conditions are satisfied. One such condition is that the service provider should not have availed CENVAT credit on the excise duty paid on inputs and capital goods used for providing output service. This condition has been enlarged to the effect that the service provider should not have availed, not only the CENVAT credit of duty on inputs and capital goods, but also credit of service tax paid on input services used in providing output service.

Further, as a measure of rationalization of abatements, the abovementioned individual notifications granting such abatements have been rescinded and a single *Notification No.1/2006 ST, dated 01.03.2006* compiling all these abatements along with the conditions necessary for availing such abatements has been issued [*Notification No. 1/2006-ST, dated 01.03.2006*].

Amendments in Rules

26. Following amendments have been made in Service Tax Rules, 1994:

- (i) Sub-clause (ii) of rule 2(1)(d) has been amended with effect from 01.05.2006 vide *Notification No. 17/2006 ST, dated 25.04.2006*.

The amended sub-clause provides that in relation to general insurance business, the person liable to pay service tax shall be the insurer or re-insurer, as the case may be, providing such service.

- (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. With effect from 16.06.2005, the words “established by or under” in the above rule have been substituted by the words “*formed or registered under*” vide *Notification No. 23/2005 ST, dated 07.06.2005*. 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) Sub-rule (5A) has been inserted after sub-rule (5) in rule 4. Sub-rule (5A) provides that a change in any information or details furnished by an assessee in Form ST-1 at the time of obtaining registration or any additional information or detail intended to be furnished should be intimated in writing by the assessee to the jurisdictional Assistant/Deputy Commissioner of Central Excise. Such intimation should be made within a period of 30 days of such change [*Notification No. 5/2006-ST, dated 01.03.2006*].
- (iv) Sub-rule (7) of rule 4 provides that every registered assessee who ceases to provide the taxable service, for which he is registered, should surrender his registration certificate immediately. The authority to whom certificate should be surrendered was so far not specified in the sub-rule. This omission has been rectified by providing that the certificate should be surrendered to the Superintendent of Central Excise [*Notification No. 5/2006-ST, dated 01.03.2006*].
- (v) Sub-rule (8) has been inserted after sub-rule (7) in rule 4. This new sub-rule provides that, on receipt of the certificate under sub-rule (7), the Superintendent of Central Excise shall ensure that the assessee has paid all monies due to the Central Government under the provisions of the Act/Rules/Notifications and thereupon cancel the registration certificate [*Notification No. 5/2006-ST, dated 01.03.2006*].
- (vi) 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. With effect from 16.06.2005, 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 [*Notification No. 23/2005 ST, dated 07.06.2005*].
- (vii) Sub-rule (3) has been inserted after sub-rule (2) in rule 5. The new sub-rule provides that all records maintained by an assessee shall be preserved at least for a period of 5 years immediately after the financial year to which such records pertain [*Notification No. 5/2006-ST, dated 01.03.2006*].
- (viii) After sub-rule (3), another new sub-rule (4) has been inserted in rule 5. Sub-rule 4 lays down that every assessee shall make available records as mentioned in sub-rule (3) for inspection and examination by the Central Excise Officer. The records should be made available at the registered premises at all reasonable time. However, the Central Excise Officer can do such inspection and examination only when he is authorised for this purpose in writing by the jurisdictional Assistant/Deputy Commissioner of Central Excise, as the case may be. For this purpose, the term “registered premises” shall include all premises or offices from where an assessee is providing taxable services. [*Notification No. 5/2006-ST, dated 01.03.2006*]
- (ix) Rule 6(4) provides for provisional assessment in case of service tax. With effect from 16.06.2005, 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) [Notification No. 23/2005 ST, dated 07.06.2005].

- (x) Sub-rule 7 of rule 6 provides an option to the person liable for paying service tax in relation to the services provided by an air travel agent, of paying 0.5% of the basic fare in the case of domestic bookings and 1.0% of the basic fare in the case of international bookings towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66. However, with effect from 01.05.2006, *Notification No.17/2006 ST, dated 25.04.2006* has amended the rates of optional service tax in case of domestic booking and international booking to 0.6% and 1.2% of basic fares respectively.
27. Rule 3 of Export of Services Rules, 2005 has been amended vide *Notification No. 13/2006 ST, dated 19.04.2006*.

The amended rule 3 classifies the taxable services in three categories –

- (a) when the immovable property in respect of which the service is rendered is situated abroad [Rule 3(1)(i)]
- (b) when the service is performed outside India [Rule 3(1)(ii)]
- (c) when service is provided from India, but recipient of service is outside India [Rule 3(1)(iii)].

In order to be treated as export of services, different requirements in each of the three categories have to be fulfilled.

- (a) As per Rule 3(1)(i) the following services provided in relation to an immovable property shall be eligible for exemption as 'export of service' only when the immovable property is situated outside India:

Sub-clause of section 65(105)	Service covered
(d)	General insurance services
(p)	Architects' services
(q)	Interior decorator's services
(v)	Real estate agent's services
(zzq)	Construction service
(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

Thus, in the first category, the service shall be treated as 'export of taxable service' only if the immovable property is situated abroad.

- (b) As per Rule 3(1)(ii) the following services shall be eligible for exemption as 'export of services' only if they are performed outside India:

Sub-clause of section 65(105)	Service Covered
(a)	Stock broking
(f)	Courier agency's services
(h)	Custom house agent's services
(i)	Steamer agent's services
(j)	Clearing and forwarding agent's services
(l)	Air travel agent's services
(m)	Mandap keeper's services
(n)	Tour operator's services
(o)	Rent-a-cab scheme operator's services
(s)	Practising chartered accountant's services
(t)	Practising cost accountant's services
(u)	Practising company secretary's services
(w)	Security agency's services
(x)	Credit rating agency's services
(y)	Market research agency's services
(z)	Underwriter's services
(zb)	Photography services
(zc)	Convention services
(zi)	Video tape production services
(zj)	Sound recording services
(zn)	Port services
(zo)	Authorised service station's services
(zq)	Beauty parlour's services
(zr)	Cargo handling services
(zt)	Dry cleaning services
(zu)	Event management services
(zv)	Fashion designer's services
(zw)	Health club and fitness centre's services
(zza)	Storage and warehousing services
(zzc)	Commercial training or coaching services
(zzd)	Erection, commissioning or installation services
(zzf)	Internet café's services
(zzg)	Maintenance and repair services
(zzh)	Technical testing and analysis services
(zzi)	Technical inspection and certification services
(zzl)	Other port services
(zzm)	Airport services

(zzn)	Transport of goods by air services
(zzo)	Business exhibition services
(zzp)	Transport of goods by road
(zsz)	Opinion poll services
(zzt)	Outdoor caterer's services
(zzv)	Survey and exploration of mineral services
(zzw)	Pandal or shamiana contractor's services
(zzx)	Travel agent services
(zzy)	Forward contract services
(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

It has been clarified that even if such a taxable service is partly performed outside India, it shall be considered to have been performed outside India. Thus, part performance of service in India is permissible under these rules. 'Perform' means physical performance of the service. For example, sending market research report from India to a foreign client will not be 'performance of service'. However, if some part of market research is done in India and some part abroad, it will be treated as 'export of service'.

(c) Rule 3(1)(iii) covers the following services:

Sub-clause of section 65(105)	Service Covered
(b)	Telephone services
(c)	Pager services
(d)	General insurance services (other than immovable property)
(e)	Advertising agency's services
(g)	Consulting Engineer's services
(k)	Manpower recruitment agency's services
(r)	Management Consultant's services
(za)	Scientific and technical consultancy services
(zd)	Leased circuit services
(ze)	Telegraph services
(zf)	Telex services
(zg)	Facsimile (FAX) services
(zh)	Computer network (On-line information and data base access or retrieval services)
(zk)	Broadcasting services
(zl)	Insurance Auxiliary (General Insurance) services
(zm)	Banking and Financial services
(zs)	Cable Operator's services
(zx)	Life insurance services

(zy)	Insurance Auxiliary (Life insurance) services
(zz)	Rail travel agent's services
(zzb)	Business auxiliary services
(zze)	Franchise services
(zzj)	Authorised service station's services in respect of light motor vehicle
(zzk)	Foreign exchange broking services
(zzr)	Intellectual property services
(zzu)	Programme Production (of TV or Radio programmes) services
(zzz)	Transport of goods through pipeline or other conduit
(zzzc)	Survey and map making services other than by government departments (other than immovable property)
(zzzg)	Mailing list compilation and mailing services

The abovementioned services when provided in relation to business or commerce shall be eligible for exemption as 'export of services' when the recipient of such services are located outside India. When provided otherwise such services shall be eligible for exemption as 'export of services' when the recipient of such services are located outside India at the time of provision of such service.

However, where such recipient has commercial establishment or any office relating thereto, in India, such taxable services provided shall be treated as export of service only when order for provision of such service is made from any of his commercial establishment or office located outside India.

It is to be noted that services in relation to transport of passengers embarking on international journey by air, other than economy class passengers and transport of persons by cruise ship are not covered in any of the three categories.

As per sub-rule (2) of rule 3, any taxable service shall be treated as exported only when the following conditions are satisfied:-

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

It has been clarified by an Explanation in rule 3 that "India" includes the designated areas in the Continental Shelf and Exclusive Economic Zone of India. The 'Exclusive Economic Zone' extends up to 200 nautical miles inside the sea from baseline. 'India' also includes territorial waters, i.e., up to 12 nautical miles from landmass. Thus, service tax is leviable if services are provided within territorial waters or in designated areas of continental shelf and exclusive economic zone. In other words, services provided in this area/zone will be treated as 'service provided in India'.

SERVICE TAX (REGISTRATION OF SPECIAL CATEGORY OF PERSONS) RULES, 2005

The Service Tax (Registration of Special Category of Persons) Rules, 2005 have been notified vide *Notification No. 27/2005 ST, dated 07.06.2005*. These rules have come in to effect from 16.06.2005.

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 (8) 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.

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.