

PAPER – 8 : INDIRECT TAXES

QUESTIONS

1. Blending of tea amounts to manufacture. Discuss the correctness or otherwise of this statement with the help of a decided case law.
2. How will the excisable goods be classified when they are prima facie classifiable under two or more headings?
3. Pretty Prints Ltd., a trading company, supplies fabrics to Vijay Works, an independent processor. The cost of fabrics supplied is Rs.10,150. Vijay Works charges Rs.4,500 which includes Rs.3,500 as processing charges and Rs.1,000 as its profit. Pretty Prints sells the goods from the factory of Vijay Works at Rs.18,000. The rate of excise duty is 16% plus education cess as applicable.

Determine the assessable value of the goods.

4. ABC Ltd. is engaged in a particular kind of processing and pays excise duty on the final goods so produced. Excise duty paid on the inputs is availed as CENVAT credit. However, such processing is held as not chargeable to excise duty by the High Court. With reference to the Central Excise Act, 1944, briefly explain the provisions introduced vide the Finance Act, 2007 in this regard.
5. What is the 'relevant date' for the purpose of reckoning the period of one year for filing a refund claim of excise duty in the following cases?
 - (i) in the case of exports where goods are exported by land;
 - (ii) in the case of provisional assessment;
 - (iii) where duty becomes refundable as a consequence of order of the CESTAT.
6. Omission to give correct information cannot be construed as 'suppression of facts' for the purpose of the proviso to section 11A(1) of the Central Excise Act, 1944. Discuss the correctness or otherwise of this statement with the aid of a decided case law.
7. Briefly explain the provisions of section 37E of the Central Excise Act, 1944 introduced by the Taxation Laws (Amendment) Act, 2006.
8. Food India Ltd. manufactured biscuits and sold them under the brand name "Crunchy and Creamy". Food India Ltd. claimed the benefit of small scale exemption. However, the Assistant Commissioner of Central Excise denied such benefit to Food India Ltd. on the ground that the brand name "Crunchy and Creamy" was a registered trade mark of PQ Biscuits and that PQ biscuits were using the said brand name on manufacture of biscuits themselves.

Food India Ltd. contended that PQ Biscuits were not the owner of the said brand name as it was not registered in their name. It was further submitted that PQ Biscuits had discontinued their business after which they (Food India Ltd.) had applied for the ownership of the brand name "Crunchy and Creamy" to the Registrar, Trade Marks under the Trade Marks Act. The Registration certificate registering the trade mark "Crunchy and Creamy" in favour of Food India Ltd. was issued by the Registrar, Trade Marks with retrospective effect (covering the impugned period).

You are required to examine whether Food India Ltd. is entitled for the benefit of small scale exemption or not with the aid of a decided case law.

9. DEF Ltd. is a manufacturer and has paid excise duty on provisional basis. The Assistant Commissioner of Central Excise issues a show cause notice before the finalization of provisional assessment on the ground that DEF Ltd. has undervalued its goods. Do you think that such a show cause notice is valid? Discuss with the help of a decided case law.
10. With reference to Chapter V of the Central Excise Act, 1944 containing provisions relating to the Settlement Commission, state whether the following statements are true or false giving proper reasons:

- (i) Application for settlement can be made when a proceeding pending before the Appellate Tribunal is referred back to the adjudicating authority for fresh adjudication.
- (ii) Application for settlement can be made in respect of a matter involving clandestine removal of goods.
- (iii) An assessee may make total four applications for settlement during his lifetime.
- (iv) Settlement Commission cannot grant immunity in respect of prosecution for any offence under the Indian Penal Code.
- (v) Settlement Commission does not have the power to reopen completed proceedings.

You are required to answer taking into account the position after 01.06.2007.

11. Briefly explain the following with reference to the Customs Act, 1962:
 - (i) Foreign going vessel or aircraft
 - (ii) Stores
12. Section 22 of the Customs Act, 1962 provides for abatement of duty on damaged or deteriorated goods. Explain the circumstances under which such abatement can be granted.
13. Write a brief note on protective duties levied under the Customs Tariff Act, 1975.
14. Alpha Ltd. imported laptops containing preloaded Hard Disc Drives (HDD). The said drives were preloaded with operating system (software). The Assistant Commissioner of Customs claimed that the said laptop along with the operating software was classifiable as a machine under Heading 84.71. However, the assessee contended that software loaded hard disc drive should be classified separately from the laptop under Heading 85.24. The assessee classified the software separately and claimed exemption from the duty payable on the software vide an exemption notification.

Do you think the claim of the Assistant Commissioner of Customs is tenable in law? Discuss with the help of a decided case law.
15. The Finance Act, 2007 has substituted the provisions of existing section 14 (dealing with valuation) of the Customs Act, 1962 with new provisions. Explain the new provisions.
16. Explain the provisions of section 5 of the Customs Act, 1962 governing the powers of officers of customs.
17. Briefly discuss the penalties in respect of improper exportation of goods provided under section 114 of the Customs Act, 1962.
18. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:
 - (i) Commission charged by the foreman of the chit fund as consideration for providing the services in relation to chit fund.
 - (ii) Service provided by a manpower recruitment agency in relation to verifying the credentials of the candidate.
 - (iii) Consultancy services provided by a consulting engineer in relation to computer hardware.
19. Write a brief note on self-adjustment of excess service tax paid as provided under rule sub-rule (4A) and sub-rule (4B) of rule 6 of the Service tax Rules, 1994.
20. Write short notes on:
 - (a) Renting of immovable property service
 - (b) Service involved in the execution of a works contract

SUGGESTED ANSWERS/HINTS

1. This issue has been addressed by the Supreme Court in the case of CIT v. Tara Agencies 2007 (214) ELT 491 (SC). The Supreme Court has held that blending of different qualities of tea to smoothen its marketability is not manufacture but processing. The production of tea happens in the tea gardens. Manufacture happens when tea leaves are plucked from the tea bushes and by mechanical process, converted to tea. Blending of different qualities of tea is its processing.

The Apex Court explained that the word 'production' when used in juxtaposition with the word 'manufacture' covers bringing into existence new goods by a process which may or may not amount to manufacture. It covers all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods. Processing is only an intermediate stage of production and/or manufacture. The Supreme Court elaborated that no hard and fast rule can be applied for determining as to whether a process amounts to manufacture in every case and thus each case must be decided on its own facts.

2. Rule 3 of the General Rules for the Interpretation of Tariff Schedule lays down that when goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

- (a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

- (b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

- (c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

3. With effect from 01.04.2007, a new rule 10A has been inserted in the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 vide Notification No. 9/2007 CE (NT) dated 01.03.2007 to provide for valuation in case of job-work.

The rule inter alia lays down that where the excisable goods are produced or manufactured by a job-worker, on behalf of a person (principal manufacturer), then-

in a case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer.

Therefore, assessable value shall be calculated on the basis of selling price of Pretty Prints which is Rs.18000. This price shall be treated as inclusive of excise duty of 16%, education cess of 2% and secondary and higher education cess of 1% of excise duty. Hence, assessable value shall

$$\text{be } \left[18000 \times \frac{100}{116.48} \right] = 15453.30.$$

Prior to insertion of this rule, the Supreme Court's decision in the case of Ujagar Prints v. Union of India 1989 (39) E.L.T. 493 (SC) was the basis for determining the assessable value in case of job work. The assessable value included cost of material, processing charges and profit of processor.

4. Sometimes it happens that a process undertaken by a manufacturer is held as not chargeable to excise duty by the Courts, though the assessee has been availing credit of excise duty/service tax/cess paid on the inputs/capital goods/input services used in manufacturing the final product and paying excise duty on such final products.

A new section 5B has been inserted after section 5A in the Central Excise Act. The new section 5B provides that in such cases the Central Government may order for non-reversal of the credit allowed to the assessee by issuing a notification. The notification may specify the conditions subject to which such non-reversal of credit may be ordered. Further, the Central Government may also order for non-reversal of credit, if any, taken by the buyer of the said product in such notification.

It may be noted that such non-reversal of the credit shall not be ordered if the assessee has preferred a claim for refund of excise duty paid by him.

5. Section 11B deals with the claim for refund of duty. It inter alia provides that claim for refund of duty should be filed before the expiry of one year from the relevant date. Clause (B) of the explanation to section 11B defines the relevant date for filing refund claim in case of different situations.

- (i) The relevant date for filing the refund claim in the case of exports where goods are exported by land is the date on which such goods pass the frontier.
- (ii) The relevant date for filing the refund claim in the case of provisional assessment is the date of adjustment of duty after the final assessment thereof.
- (iii) A new sub-clause (ec) has been inserted vide the Finance Act, 2007 in clause (B) of the explanation to section 11B with a view to define the relevant date for filing a refund claim in consequences of judgement, decree, order or direction of appellate authority, Appellate Tribunal or any Court as the date of such judgement, decree, order or direction. Therefore, the relevant date for filing the refund claim where the duty becomes refundable as a consequence of the order of the CESTAT is the date of such order.

6. This issue was addressed by the Supreme Court in the case of Continental Foundation Joint Venture v. CCEx. 2007 (216) ELT 177 (SC). The Supreme Court observed that since the expression "suppression" used in proviso to section 11A(1) of the Central Excise Act, 1944 is accompanied by very strong words as fraud or collusion, it should be construed strictly. Suppression means failure to disclose full information with intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. The Apex Court held that mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. The Apex Court explained that an incorrect statement cannot be equated with a wilful mis-statement.

The Supreme Court elaborated further that as far as words 'fraud and collusion' used in the proviso to section 11A(1) are concerned, it is evident that the intent to evade duty is built into these very words. Similarly, the words 'mis-statement or suppression of facts' are clearly qualified by the immediately preceding word 'wilful' which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty.' Therefore, there cannot be a suppression or mis-statement of a fact which is not wilful and yet constitute a permissible ground for the purpose of the proviso to section 11A(1). Mis-statement of fact must be wilful.

Thus, in view of the above-mentioned judgement, the statement is correct.

7. Section 37E introduced by the Taxation Laws (Amendment) Act, 2006 provides for publishing the name of any person and particulars of any proceedings in relation to such person, in public interest. The provisions are discussed below:

- (1) The Central Government may publish name of any person and any other particulars relating to any proceedings or prosecutions in respect of such person if it is of the opinion that it is necessary or expedient in the public interest to do so. The Government can do the publication in such manner as it thinks fit.
 - (2) The publication shall be made in relation to any penalty only after the time for presenting an appeal to the Commissioner (Appeals) or the Appellate Tribunal expires without an appeal being presented or the appeal, if presented, gets disposed of.
 - (3) In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, circumstances of the case justify it.
8. The facts of the case are similar to the case of *Meghraj Biscuits Industries Ltd. v. CCE*. 2007 (210) ELT 161 (SC). The Supreme Court has held in this case that grant of registration certificate under the Trade Marks Act will not automatically provide benefit of exemption to the SSI Unit. The Apex Court explained that the effect of making the registration certificate applicable from retrospective date is based on the principle of deemed equivalence to public user of such mark. However, if a SSI unit wrongly affixes a trade mark of another person, be it registered or not, or if it uses the trade mark of an ineligible person then such default would not be eliminated by the principle of deemed equivalence embodied in section 8 of the Trade Marks Act, 1999 as that principle is based on a deeming fiction which is confined only to the provisions of the Trade Marks Act. Deeming fiction can not be extended to the excise law.

Further, the Supreme Court observed that discontinuation of business in respect of a product does not necessarily amount to abandonment. The abandonment of the trade mark by the other company has to be proved by the appellants. The burden to satisfy the adjudicating authority that there was no intention of indicating a connection with the goods of the assessee and such other person was on the assessee. Thus, the Supreme Court held that issuance of registration certificate with retrospective effect will not tantamount to conferment of exemption benefit under the Excise Law once it is found that the appellants had wrongly used the trade mark.

In view of the above-mentioned decision, Food India Ltd. shall not be eligible for the small scale exemption.

9. This issue was addressed by the Supreme Court in the case of *CCE & Cus. v. I.T.C. Ltd.* (2006) 203 ELT 532 (SC). The Supreme Court observed that the power to issue a show cause notice under section 11A of the Central Excise Act, 1944 can be invoked only when duty is not levied or not paid or short-levied or short-paid. Such a proceeding can be initiated within six months (now one year) from the relevant date. As per section 11A(3)(ii)(b), in case of provisional assessment the relevant date is the date of adjustment of duty after final assessment. Therefore, a proceeding under section 11A cannot be initiated without completing the assessment proceedings. The question as to non-levy or short-levy of an excise duty would arise only when the levy had been laid in accordance with law. When a duty is levied, it becomes payable which in turn would mean legally recoverable.

The Apex Court elaborated that after the final assessment, the provisionally assessed duty is adjusted against the finally assessed duty and if the provisionally assessed duty falls short of or is in excess of the finally assessed duty, the assessee has to pay the deficiency or is entitled to a refund, as the case may be. Thus, the liability of the assessee ultimately depends upon the undertaking of exercise by the assessing officer to complete the assessment proceeding.

Thus, the Supreme Court held that a show cause notice issued before the finalization of provisional assessment is not valid in law. The same principle is also clearly evident on a plain reading of the provisions of the Act and the Rules framed thereunder.

In view of the above-mentioned judgement, the show cause notice issued on DEF Ltd. is not valid.

10. (i) False. With effect from 01.06.07, section 31(c) defining case has been amended vide the Finance Act, 2007. The new definition provides that:
- “Case means any proceeding under this Act or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application under sub-section (1) of section 32E is made.
- Provided that when any proceeding is referred back in any appeal or revision, as the case may be, by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, as the case may be, then such proceeding shall not be deemed to be a proceeding pending within the meaning of this clause”.
- Thus, with effect from 01.06.07, Settlement Commission cannot be approached when a proceeding pending before the Appellate Tribunal is referred back to the adjudicating authority for fresh adjudication. It can only be approached when original adjudication is pending.
- (ii) False. With effect from 01.06.2007, Finance Act, 2007 has amended section 32E to provide inter alia that an assessee shall be eligible to file an application only in respect of the goods for which he admits short levy on account of misclassification, undervaluation, inapplicability of exemption notification or CENVAT credit but not in respect of the goods for which no proper record has been maintained by the assessee in his daily stock register.
- Thus, Settlement Commission cannot be approached in respect of clandestine removal of goods.
- (iii) False. With effect from 11.05.2007, section 32O which specifies the grounds under which an assessee is barred from making any subsequent application for settlement under section 32E has been amended vide the Finance Act, 2007.
- The amended section provides that where an assessee has made an application under sub-section (1) of section 32E, on or after 01.06.2007 and if such application has been allowed to be proceeded with under sub-section (1) of section 32F, such assessee shall not be entitled to apply for settlement under section 32E in relation to any other matter. Thus, with effect from 01.06.07, an assessee can apply for settlement only once during his lifetime. However, in respect of cases involving identical recurring issue, the assessee can file application for settlement provided his earlier application is pending before the Settlement Commission.
- (iv) True. Section 32K empowers Settlement Commission to grant immunity from prosecution and penalty. With effect from 01.06.2007, the Finance Act, 2007 has restricted the scope of such power of the Settlement Commission by withdrawing its power to grant immunity from prosecution for any offence under Indian Penal Code or any Central Act for the time being in force other than Central Excise Act.
- (v) True. Section 32H empowers the Settlement Commission to reopen completed proceedings. However, with effect from 01.06.2007, the Finance Act, 2007 has disempowered the Settlement Commission to reopen the proceedings in cases where applications under section 32E are made on or after the 1st day of June, 2007.
11. (i) As per section 2(21) of the Customs Act, 1962, foreign going vessel or aircraft means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes-
- (i) any naval vessel of any foreign Government taking part in any naval exercises;
 - (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;
 - (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

- (ii) As per section 2(38) of the Customs Act, 1962, stores means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting. Stores are also goods but are covered by special provisions in sections 85 to 90. The definition does not cover goods for use in a vehicle.

12. The abatement is available under the following circumstances:

- (a) When the imported goods are damaged or deteriorated before or during the course of their unloading. At this stage, no distinction is made between warehoused goods and goods meant for home consumption.
- (b) In the case of imported goods cleared for home consumption, when the goods are damaged after unloading but before examination by the customs authorities. Such damage should not have been caused by any willful act, negligence or default of the importer, his employee or agent.
- (c) In the case of warehoused goods, when the goods are damaged before clearance for home consumption. Such damage should not have been caused by any willful act, negligence or default of the owner, his employee or agent.

All the above have to be proved to the satisfaction of the Assistant or Deputy Commissioner of Customs in order to claim abatement. The term 'damage' denotes physical damage to the goods. This implies that the goods are not fit to be used for the purpose for which they are meant. Deterioration is reduction in quality of goods due to natural causes.

13. Customs duties are of two types: revenue duties and protective duties. Revenue duties are those which are levied for the purpose of raising customs revenue, whereas protective duties are intended to give protection to indigenous industries. If resort to protective duties is not made there could be a glut of cheap imported articles in the market making the indigenous goods unattractive. The protection through protective duties is given considering the following factors:

- (a) The protective duties should not be very stiff so as to discourage imports.
- (b) It should be sufficiently attractive to encourage imports to bridge the gap between demand and supply of those articles in the market.

The protective duties are levied by the Central Government on the recommendation made by the Tariff Commission and when it is satisfied that the circumstances make it necessary to take immediate action to provide protection to any industry established in India.

Section 7 of the Customs Tariff Act provides as follows:

- (a) The protective duty shall be effective only upto and inclusive of the date if any, specified in the First Schedule.
- (b) The Central Government may reduce or increase the duty by notification in the Official Gazette.
- (c) If there is any increase in the duty as specified above, then the Central Government is required to place such notification in the Parliament for its approval. If the Parliament recommends any change in the notification, then the notification shall have effect subject to such changes.

14. The facts of the case are similar to the case of *CCus. v. Hewlett Packard India Sales (P) Ltd.* 2007 (215) ELT 484 (SC). In this case, the Supreme Court observed that the pre-loaded operating systems recorded in Hard Disc Drive in the laptop (item of import) forms an integral part of the laptop as the laptop cannot work without the operating system. The computer cannot even open without the operating system. A laptop without an operating system is like an empty building.

The Apex Court held that when a laptop is imported with in-built pre-loaded operating system recorded on HDD, the said item forms an integral part of laptop (Computer system). Hence,

laptop should be treated as one single unit classifiable under Heading 84.71. However, if the operating system is imported as packaged software like an accessory, then it would be classifiable under Heading 85.24.

Thus, in view of the above-mentioned judgement, the Assistant Commissioner's claim is tenable in law.

15. Sub-section (1) of section 14 of the Customs Act, 1962 provided that valuation of goods shall be based on the concept of 'deemed value'. However, the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 provide that the value of the imported goods shall be based on the concept of transaction value.

The Finance Act, 2007 has substituted a new section 14 for existing section 14 with an aim to rectify this anomaly. The new section 14 is based on transaction value and has become effective from 10.10.2007.

The provisions of the new section are:

- (i) Sub-section (1) lays down that for the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods.
- (ii) In case of export goods, the transaction value shall be
 - the price actually paid or payable for the goods
 - when sold for export from India
 - for delivery at the time and place of exportation
 - where the buyer and seller of the goods are not related and
 - price is the sole consideration for the sale.

However further conditions may be specified in the rules made in this behalf.

- (iii) In case of imported goods, the transaction value shall be
 - the price actually paid or payable for the goods when sold for export to India
 - for delivery at the time and place of importation
 - where the buyer and seller of the goods are not related and
 - price is the sole consideration for the sale.

However, further conditions may be specified in the rules made in this behalf.

Such transaction value shall also include in addition to the price as aforesaid, any amount paid or payable for costs and services, including:

- commissions and brokerage,
- engineering,
- design work,
- royalties and licence fees,
- costs of transportation to the place of importation,
- insurance
- loading,
- unloading and
- handling charges

to the extent and in manner specified in the rules made in this behalf.

- (iv) Such rules may provide for:
 - (a) the circumstances in which the buyer and the seller shall be deemed to be related;
 - (b) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
 - (c) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.
 - (v) For imported goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing bill of entry under section 46.
 - (vi) For export goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing shipping bill (vessel or aircraft) or bill of export (vehicle) under section 50.
 - (vii) The rate of exchange is notified by three agencies- the Central Board of Excise and Customs (Board), the Reserve Bank of India and the Foreign Exchange Dealers' Association of India. For the purpose of customs valuation, "rate of exchange" means the rate of exchange-
 - (i) determined by the Board, or
 - (ii) ascertained in such manner as the Board may direct,

for the conversion of Indian currency into foreign currency or foreign currency into Indian currency. Thus, for the purpose of valuation under customs laws, rate notified by CBEC (Board) shall be taken into account.

The CBEC notifies the rates on a monthly basis applicable from the first day of the month. There are separate rates for imported goods (selling rate) and export goods (buying rate).
 - (viii) "Foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999.
 - (ix) Sub-section (2) provides that the Board may fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods by notification in the Official Gazette if it is satisfied that it is necessary to do so.
 - (x) Where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value. Provisions of sub-section (2) have an overriding effect on the provisions of sub-section (1).
16. The provisions of section 5 of the Customs Act, 1962 are discussed below:
- (1) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.
 - (2) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.
 - (3) However, the Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV (Appeals and Revision) and section 108 (power to summon persons for giving evidence).
17. Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable:-
- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;

- (ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;
 - (iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.
18. (i) With effect from 01.06.2007, the Finance Act, 2007 has amended the scope of banking and financial services with a view to include cash management services within its purview. CBEC has clarified vide its Circular No. 96/7/2007 ST dated 23.08.2007 that business of a chit fund is to mobilize cash from the subscribers and effectively cause movement of such cash to keep it working and, therefore, the activity of chit funds is in the nature of cash management.

Thus, commission charged by the foreman of the chit fund as consideration for providing the services in relation to chit fund shall be leviable to service tax under "banking and other financial services".

- (ii) With effect from 01.06.2007, the Finance Act, 2007 has inserted an explanation at the end of sub-clause (k) of clause (105) of section 65 which defines taxable manpower or recruitment service. The explanation clarifies that recruitment or supply of manpower service includes the following services:

- (a) pre-recruitment screening,
- (b) verification of the credentials and antecedents of the candidate, and
- (c) authenticity of documents submitted by the candidate.

Thus, service provided by a manpower recruitment agency in relation to verifying the credentials of the candidate shall be chargeable to service tax.

- (iii) With effect from 01.06.2007, the Finance Act, 2007 has included consultancy in the field of computer hardware engineering within the scope of taxable services provided by a consulting engineer by amending the definition of taxable consulting service provided under sub-clause (g) of clause (105) of section 65.

19. Notification No. 1/2007 ST dated 01.03.2007 has substituted sub-rule (4A) of rule 6 and inserted sub-rule 4B to provide for self-adjustment of excess service tax paid, subject to specified conditions. Rule 6(4A) provides that where an assessee has paid to the credit of the Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be.

However, such an adjustment would be subject to the following conditions mentioned in rule 6(4B):

- (i) Self-adjustment of excess amount would not be allowed in case of reasons involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.
 - (ii) Excess amount paid and proposed to be adjusted should not exceed Rs.50,000 for the relevant month or quarter. However, in case of assessee's opting for centralized registration excess amount can be adjusted without any monetary limit provided the excess amount paid is on account of delayed receipt of details of payments from branch offices.
 - (iii) Adjustment can be made only in the succeeding month or quarter.
 - (iv) The details of self-adjustment should be intimated to the Superintendent of Central Excise within a period of 15 days from the date of such adjustment.
20. (a) With effect from 01.06.2007, service of renting of immovable property has been made liable to service tax by the Finance Act, 2007.

Section 65(105)(zzzz) of the Finance Act, 1994 defines the taxable service of renting of immovable property as any service provided or to be provided to any person, by any other

person in relation to renting of immovable property for use in the course or furtherance of business or commerce.

For the purposes of this sub-clause, “immovable property” includes—

- (i) building and part of a building, and the land appurtenant thereto;
- (ii) land incidental to the use of such building or part of a building;
- (iii) the common or shared areas and facilities relating thereto; and
- (iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,

but does not include-

- (a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;
- (b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;
- (c) land used for educational, sports, circus, entertainment and parking purposes; and
- (d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

It may be noted that an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce.

Therefore, in case of a single composite contract of renting of immovable property involving part of property for use in commerce or business and part of it for residential/accommodation purposes, the total value of the contract shall be the taxable value.

Section 65(90a) of the Finance Act, 1994 provides that renting of immovable property includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include-

- (i) renting of immovable property by a religious body or to a religious body; or
- (ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.

Here, “for use in the course or furtherance of business or commerce” includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings.

- (b) In a works contract, sales tax /VAT is levied on the transfer of property in goods involved in the execution of such works contract. With effect from 01.06.2007, the Finance Act, 2007 has levied service tax on the service element involved in the execution of a works contract.

Section 65(105)(zzzza) of the Finance Act, 1994 defines works contract service as service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

For the purposes of this sub-clause, “works contract” means a contract wherein,—

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) such contract is for the purposes of carrying out,—
 - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of

fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

- (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
- (c) construction of a new residential complex or a part thereof; or
- (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
- (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.

A composition scheme is available for the service providers involved in the execution of a works contract. The scheme gives an option to the assessee to pay 2% of the total value of the works contract as service tax. Assessee's opting for the composition scheme are not entitled to avail CENVAT credit of duty or cess paid on inputs required for use in the works contract. The assessee who do not opt for this scheme have to pay service tax on the taxable value of the works contract which is relatable to services provided in the execution of a works contract. Such value has to be determined on actual basis based on the records maintained by the assessee.

IMPORTANT NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2007 TO 31.10.2007

Students may note that the Study Material for Indirect taxes contains all the relevant amendments made by Finance Act, 2007. Further, Circulars/Notifications issued up to 30.04.2007 have also been incorporated therein. The following are the amendments which have been made till 31.10.2007. It may carefully be noted that for the students appearing in May 2008 the amendments made by Notifications, Circulars etc. up to 31.10.2007, as detailed hereunder, are relevant.

I. CENTRAL EXCISE

1. Following amendments have been made in the Central Excise Rules, 2002:

- (i) Rule 8(1) of the Central Excise Rules, 2002 has been amended to provide that the duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking and by the 5th day of the following month, in any other case.

In case of SSI, duty on the goods removed from the factory or the warehouse during a month shall be paid by the 16th day of the following month, if the duty is paid electronically through internet banking and by the 15th day of the following month, in any other case [Notification No. 34/2007 CE (NT) dated 11.09.2007].

- (ii) Notification No. 36/2007 CE (NT) dated 14.09.2007 has inserted two provisos in rule 11(7) of the Central Excise Rules, 2002.

The first proviso lays down that in case of the first stage dealer receiving imported goods under an invoice bearing an indication that the credit of additional duty of customs levied on the said goods under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall not be admissible, the said dealer shall on the resale of the said imported goods, indicate on the invoice issued by him that no credit of the additional duty levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible.

The second proviso lays down that in case of the second stage dealer receiving imported goods under an invoice bearing an indication that the credit of additional duty of customs levied on the said goods under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall not be admissible, the said dealer shall on the resale of such imported goods, indicate

on the invoice issued by him that no credit of the additional duty levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible.

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

- (i) Notification No. 26/2007 CE (NT) dated 11.05.2007 has inserted sub-rule (5B) after sub-rule (5A) in rule 3 of the CENVAT Credit Rules, 2004. Sub-rule (5B) provides that if the value of any
 - (i) input, or
 - (ii) capital goods before being put to use,
 on which CENVAT Credit has been taken is written off fully or where any provision to write off fully has been made in the books of account, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods.
 However, if the said input or capital goods is subsequently used in the manufacture of final products, the manufacturer shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.
- (ii) Sub-rule (5C) has been inserted after sub-rule (5B) in rule 3 of the CENVAT Credit Rules, 2004 vide Notification No. 33/2007 CE (NT) dated 07.09.2007. Sub-rule (5C) provides that where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed.
- (iii) Notification No. 35/2007 CE (NT) dated 14.09.2007 has inserted a proviso in rule 9(1) of the CENVAT Credit Rules, 2004. The proviso lays down that the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible.
- (iv) Notification No. 32/2007 CE (NT) dated 03.08.2007 has amended rule 12 of the CENVAT Credit Rules, 2004 to the effect that the CENVAT credit on inputs or capital goods cleared under the terms of Notification No. 20/2007 CE dated 25.04.2007 shall also be admissible as if no portion of the duty paid on such inputs or capital goods was exempted under the said notification.
- (v) Rule 12A has been amended to provide that provisions of sub-rule (1) and sub-rule (4) of rule 12A shall also not be applicable if the recipient premises is availing Notification No. 20/2007 CE dated 25.04.2007 [Notification No. 32/2007 CE (NT) dated 03.08.2007].
- (vi) Notification No. 27/2007 CE (NT) dated 12.05.2007 has amended CENVAT Credit Rules, 2004 so as to substitute the clauses of the Finance Bill, 2007 with sections of the Finance Act, 2007 in respect of secondary and higher education cess. Since secondary and higher education cess on taxable services has become effective from 11.05.2007, the credit for the same has also been allowed by amending rule 3(1). Further, two provisos have been added after rule 3(7)(b) which lay down that credit of education cess on excisable goods and taxable services can be utilized for payment of education cess on excisable goods or taxable services. Similar provision has also been made in respect of secondary and higher education cess.

II. CUSTOMS

1. Section 94, section 95 and section 113 of the Finance Act, 2007 shall come into force from 10.10.2007 i.e., the amendment made in section 2 of the Customs Act, 1962 relating to value, new section 14 of the Customs Act, 1962 relating to valuation and amendment in section 156 of the Customs Act, 1962 relating to power to make rules shall all become effective from 10.10.2007 [Notification No. 93/2007 Cus. (NT) dated 13.09.2007]

2. Circular No.35/2007 Cus. dated 28.09.2007 has clarified that all the provisions of Customs Act, 1962 and Baggage Rules, 1998 are applicable to unaccompanied baggage as they are applicable to baggage (accompanied), except the free allowance which is not available for unaccompanied baggage.

CUSTOMS VALUATION (DETERMINATION OF VALUE OF IMPORTED GOODS) RULES, 2007

Notification No. 94/2007 Cus. (NT) dated 13.09.2007 has notified Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. They shall come into force from 10.10.2007. They shall apply to imported goods. The rules are given below:

Rule 2 – Definitions : (1) In these rules, unless the context otherwise requires, -

- (a) "computed value" means the value of imported goods determined in accordance with rule 8.
- (b) "deductive value" means the value determined in accordance with rule 7.
- (c) "goods of the same class or kind", means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods.
- (d) "identical goods" means imported goods -
 - (i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;
 - (ii) produced in the country in which the goods being valued were produced; and
 - (iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.
- (e) "produced" includes grown, manufactured and mined.
- (f) "similar goods" means imported goods -
 - (i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
 - (ii) produced in the country in which the goods being valued were produced; and
 - (iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.
- (g) "transaction value" means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962.
- (2) For the purpose of these rules, persons shall be deemed to be "related" only if -
 - (i) they are officers or directors of one another's businesses;
 - (ii) they are legally recognised partners in business;

- (iii) they are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family.

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

Rule 3 - Determination of the method of valuation : (1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10.

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that-

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –

- (i) are imposed or required by law or by the public authorities in India; or
- (ii) limit the geographical area in which the goods may be resold; or
- (iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

- (i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
- (ii) the deductive value for identical goods or similar goods;
- (iii) the computed value for identical goods or similar goods.

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related.

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

Rule 4 - Transaction value of identical goods : (1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued.

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

Rule 5 - Transaction value of similar goods : (1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued.

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Rule 6 - Determination of value where value can not be determined under rules 3, 4 and 5 : If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

Rule 7 - Deductive value : (1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions: —

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods,

after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

Rule 8 - Computed value : Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
- (c) the cost or value of all other expenses under sub-rule (2) of rule 10.

Rule 9 - Residual method : (1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India.

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of this rule on the basis of —

- (i) the selling price in India of the goods produced in India;
- (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- (iii) the price of the goods on the domestic market of the country of exportation;
- (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
- (v) the price of the goods for the export to a country other than India;
- (vi) minimum customs values; or
- (vii) arbitrary or fictitious values.

Rule 10 - Cost and services : (1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods:

(a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-

- (i) commissions and brokerage, except buying commissions;
- (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
- (iii) the cost of packing whether for labour or materials.

(b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely:-

- (i) materials, components, parts and similar items incorporated in the imported goods;
- (ii) tools, dies, moulds and similar items used in the production of the Imported goods;
- (iii) materials consumed in the production of the imported goods;

- (iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods.
- (c) royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
- (e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Explanation.- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

(2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 and these rules, the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include –

- (a) the cost of transport of the imported goods to the place of importation;
- (b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation; and
- (c) the cost of insurance :

Provided that —

- (i) where the cost of transport referred to in clause (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods;
- (ii) the charges referred to in clause (b) shall be one per cent of the free on board value of the goods plus the cost of transport referred to in clause (a) plus the cost of insurance referred to in clause (c);
- (iii) where the cost referred to in clause (c) is not ascertainable, such cost shall be 1.125% of free on board value of the goods;

Provided further that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods.

Provided also that where the free on board value of the goods is not ascertainable, the costs referred to in clause (a) shall be twenty per cent of the free on board value of the goods plus cost of insurance for clause (i) above and the cost referred to in clause (c) shall be 1.125% of the free on board value of the goods plus cost of transport for clause (iii).

Provided also that in case of goods imported by sea stuffed in a container for clearance at an Inland Container Depot or Container Freight Station, the cost of freight incurred in the movement of container from the port of entry to the Inland Container Depot or Container Freight Station shall not be included in the cost of transport referred to in clause (a).

Explanation.- The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on chartered vessels, lighterage or barge charges.

- (3) Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data.
- (4) No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule.

Rule 11 - Declaration by the importer : (1) The importer or his agent shall furnish -

- (a) a declaration disclosing full and accurate details relating to the value of imported goods; and

(b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

(2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

(3) The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

Rule 12 - Rejection of declared value : (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:—

- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.
- (ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.
- (iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -
 - (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
 - (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
 - (c) the sale involves special discounts limited to exclusive agents;
 - (d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
 - (e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;
 - (f) the fraudulent or manipulated documents.

Rule 13 - Interpretative notes : The interpretative notes shall apply for the interpretation of these rules.

General Note:

Use of generally accepted accounting principles

1. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations shall be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed and which financial statements should be

prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

Notes to rules

Note to rule 2

In rule 2(2)(v), for the purposes of these rules, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Note to rule 3

Price actually paid or payable

The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in rule 10, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the value of imported goods.

The value of imported goods shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

- (a) Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
- (b) The cost of transport after importation;
- (c) Duties and taxes in India.

The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Rule 3(2)(a) (iii)

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Rule 3(2)(b)

If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include-

- (a) The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;
- (b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;
- (c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semifinished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in India shall not result in rejection of the transaction value for the purposes of rule 3. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these

activities is not part of the value of imported goods nor shall such activities result in rejection of the transaction value.

Rule 3(3)

1. Rule 3(3)(a) and rule 3(3)(b) provide different means of establishing the acceptability of a transaction value.

2. Rule 3(3)(a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value of imported goods provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the proper officer of customs has no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the proper officer of customs may have previously examined the relationship, or he may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the proper officer of customs is unable to accept the transaction value without further inquiry, he should give the importer an opportunity to supply such further detailed information as may be necessary to enable him to examine the circumstances surrounding the sale. In this context, the proper officer of customs should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of rule 2(2), buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Rule 3(3)(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the proper officer of customs and is therefore acceptable under the provisions of rule 3. Where a test under rule 3(3)(b) is met, it is not necessary to examine the question of influence under rule 3(3)(a). If the proper officer of customs has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in rule 3(3)(b) has been met, there is no reason for him to require the importer to demonstrate that the test can be met. In rule 3(3)(b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Rule 3(3)(b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in rule 3(3)(b).

Notes to rule 4

1. In applying rule 4, the proper officer of customs shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being

valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities; or
 - (b) a sale at a different commercial level but in substantially the same quantities; or
 - (c) a sale at a different commercial level and in different quantities.
2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:
- (a) quantity factors only;
 - (b) commercial level factors only; or
 - (c) both commercial level and quantity factors.
3. For the purposes of rule 4, the transaction value of identical imported goods means a value, adjusted as provided for in rule 4(1)(b) and (c) and rule 4(2) which has already been accepted under rule 3.
4. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognised that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under the provisions of rule 4 is not appropriate.

Note to rule 5

1. In applying rule 5, the proper officer of customs shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. For the purpose of rule 5, the transaction value of similar imported goods means the value of imported goods, adjusted as provided for in rule 5(2) which has already been accepted under rule 3.
2. All other provisions contained in note to rule 4 shall mutatis mutandis also apply in respect of similar goods.

Note to rule 7

1. The term "unit/price at which goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.
2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1 -10 units	100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a price is 80, therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. in this example, the greatest number of units sold at a particular price is 500, therefore, the unit price in the greatest aggregate quantity is 95.

4. A third example would be the following situation where various quantities are sold at various prices.

(a) Sales

Sale quantity	Unit price
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) Totals

Total quantity sold	Unit price
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65, therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in India, as described in paragraph 1 above to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in rule10(1)(b), should not be taken into account in establishing the unit price for the purposes of rule 7.

6. It should be noted that "profit and general expenses" referred to in rule 7(1) should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtaining in sales in India, of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The "general expenses" include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of rule 7(1)(iii) shall be deducted under the provisions of rule 7(1)(i).

9. In determining either the commissions or the usual profits and general expenses under the provisions of rule 7(1), the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in India, of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of rule 7 goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of rule 7(2) the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported, goods are made in sufficient quantity to establish the unit price.

11. Where the method in rule 7(3) is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

12. It is recognized that the method of valuation provided for in rule 7(3) would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Note to rule 8

1. As a general rule, value of imported goods is determined under these rules on the basis of information readily available in India. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside India. Furthermore, in most cases, the producer of the goods will be outside the jurisdiction of the proper officer. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the proper officer the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The "cost or value" referred to in clause (a) of rule 8 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The "cost or value" shall include the cost of elements specified in clauses (1)(a)(ii) and (1)(a)(iii) of rule 10. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to rule 10, of any element specified in rule 10(1)(b) which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in rule 10(1)(b)(iv) which are undertaken in India shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The "amount for profit and general expenses" referred to in clause(b) of rule 8 is to be determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India.

5. It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, producer's profit figure is low and his general expenses are high, the producer's profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in India and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in India and accept a low profit to maintain competitiveness. Where the

producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. The "general expenses" referred to in clause (b) of rule 8 covers the direct and indirect costs of producing and selling the goods for export which are not included under clause (a) of rule 8.

7. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of rule 8, sales for export to India of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of rule 8 "goods of the same class or kind" must be from the same country as the goods being valued.

Note to rule 9

1. Value of imported goods determined under the provisions of rule 9 should to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 9.

3. Some examples of reasonable flexibility are as follows:

(a) Identical goods. - The requirement that the identical goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of rules 7 and 8 could be used.

(b) Similar goods. - The requirement that the similar goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of rules 7 and 8 could be used.

(c) Deductive method. - The requirement that the goods shall have been sold in the "condition as imported" in rule 7(1) could be flexibly interpreted; the ninety days requirement could be administered flexibly.

Note to rule 10

In rule 10(1)(a)(i), the term "buying commissions" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

Rule 10(1)(b)(ii)

1. There are two factors involved in the apportionment of the elements specified in rule 10(1)(b)(ii) to the imported goods - the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to him, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first

shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10000 units. By the time of arrival of the first shipment of 1000 units, the producer has already produced 4,000 units. The importer may request the proper officer of customs to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Rule 10(1)(b)(iv)

1. Additions for the elements specified in rule 10(1)(b)(iv) should be based on objective and quantifiable data. In order to minimise the burden for both the importer and proper officer of customs in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The case with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of rule 10.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of rule 10 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

Rule 10(1)(c)

1. The royalties and licence fees referred to in rule 10(1)(c) may include among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Rule 10(3)

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of rule 10, the transaction value cannot be determined under the provisions of rule 3.

3. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors, which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from

special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

Circular No. 38/2007 Cus. dated 09.10.2007 has been issued to clarify the major changes in the new Import Valuation Rules i.e., Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 notified vide Notification No 94/2007-Cus (NT) dated 13-9-2007.

The clarifications are given below for proper application of the Valuation Rules, i.e., Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:-

- (i) Transaction Value has been defined to mean the value referred to in sub-section (1) of section 14 of the Customs Act, 1962.
- (ii) A 'proviso' has been added to Rules 4(1)(a) and 5(1) concerning identical goods and similar goods respectively, to the effect that the value of the goods provisionally assessed under section 18 of the Customs Act, 1962, shall not be the basis for determining the value of any other goods.
- (iii) In the residual method of Valuation, which has been renumbered as Rule 9 (erstwhile Rule 8), a proviso has been added with a view to keeping Rule 9 in line with Article 7 of the WTO Valuation Agreement which corresponds to the said Rules and refers to the provisions of Article VII of the GATT.
- (iv) An 'Explanation' has been added to Rule 10(1) [erstwhile Rule 9(1)] to clarify that the royalty, licence fee or any other payment for using a process, when they are otherwise includible in terms of clause (c) or (e) of Rule 10(1), shall be added to the price actually paid or payable, notwithstanding the fact that such goods may be subjected to the said process after their importation. At times, royalty, license fee or any other payment for a process to be paid by the importer may be linked to post-importation activity like running of the machine/ plant, when the process is put to use. This Explanation has been added in the context of the Supreme Court judgement in the case of J.K. Corporation Ltd. v. Commissioner of Customs (Port) Kolkata 2007 (208) ELT 485 (SC) so as to clarify that such royalty, license fee, etc., if otherwise includible in terms of clauses (c) or (e) of Rule 10, will be includible in the value of the goods irrespective of the fact that such royalty, licence fee, etc., relates to a process which is made operational during the running of the machines, i.e., after importation of the goods.
- (v) An 'Explanation' has been added to Rule 10(2) clarifying that the cost of transport of the imported goods includes ship demurrage charges on chartered vessels, lighterage charges or barge charges. This Explanation is to take care of cases of imports by time chartered vessels or bulk carriers discharging goods on high seas needing additional expenditure for delivery of the goods at the "Place of Importation" mentioned in Rule 10(2)(a). The 'place of importation', as observed by the Supreme Court in the case of Garden Silk Mills Ltd Versus Union of India 1993 (113) E.L.T. 358 (S.C) means the place where the imported goods reach the landmass of India in the Customs area of the port, airport or land customs station, or if they are consumed before reaching the landmass of India, the place of consumption. Therefore, in cases where ship demurrage charges are paid by the importer for detention of the ship in the harbour before touching the landmass at the docks or at the place of consumption, these charges would be includible in the cost of transportation. Similarly, in cases where the big mother vessels cannot enter the harbour for any reason and goods are brought to the docks by smaller vessels like barges, small boats, etc., the cost incurred by the importer for bringing the goods to the landmass or place of consumption, such as lighterage charges, barge charges will also be included in the cost of transportation.
- (vi) An 'Explanation' has been added to Rule 12 (erstwhile Rule 10A), which relates to rejection of declared value, to bring more clarity and objectivity in exercising the authority for rejection of declared value. The Explanation clarifies that this rule as such does not provide a method for determination of value, and that it merely provides a mechanism and procedure for rejection of declared value in certain cases. It also clarifies that where the proper officer is satisfied after consultation with the importer, the declared value shall be accepted. This Explanation also gives

certain illustrative reasons which could form the basis for having doubt about the truth or accuracy of the declared value.

CUSTOMS VALUATION (DETERMINATION OF VALUE OF EXPORT GOODS) RULES, 2007

Notification No. 95/2007 Cus. (NT) dated 13.09.2007 has notified Customs Valuation (Determination of Value of Export Goods) Rules, 2007. They shall come into force from 10.10.2007. They shall apply to the export goods.

Rule 2 – Definitions : (1) In these rules, unless the context otherwise requires, -

- (a) "goods of like kind and quality" means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and
- (b) "transaction value" means the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962).
- (2) For the purposes of these rules, persons shall be deemed to be "related" only if –
 - (i) they are officers or directors of one another's businesses;
 - (ii) they are legally recognised partners in business;
 - (iii) they are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family.

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

Rule 3 - Determination of the method of valuation : (1) Subject to rule 8, the value of export goods shall be the transaction value.

- (2) The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.
- (3) If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.

Rule 4 - Determination of export value by comparison : (1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).

- (2) In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-
 - (i) difference in the dates of exportation,
 - (ii) difference in commercial levels and quantity levels,
 - (iii) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,
 - (iv) difference in domestic freight and insurance charges depending on the place of exportation.

Rule 5 - Computed value method : If the value cannot be determined under rule 4, it shall be based on a computed value, which shall include the following:-

- (a) cost of production, manufacture or processing of export goods;
- (b) charges, if any, for the design or brand;
- (c) an amount towards profit.

Rule 6 - Residual method : (1) Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.

Rule 7 - Declaration by the exporter : The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.

Rule 8 - Rejection of declared value (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.

(2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation (1) For the removal of doubts, it is hereby declared that-

- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 6.
- (ii) The declared value shall be accepted where the proper officer is satisfied about the truth or accuracy of the declared value after the said enquiry in consultation with the exporter.
- (iii) The proper officer shall have the powers to raise doubts on the declared value based on certain reasons which may include –
 - (a) the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.
 - (b) the significantly higher value compared to the market value of goods of like kind and quality at the time of export.
 - (c) the misdeclaration of goods in parameters such as description, quality, quantity, year of manufacture or production.

Circular No. 37/2007 Cus. dated 09.10.2007 has been issued regarding the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 notified vide Notification No 95/2007 Cus. (NT) dated 13.09.2007. The Customs Valuation (Determination of Value of Export Goods) Rules 2007 have been framed in a format similar to the Valuation Rules for the imported goods. Conceptually also, acceptance of Transaction Value for export goods has been emphasized in the said rules, in as much as Rule 3 specifically provides for it.

Rule 3 of the said rules also stipulates that the Transaction Value for export goods shall be accepted even where buyer and seller are related, provided that the relationship did not influence the price of the goods. Where the relationship is found to influence the price, as determined by the proper officer on receipt of further information from the exporter, the value of the export goods shall be determined by proceeding sequentially through rules 4 to 6 of the said Valuation Rules. The persons who shall be deemed to be 'related' have been specified in Rule 2(2) of the said Valuation Rules, and this provision

has been adopted from the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Thus transaction value is the primary basis for valuation of export goods and the method specified under Rule 3 will be applicable in the vast majority of cases of export by acceptance of declared value. In cases where the transaction value is not accepted, the valuation of the export goods shall be done by application of Rules 4 to 6 sequentially.

Acceptance of transaction value is, however, subject to the provision of Rule 8 which provides for rejection of declared value for the export goods in certain exceptional cases. These are situations where the assessing officer has reasons to doubt the truth or accuracy of the declared value and further enquiry or investigation is needed to determine the appropriate value. It is hereby instructed that when an investigation / enquiry is undertaken to determine whether or not the Declared Value should be accepted as Transaction Value, the export consignment shall not be ordinarily detained. Wherever there are doubts about the declared value of the export goods, the proper officer shall retain representative sealed samples, wherever considered necessary and feasible, and allow the goods to be exported after due processing. However, it is clarified that in a situation of serious violation such as outright mis-declaration of goods, attempt to export the goods unauthorisedly, i.e., smuggle the goods out of the country, or where there is forgery or fraudulent documentation, the goods may be detained or seized as required. No export consignment shall be detained for reasons of doubts regarding valuation without the approval of the jurisdictional Commissioner of Customs.

An 'Explanation' relating to rejection of declared value of export goods has been added to Rule 8 to bring clarity and objectivity in exercising the authority for rejection of declared value. The Explanation clarifies that this rule as such does not provide a method for determination of value, and that it merely provides a mechanism and procedure for rejection of declared value of export goods in certain cases. It also clarifies that where the proper officer is satisfied after consultation with the exporter, the declared value shall be accepted. This Explanation also gives certain illustrative reasons which could form the basis for having doubt about the truth or accuracy of the declared value.

While raising doubt about truth or accuracy of the declared value in terms of Rule 8, the proper officer shall issue a query memo specifying reasons for such doubt. Meanwhile, the goods will be released for export against a simple undertaking after drawal of representative sample as indicated in para 5. The decision to initiate the process of investigation into valuation aspects, if any, shall be taken at the earliest at the level of Joint /Additional Commissioner.

In a case where transaction value cannot be determined or the declared value is rejected under Rule 8, and export value has to be determined by comparison in terms of Rule 4, the proper officer shall take utmost care in selecting an export product for an in-depth inquiry. The proper officer will make the adjustments objectively on the basis of the relevant factors, some of which have been illustrated at sub rule (2) of Rule 4.

Where the value has to be determined by Computed value method under Rule 5, the proper officer shall give due consideration to the cost-certificate issued by a Cost Accountant or Chartered Accountant or Government approved valuer, as produced by the exporter.

It is clarified that the main purpose of introducing the Export Valuation Rules is to provide for a sound legal basis for the valuation of export goods. It is also expected to check deliberate overvaluation of export goods and mis-utilization of value based export incentive schemes. At the same time due care has to be taken to facilitate the movement of bonafide export goods which is vital for the country's economic growth. The assessing officers shall, therefore, exercise due caution to avoid unnecessary queries regarding truth or accuracy of the declared export value. The Export Valuation Rules are not intended to bring about any significant change in the existing pattern of valuation of export goods. It is the responsibility of the supervisory officers to monitor regularly the export valuation practices, so as to ensure proper implementation of the said Valuation Rules without hindering the flow of bona fide export goods.

Rule 7 of the Export Valuation Rules calls for a declaration relating to the value to be filed by the exporter. A declaration format for this purpose has been designed and the same is enclosed as Annexure-A. Since it may be sometime before the format is notified to the trade by the respective

Commissionerates, care should be taken to ensure that no export consignments are held up for want of such declaration which may for the time being be obtained subsequent to exports. The filing of the declaration along with the shipping bill should however be enforced with effect from 12th November 2007.

III. SERVICE TAX

Notification No. 23/2007 ST dated 22.05.2007 has notified 01.06.2007 as the date on which the services introduced by the Finance Act, 2007 would become effective. Further, the amendments made in the existing services vide the Finance Act, 2007 would also become effective from 01.06.2007.

Exemptions:

1. With effect from 01.06.2007, Notification No. 24/2007 ST dated 22.05.2007 has exempted the taxable service of renting of immovable property from so much of the service tax leviable thereon as is in excess of the service tax calculated on a value which is equivalent to the gross amount charged for renting of such immovable property less taxes on such property, namely property tax levied and collected by local bodies.

However, any amount such as interest, penalty paid to the local authority by the service provider on account of delayed payment of property tax or any other reasons shall not be treated as property tax for the purposes of deduction from the gross amount charged.

Further, wherever the period for which property tax paid is different from the period for which service tax is paid, property tax proportionate to the period for which service tax is paid shall be calculated and the amount so calculated shall be excluded from the gross amount charged for renting of the immovable property for the said period, for the purposes of levy of service tax.

Example:

Property tax paid for April to September	= Rs. 12,000/-
Rent received for April	= Rs. 1,00,000/-
Service tax payable for April	= Rs. 98,000/- (1,00,000–2,000) * applicable rate of service tax

2. With effect from 01.06.2007, Notification No. 25/2007 ST dated 22.05.2007 has exempted commercial or industrial construction service and services provided in relation to the execution of works contract provided to any person by any other person in relation to construction of port or other port from the whole of the service tax leviable thereon.

It has been declared that-

- (i) commercial or industrial construction service or services provided in relation to the execution of works contract in relation to construction of port or other port shall not include services of completion and finishing, repair, alteration, renovation, restoration, maintenance or repair provided in relation to existing port or other port; and
- (ii) "port" and "other port" have the meanings respectively assigned to them in clauses (81) and (76) of section 65 of the Finance Act.

Consequently, with effect from 01.06.2007, Notification No. 26/2007 ST dated 22.05.2007 has rescinded Notification No. 16/2005 ST dated 07.06.2005. Notification No. 16/2005 ST dated 07.06.2005 exempted the commercial or industrial construction service provided to any person by a commercial concern in relation to construction of port or other port from the whole of service tax leviable thereon.

3. Notification No. 33/2007 ST dated 23.05.2007 has exempted all taxable services specified in section 65 of the said Act provided by any person, for the official use of a foreign diplomatic mission or consular post in India, from whole of the service tax leviable under section 66 of the said Act. The Notification also prescribes a procedure for availing the said exemption.
4. Notification No. 34/2007 ST dated 23.05.2007 has exempted all taxable services specified in section 65 of the said Act provided by any person, for the personal use or for the use of the family

members of diplomatic agents or career consular officers posted in a foreign diplomatic mission or consular post in India, from whole of the service tax leviable under section 66. The Notification also prescribes a procedure for availing the said exemption.

5. During the period between 01.07.1994 and 14.07.2007 there was a practice of not levying service tax on roaming service provided to an international in-bound roaming subscriber, by a telegraph authority. However, such services were liable to service tax under section 65(105)(b) of the Finance Act.

Therefore, in exercise of the powers conferred by section 11C of the Central Excise Act 1944 read with section 83 of the Finance Act, the Central Government has directed vide Notification No. 36/2007-ST dated 15.06.2007 that the service tax payable on roaming services provided by a telegraph authority to an international in-bound roaming subscriber, which was not being levied in accordance with the said practice, shall not be required to be paid in respect of such roaming service provided during the aforesaid period.

6. Notification No. 38/2007 ST dated 23.08.2007 has amended Notification No. 1/2006 ST dated 01.03.2006 so as to increase the percentage of abatement from 60% to 75% in the case of services provided by a tour operator in relation to a package tour. Further, package tour has also been redefined as a tour wherein transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour.
7. Notification No. 41/2007 ST dated 06.10.2007 has exempted the taxable services specified in column (3) of the Schedule (hereinafter referred to as specified services) received by an exporter and used for export of goods (hereinafter referred to as said goods), from the whole of the service tax leviable thereon under section 66 and section 66A subject to the conditions specified in the corresponding entry in column (4) of the Schedule.

It may be noted that -

- (a) the exemption shall be claimed by the exporter of the goods for the specified services received and used by the exporter for export of the said goods;
- (b) the exemption claimed by the exporter shall be provided by way of refund of service tax paid on the specified services used for export of the said goods;
- (c) the exporter claiming the exemption has actually paid the service tax on the specified services;
- (d) no CENVAT credit of service tax paid on the specified services used for export of said goods has been taken under the CENVAT Credit Rules, 2004;
- (e) the said goods have been exported without availing drawback of service tax paid on the specified services under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995;
- (f) exemption or refund of service tax paid on the specified services used for export of said goods shall not be claimed except under this notification.

The exemption contained in this notification shall be given effect to in the following manner, namely:-

- (a) the person liable to pay service tax under sub-section (1) or sub-section (2) of section 68 of the said Finance Act shall pay service tax as applicable on the specified services provided to the exporter and used for export of the said goods, and such person shall not be eligible to claim exemption for the specified services.

However, where the exporter of the said goods and the person liable to pay service tax under sub-section (2) of section 68 for the said services are the same person, then in such cases exemption for the specified services shall be claimed by that person;

- (b) the exporter shall claim the exemption by filing a claim for refund of service tax paid on specified services.

Provided that–

- (i) the manufacturer-exporter of the said goods shall file the claim for refund to the Assistant/Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse, and
- (ii) the exporter, other than a manufacturer-exporter, shall file the claim for refund to the Assistant/Deputy Commissioner of Central Excise having jurisdiction over the registered office or the head office, as the case may be, of such exporter;
- (c) the exporter who is not registered as an assessee under the Central Excise Act, 1944 or the rules made thereunder, or the said Finance Act or the rules made thereunder, shall, prior to filing a claim for refund of service tax under this notification, file a declaration in the prescribed Form with the respective jurisdictional Assistant/Deputy Commissioner of Central Excise;
- (d) the jurisdictional Assistant/Deputy Commissioner of Central Excise shall after due verification, allot a service tax code (STC) number to the exporter within seven days from the date of receipt of the said Form;
- (e) the claim for refund shall be filed on a quarterly basis, within sixty days from the end of the relevant quarter during which the said goods have been exported:
The said goods shall be deemed to have been exported on the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962;
- (f) the refund claim shall be accompanied by documents evidencing, -
 - (i) export of the said goods;
 - (ii) payment of service tax on the specified services for which claim for refund of service tax paid is filed;
 - (iii) wherever applicable, a copy of the written agreement entered into by the exporter with the buyer of the said goods, as the case may be;
- (g) the Assistant/Deputy Commissioner of Central Excise shall after satisfying himself that the said services have been actually used for export of said goods, refund the service tax paid on the specified services used for export of said goods;
- (h) where any refund of service tax paid on specified services used for export of said goods has been paid to an exporter but the sale proceeds in respect of the said goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999, including any extension of such period, such service tax refunded shall be recoverable under the provisions of the said Finance Act and the rules made thereunder, as if it is a recovery of service tax erroneously refunded.

Schedule

Sl. No.	Taxable services		Conditions
	Classification under Finance Act, 1994	Description	
(1)	(2)	(3)	(4)
1.	Section 65(105)(d)	Services provided to an exporter by an insurer, including a re-insurer carrying on general insurance business in relation to insurance of said goods	(i) document issued by the insurer, including re-insurer, for payment of insurance premium shall be specific to export goods and shall be in the name of the exporter.

2.	Section 65(105)(zn)	Port services provided for export of said goods	-
3.	Section 65(105)(zzh)	Services provided by a technical testing and analysis agency in relation to technical testing and analysis of said goods where such technical testing and analysis is required to be undertaken as per the written agreement between the exporter and the buyer of the said goods	(i) the exporter furnishes a copy of the written agreement entered into with the buyer of the said goods requiring testing and analysis of the said goods; and (ii) the invoice issued by the service provider shall be specific to export goods and shall be in the name of the exporter.
4.	Section 65(105)(zzi)	Services provided by an inspection and certification agency in relation to inspection and certification of export goods where such technical inspection and certification is required to be undertaken as per written agreement between the exporter and the buyer of the export goods	(i) the exporter furnishes a copy of the written agreement entered into with the buyer of the said goods requiring inspection and certification of the said goods; and (ii) the invoice issued by the service provider shall be specific to export goods and shall be in the name of the exporter.
5.	Section 65(105)(zzl)	Other port services provided for export of said goods	-
6.	Section 65(105)(zzp)	Services provided for transport of said goods by road from the inland container depot to the port of export	-
7.	Section 65(105)(zzzp)	Services provided for transport of said goods by rail from the inland container depot to the port of export	-

Other amendments

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

- (i) With effect from 01.06.2007, in rule 2, in sub-rule (1), in clause (d), in sub-clause (i), for the words "a telephone connection or pager or a communication through telegraph or telex or a facsimile communication or a leased circuit", the words "telecommunication service" have been substituted vide Notification No. 28/2007 ST dated 22.05.2007.
- (ii) Notification No. 39/2007 ST dated 12.09.2007 has substituted rule 6(1) with the following sub-rule:

The service tax shall be paid to the credit of the Central Government,-

- (i) by the 6th day of the month, if the duty is deposited electronically through internet banking; and

(ii) by the 5th day of the month, in any other case,

immediately following the calendar month in which the payments are received, towards the value of taxable services.

However, where the assessee is an individual or proprietary firm or partnership firm, the service tax shall be paid to the credit of the Central Government by the 6th day of the month if the duty is deposited electronically through internet banking, or, in any other case, the 5th day of the month, as the case may be, immediately following the quarter in which the payments are received, towards the value of taxable services.

Further, notwithstanding the time of receipt of payment towards the value of services, no service tax shall be payable for the part or whole of the value of services, which is attributable to services provided during the period when such services were not taxable.

Also, the service tax on the value of taxable services received during the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year.

- (iii) With effect from 01.06.2007, in rule 6, after sub-rule (4B), sub-rule (4C) has been inserted. Sub-rule (4C) provides that notwithstanding anything contained in sub-rules (4), (4A) and (4B), where the person liable to pay service tax in respect of services provided or to be provided in relation to renting of immovable property has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, on account of non-availing of deduction of property tax paid in terms of Notification No. 24/2007 ST dated 22.05.2007 from the gross amount charged for renting of the immovable property for the said period at the time of payment of service tax, the assessee may adjust such excess amount paid by him against his service tax liability within 1 year from the date of payment of such property tax. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of 15 days from the date of such adjustment [Notification No. 28/2007 ST dated 22.05.2007].
- (iv) Notification No. 20/2007 ST dated 12.05.2007 has inserted rule 7C after rule 7B. Rule 7C is in respect of amount to be paid for delay in furnishing the prescribed return. It provides that where the return prescribed under rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Central Government, for the period of delay of-
 - (i) 15 days from the date prescribed for submission of such return, an amount of Rs.500;
 - (ii) beyond 15 days but not later than 30 days from the date prescribed for submission of such return, an amount of Rs.1,000; and
 - (iii) beyond 30 days from the date prescribed for submission of such return an amount of Rs.1,000 plus Rs.100 for every day from the 31st day till the date of furnishing the said return.

However, the total amount payable in terms of this rule, for delayed submission of return, shall not exceed the amount specified in section 70 of the Act. Further, where the assessee has paid the amount as prescribed under this rule for delayed submission of return, the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded.

Any pending proceedings under section 77 for delayed submission or non-submission of return that has been initiated before 11.05.2007 shall also be deemed to be concluded if the amount specified for delay in furnishing the return is paid by the assessee within 60 days from 11.05.2007.

- 9. With effect from 01.06.2007, Notification No. 29/2007 ST dated 22.05.2007 has inserted rule 2A after rule 2 in the Service Tax (Determination of Value) Rules, 2006. Rule 2A contains the provisions for determination of value of services involved in the execution of a works contract.

The rule provides that subject to the provisions of section 67, the value of taxable service in relation to services involved in the execution of a works contract (hereinafter referred to as works contract service shall be determined by the service provider in the following manner:-

- (i) Value of works contract service determined shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.

The gross amount charged for the works contract shall not include value added tax (VAT) or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract.

The value of works contract service shall include-

- (a) labour charges for execution of the works;
 - (b) amount paid to a sub-contractor for labour and services;
 - (c) charges for planning, designing and architect's fees;
 - (d) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
 - (e) cost of consumables such as water, electricity, fuel, used in the execution of the works contract;
 - (f) cost of establishment of the contractor relatable to supply of labour and services;
 - (g) other similar expenses relatable to supply of labour and services; and
 - (h) profit earned by the service provider relatable to supply of labour and services.
- (ii) Where value added tax or sales tax, as the case may be, has been paid on the actual value of transfer of property in goods involved in the execution of the works contract, then such value adopted for the purposes of payment of value added tax or sales tax, as the case may be, shall be taken as the value of transfer of property in goods involved in the execution of the said works contract for determining the value of works contract service under clause (i).
10. Notification No. 21/2007 ST and 22/2007 ST dated 12.05.2007 have amended Notification Nos. 11/2005 and 12/2005 both dated 19.04.2005 so as to clarify that "cess" for the purpose of the said notifications would also include secondary and higher education cess.
 11. With effect from 01.06.2007, in Notification No. 36/2004 ST dated 31.12.2004 in paragraph (A), in sub-paragraph (i), for the words "a telephone connection or pager or a communication through telegraph or telex or a facsimile communication or a leased circuit", the words "telecommunication service" have been substituted vide Notification No. 27/2007 ST dated 22.05.2007.
 12. With effect from 01.06.2007, Export of Services Rules, 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 have been amended vide Notification No. 30/2007 ST dated 22.05.07 and Notification No. 31/2007 ST dated 22.05.07 so as to categorise the new taxable services introduced by the Finance Act, 2007 under Rule 3. Taxable services have been categorised as under:

Sl. No.	Taxable service	Sub-clause of section 65(105)	Export of Services Rules, 2005	Taxation of Services (Provided from Outside India and Received in India) Rules, 2006
1.	Telecommunication service	zzzx	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
2.	Mining of mineral, oil or gas	zzzy	Category 1 [Rule 3(1)(i)]	Category 1 [Rule 3(i)]
3.	Renting of immovable property	zzzz	Category 1 [Rule 3(1)(i)]	Category 1 [Rule 3(i)]

4.	Works contract service	zzzza	Category 1 [Rule 3(1)(i)]	Category 1 [Rule 3(i)]
5.	Development and supply of content	zzzzb	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
6.	Asset management	zzzzc	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
7.	Design services	zzzzd	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]

Further, in Export of Services Rules, in sub-rule (2) in clause (b), the words “provided outside India” have been omitted.

13. Circular No. 93/04/2007 ST dated 10.05.2007 has withdrawn the following 48 circulars/clarifications/instructions on the basis of the recommendations made in the report submitted by Shri T.R. Rustagi and views/comments/suggestions received from the trade and industry associations and the departmental officers as these circulars had lost their relevance due to changes in law, procedures, etc:

Sl. No.	Circular No./F.No.	Date
1	1/1/94 – ST	29.06.1994
2	2/2/94 – ST	08.07.1994
3	4/4/94 – ST	06.09.1994
4	5/5/94 – ST	11.10.1994
5	6/1/95 – ST	02.05.1995
6	7/1/96 – ST	29.02.1996
7	8/2/96 – ST	11.03.1996
8	9/3/96 – ST	11.03.1996
9	13/7/96 – ST	20.09.1996
10	15/9/96 – ST	04.10.1996
11	16/10/96 – ST	15.10.1996
12	19/13/96 –ST	21.11.1996
13	20/14/96 – ST	31.12.1996
14	21/1/97 – ST	27.01.1997
15	F. No. B.43/1/97- TRU	06.06.1997
16	F. No. 148/3/97 – CX4	09.09.1997
17	23/3/97 – ST	13.10.1997
18	F.No.354/128/97 –TRU	18.12.1997
19	25/2/98 – ST	23.07.1998
20	26/3/98 – ST	10.09.1998
21	27/1/99 – ST	19.05.1999
22	28/2/99 – ST	04.07.1999
23	30/1/2000 – ST	05.06.2000
24	31/2/2000 – ST	31.07.2000
25	34/2/2001 – ST	30.04.2001
26	36/4/2001 – ST	08.10.2001

27	37/5/2001 – ST	27.12.2001
28	38/1/2002 – ST	07.02.2002
29	39/2/2002 – ST	20.02.2002
30	42/5/2002 – ST	29.04.2002
31	45/8/2002 – ST	30.07.2002
32	48/10/2002-ST	13.09.2002
33	51/13/2002 – ST	07.01.2003
34	53/2/2003 – ST	27.03.2003
35	54/3/2003-ST	21.04.2003
36	55/4/2003 – ST	24.04.2003
37	56/5/2003 – ST	25.04.2003
38	57/6/2003 – ST	20.05.2003
39	64/13/2003 – ST	28.10.2003
40	65/14/2003 – ST	05.11.2003
41	70/19/2003 – ST	17.12.2003
42	73/3/2004 – ST	05.01.2004
43	74/4/2004 – ST	23.01.2004
44	77/07/2004 – ST	10.03.2004
45	78/8/2004 – ST	23.03.2004
46	79/9/2004 – ST	13.05.2004
47	F. No. 341/20/2005-TRU	12.05.2005
48	F.No./354/106/2005-TRU	08.08.2005

14. Circular No. 94/5/2007-ST dated 15.05.2007 has clarified that “entry and exit load” charged by mutual fund would not attract service tax levy under the category of fund management service. Entry and exit load charges are not towards fund management service provided by the Asset Management Company to the mutual fund but to meet the initial issue expenses and other specified expenses, incurred by the mutual fund.

In a mutual fund, fund management activity is undertaken by an asset management company (AMC) right from the stage of inception of mutual fund. For its services of fund/asset management, an AMC charges the mutual fund an ‘investment and advisory fee’ in accordance with provisions contained in the SEBI regulation. This fee is chargeable to service tax under ‘fund management service’. Similarly, service provided by the distributors/selling agents, brokers, custodians, trustees etc., to the fund, is also taxable under respective taxable service such as business auxiliary service, stock broking service and banking & other financial services.

WORKS CONTRACT (COMPOSITION SCHEME FOR PAYMENT OF SERVICE TAX) RULES, 2007

Notification No. 32/2007 ST dated 22.05.2007 has notified Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. These rules have come into effect from 01.06.2007.

Rule 2 contains the following definitions:

- (a) “Act” means the Finance Act, 1994 (32 of 1994);
- (b) “section” means the section of the Act;
- (c) “works contract service” means services provided in relation to the execution of a works contract referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act;

- (d) words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

Sub-rule (1) of rule 3 lays down that notwithstanding anything contained in section 67 of the Act and rule 2A of the Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to 2% of the gross amount charged for the works contract.

The gross amount charged for the works contract shall not include value added tax (VAT) or sales tax, as the case may be, paid on transfer of property in goods involved in the execution of the said works contract.

Sub-rule (2) provides that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

Sub-rule (3) provides that the provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract.

CIRCULAR NO. 96/7/2007 ST DATED 23.08.2007

This circular has been issued to clarify technical issues relating to taxation of services under the Finance Act, 1994. This circular supersedes all circulars, clarifications and communications, other than Orders issued under section 37B of the Central Excise Act, 1944 (as made applicable to service tax by section 83 of the Finance Act, 1994), issued from time to time by the CBEC, DG (Service Tax) and various field formations on all technical issues including the scope and classification of taxable services, valuation of taxable services, export of services, services received from outside India, scope of exemptions and all other matters on levy of service tax. With the issue of this circular, all earlier clarifications issued on technical issues relating to service tax stand withdrawn.

At the time of introduction of the Finance Bills and after enactment of respective Finance Acts, letters are issued by TRU explaining the provisions contained in the Finance Bills / Finance Acts. Such letters explaining the provisions contained in the Finance Bill / Finance Act would be read in the relevant context.

Views stated in the circular reflect the interpretation of the law and the current practice of the department. This circular is not to be treated as part of law and does not override the legal provisions. The relevant statutory provisions must be referred to and they will prevail.

Particulars	Date of issue of clarification	Issue	Clarification
Telecommunication Service [Section (105)(zzzx)]	23.08.07	Whether service tax is liable on the amount collected as surcharge for delayed payment of telephone bills?	An amount collected for delayed payment of a telephone bill is not to be treated as consideration charged for provision of telecom service and, therefore, does not form part of the value of taxable service under section 67 read with Service Tax (Determination of Value) Rules, 2006.

Particulars	Date of issue of clarification	Issue	Clarification
Advertising agency [Section (105)(e)]	23.08.07	Persons / agencies canvass advertisements for publishing, on commission basis. Such persons / agencies do not provide any other services like making, preparation, display or exhibition of advertisement. Whether merely canvassing advertisement for publishing on a commission basis by persons / agencies is classifiable as Advertising Agency service [section 65(105)(e)] or not?	Merely canvassing advertisements for publishing, on commission basis, is not classifiable under the taxable service falling under section 65(105)(e). Such services are liable to service tax under business auxiliary service [section 65(105)(zzb)].
(i) Courier agency [Section (105)(f)]	23.08.07	Some transporters undertake door- to-door transportation of goods or articles and they have made special arrangements for speedy transportation and timely delivery of such goods or articles. Such services are known as 'Express Cargo Service' with assurance of timely delivery. Whether such 'Express cargo service' is covered under courier agency service [section 65(105)(f)]?	The nature of service provided by 'Express Cargo Service' provider falls within the scope and definition of the courier agency. Hence, the said service is liable to service tax under courier agency service [section 65(105)(f)].
(ii) Courier agency [Section (105)(f)]	23.08.07	"Angadia" undertakes delivery of documents, goods or articles received from a customer to another person for a consideration. Whether services provided by angadia is liable to service tax under courier agency service [section 65(105)(f)]?	Angadias are covered within the definition of 'courier agency' [section 65(33)]. Therefore, such services provided by angadia is liable to service tax under courier agency service [section 65(105)(f)].
Consulting engineer [Section (105)(g)]	23.08.07	Whether a self-employed professionally qualified engineer can be considered as 'consulting engineer' [section 65(31)] and service provided by such self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering is liable to service tax?	Consulting engineers include self-employed professionally qualified engineer, whether or not employing others for assistance. Services provided by such self-employed professionally qualified

Particulars	Date of issue of clarification	Issue	Clarification
		engineering is liable to service tax under consulting engineer service [section 65(105)(g)]?	engineer to a client in relation to one or more discipline of engineering is liable to service tax under consulting engineer service [section 65(105)(g)].
(i) Manpower recruitment agent [Section (105)(k)]	23.08.07	Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses / MNCs, who come to the institutes for recruiting candidates through campus interviews. Whether services provided by such institutions in relation to recruitment of manpower are liable to service tax under 'manpower recruitment or supply agency' service [section 65(105)(k)]?	'Manpower recruitment or supply agency' is defined as "any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to a client" [section 65(68)]. Educational institutes such as IITs and IIMs fall within the definition of 'manpower recruitment or supply agency', and service tax is liable on services provided by such institutions in relation to campus recruitment under section 65(105)(k).
(ii) Manpower recruitment agent [Section (105)(k)]	23.08.07	Business or industrial organisations engage services of manpower recruitment or supply agencies for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. Whether service tax is liable on such services under manpower recruitment or supply agency's service [section 65(105)(k)]	In the case of supply of manpower, individuals are contractually employed by the manpower recruitment or supply agency. The agency agrees for use of the services of an individual, employed by him, to another person for a consideration. Employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual. Such cases are covered within the scope of the definition of the taxable service [section 65(105)(k)] and, since they act as supply agency, they fall within the definition of "manpower recruitment or supply agency" [section 65(68)] and are liable to service tax.

Particulars	Date of issue of clarification	Issue	Clarification
(i) Mandap keeper [Section (105)(m)]	23.08.07	“Mandap” is defined as any immovable property as defined in section 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor coverings therein let out for a consideration for organizing any official, social or business function. [section 65(66)] “Mandap keeper” is defined as a person who allows temporary occupation of a mandap for a consideration for organising any official, social or business function [section 65(67)]. Whether hotels / restaurants letting out their halls, rooms etc. for social, official or business functions fall within the definition of “mandap” and allowing temporary occupation of halls, rooms etc by such hotels / restaurants for organizing any official, social or business function is liable to service tax under “mandap keeper service” [section 65(105)(m)]?	Halls, rooms etc. let out by hotels / restaurants for a consideration for organising social, official or business functions are covered within the scope of “mandap” [section 65(66)], and such hotels and restaurants are covered within the scope of “mandap keeper” [section 65(67)]. Accordingly, service tax is leviable on services provided by hotels and restaurants in relation to letting out of halls, rooms, etc. for organizing any official, social or business function under mandap keeper service [section 65(105)(m)].
(ii) Mandap keeper [Section (105)(m)]	23.08.07	Whether allowing temporary occupation of a hall for the purpose of holding dance, drama or music programme or competitions is liable to service tax under Mandap Keeper Service?	Dance, drama or music programme or competitions are social functions and allowing temporary occupation of a hall for a consideration for organizing such functions are liable to service tax under Mandap Keeper Service [section 65(105)(m)].
Broadcasting agency or organization [Section (105)(zk)]	23.08.07	Whether Prasar Bharati Corporation (Doordarshan and All India Radio) are liable to pay service tax under Broadcasting Service [section 65(105) (zk)]?	Prior to 1.3.2003, Prasar Bharati Corporation did not pay service tax by virtue of erstwhile section 22 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990. However, the said section 22 was omitted vide section 163 of the Finance Act, 2002 with effect from 1.4.2003.

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			In view of the above statutory changes, with effect from 1.4.2003 Prasar Bharati Corporation is liable to pay service tax for the broadcasting services provided like any other broadcasting agency or organization engaged in providing service in relation to broadcasting.
(i) Banking and other financial services [Section (105)(zm)]	23.08.07	Moneychangers are persons authorized under section 7 of Foreign Exchange Management Act, 1973 to deal in foreign currency. Explanation given under Section 7 of the said Act states that 'dealing' means purchasing foreign currency in the form of notes, coins or traveller's cheques or selling foreign currency in the form of notes, coins or traveller's cheques. Whether services provided by a money changer in relation to dealing of foreign currency (buying or selling), at specified rates, without separately charging any amount as commission for such dealing, is liable to service tax as foreign exchange broking under 'banking and other financial services' [section 65(105) (zm)]?	Moneychangers are authorized by RBI to buy and sell foreign exchange at the prevalent market rates. Buying or selling of foreign exchange by such persons without separately charging any amount as commission or brokerage does not fall within the scope of foreign exchange broking and is not liable to service tax under section 65(105)(zm).
(ii) Banking and other financial services [Section (105)(zm)]	23.08.07	'Asset management and all other forms of fund management' are liable to service tax under 'banking and other financial service' [section 65(12)]. Whether the amount charged as 'entry and exit load' from the investor by a mutual fund is liable to service tax as asset / fund management services under banking and other financial services [section 65(105)(zm)]?	Entry load and exit load charged by a mutual fund are not for the purpose of management of assets. Thus, amount charged as "entry and exit load" are not to be treated as consideration received by an Asset Management Company for asset management and hence not liable to service tax under Banking and other Financial service [section 65(105)(zm)].
(iii) Banking and other financial	23.08.07	Whether depository services and Electronic Access to Securities Information (EASI) services	Definition of "Banking and other Financial Services" specifically includes "provision and transfer

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services [Section (105)(zm)]		provided by Central Depository Services (India) Ltd., (CDSL) is liable to service tax under Banking and other Financial Services[section 65(105)(zm)]?	of information and data processing [section 65(12)(a)(vii)]". Services provided by CDSL falls within the scope of "provision and transfer of information and data processing". These services are not in the nature of "on-line information and data base access or retrieval services". Therefore, the depository services provided by CDSL including Electronic Access to Securities Information (EASI) for a fee are liable to service tax under Banking and other Financial Services. [section 65(105)(zm)]
(iv) Banking and other financial services [Section (105)(zm)]	23.08.07	Services provided by banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern in relation to asset management including portfolio management, and all forms of fund management, is leviable to service tax under "banking and other financial services" [section 65(105)(zm) and section 65(12)]. The said taxable service also includes cash management services provided. Services are provided in relation to chit funds. Chit Funds are of two types, namely:- (a) <u>Simple Chit Funds</u>: In this case, members agree to contribute to the fund a certain amount at regular interval. Lots are drawn periodically and the member, whose name appears, gets the periodical collection. No separate amount is charged from the members. (b) <u>Business Chit Funds</u>: In this case, there is a promoter known	Reserve Bank of India has clarified that the business of a chit fund is to mobilize cash from the subscribers and effectively cause movement of such cash to keep it working and, therefore, the activity of chit funds is in the nature of cash management. (a) In the case of Simple Chit Funds, no consideration is paid or received for the services provided and, therefore, the question of levy of service tax does not arise. (b) In the case of Business Chit Funds, cash management service is provided for a consideration and, therefore, leviable to service tax under "banking and other financial services".

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		as foreman who draws up the terms and conditions of the scheme and enrolls subscribers. Every subscriber has to pay his subscription in regular installments. The foreman charges a separate amount for the services provided. Some States prescribe a ceiling limit for the amount to be charged by such promoter for the services provided. Commission amount is retained by the promoter as consideration for providing the services in relation to chit fund. Whether services provided in relation to chit fund is leviable to service tax under "banking and other financial services" or not?	
Port [Section (105)(zn)]	23.08.07	Management Committee of Paradeep Port was constituted as per the directions of Supreme Court of India. The Committee operates under the "Paradeep Port, Clearing, Forwarding and Handling Workers (Regulation of Employment) Scheme, 1994". Officers of the Paradeep Port Trust are associated with the Committee. The Committee is authorized by the Port Trust to provide a number of services within the port area for a consideration. Whether services provided by the Management Committee within the port area for a consideration is liable to service tax under Port Service?	As the Management Committee of Paradeep Port is authorized by the Port Trust to provide services within the port area at the prescribed rates, such services provided by the Committee are liable to service tax under Port Service. [section 65(105) (zn)]
(i) Authorized service station [Section (105)(zo)]	23.08.07	Authorized dealers of motor vehicles provide to customers free servicing of motor vehicles without charging any amount as service charge from the customers. The vehicle	In this case, service is provided by an authorised service station to a customer and the service provider receives the consideration for the services provided from the manufacturer.

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		manufacturer promises such a facility to attract customers and reimburses the service charges to the authorised dealers, who provide to customers free servicing of motor vehicles. However, as per agreement, consideration for the service provider is not directly paid by the customer but by the vehicle manufacturer. Whether such 'free services' given to the customer free of cost by the authorized dealers (for which they are reimbursed by the vehicle manufacturers) are liable to service tax under authorised service station service [section 65(105) (zo)]?	Service tax is liable on the amount received from the vehicle manufacturer for the purpose of servicing of vehicles.
(ii) Authorized service station [Section (105)(zo)]	23.08.07	Whether servicing / repair of heavy vehicles like trucks by authorized service station is liable to service tax under section 65(105)(zo)?	Service tax is liable on services provided by an authorised service station to a customer in relation to service, repair, reconditioning or restoration of motorcars, light motor vehicles or two-wheeled motor vehicles [section 65(105)(zo)]. Thus, servicing of heavy vehicles like trucks, not being one of the specified categories of motor vehicles, is at present not covered within the scope of the said taxable service.
(iii) Authorized service station [Section (105)(zo)]	23.08.07	Whether spare parts sold by a service station during the servicing of vehicles is liable to payment of service tax? Whether exemption can be claimed on the cost of consumables that get consumed during the course of providing service?	Service tax is not leviable on a transaction treated as sale of goods and subjected to levy of sales tax / VAT. Whether a given transaction between the service station and the customer is a sale or not, is to be determined taking into account the real nature and material facts of the transaction. Payment of VAT / sales tax on a transaction indicates that the said transaction is treated as sale of

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			goods. Any goods used in the course of providing service are to be treated as inputs used for providing the service and accordingly, cost of such inputs form integral part of the value of the taxable service. Where spare parts are used by a service station for servicing of vehicles, service tax should be levied on the entire bill, including the value of the spare parts, raised by the service provider, namely, service stations. However, the service provider is entitled to take input credit of excise duty paid on such parts or any goods used in providing the service wherein value of such goods has been included in the bill. The service provider is also entitled to take input credit of service tax paid on any taxable services used as input services for servicing of vehicles.
Event management [Section (105)(zu)]	23.08.07	Organizers of Trade Fairs and Exhibitions solicit participation from the trade and industry and provide space and other facilities, including furniture, cabins, security, electricity, etc., to display products and provision of services. Whether services provided by the organizers of trade fairs / exhibitions are covered within the scope of event management service [section 65(015)(zu)]?	Trade fairs and exhibitions are organised by persons. Such organisers of trade fairs and exhibitions provide services to exhibitors in relation to business exhibition. Services provided by an organizer of trade fairs and exhibitions to an exhibitor in relation to business exhibition is liable to service tax under "Business Exhibition Service" [Section 65(105)(zzo)] w.e.f. 10.09.2004. In addition, an organiser of the trade fair or business exhibition may engage an event manager to provide service to the organiser in relation to organising trade fairs and

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			exhibitions. In such cases, the event manager renders the service of "Event Management" to the organisers and is liable to pay service tax under "Event Management Service". The two services, namely "Business Exhibition Service" and "Event Management Service", and the two service providers of the respective services are distinct.
Storage and warehousing [Section (105)(zza)]	23.08.07	Whether services provided in relation to handling / storage and warehousing of empty containers is liable to service tax under storage and warehousing service [section 65(105)(zza)]?	Empty containers are covered within the meaning of "goods" [section 65(50)]. Thus, services provided in relation to storage and warehousing of empty containers is liable to service tax under storage and warehousing service [section 65(105)(zza)].
Business auxiliary service [Section (105)(zzb)]	23.08.07	Whether commission received by distributors for distribution of mutual fund units is liable to Service Tax under business auxiliary service?	Distributors receive commission from mutual fund for providing services relating to purchase and sale of Mutual fund units. Services provided by such distributors are in the nature of commission agent and are, thus, liable to service tax under business auxiliary service [section 65(105)(zzb)].
Management, maintenance or repair [Section (105)(zzg)]	23.08.07	Services provided by any person to a customer in relation to management, maintenance or repair is liable to service tax [section 65(105)(zzg)]. "Management, maintenance or repair" includes maintenance or repair of any goods, excluding motor vehicle [section 65(64)]. Whether maintenance or repair of software is liable to service tax?	Explanation to section 65(64) provides that "goods" includes computer software. Since, maintenance or repair of any goods is liable to service tax, services provided in relation to maintenance or repair or servicing of computer software is liable to service tax under "management, maintenance or repair" service [section 65(105)(zzg)].
(i) Club or association [Section (105)(zzze)]	23.08.07	"Club or association" is defined as any person or body of persons providing services, facilities or advantages, for a subscription or	Exemption under the Income Tax Act on the ground of being a public charitable institution is of no consequence or relevance for

Particulars	Date of issue of clarification	Issue	Clarification
		any other amount, to its members, but does not include such person or body of persons engaged in any activity having objectives which are of a charitable nature. Whether a club or association enjoying exemption under the provisions of Income Tax Act as a public charitable institution gets automatically excluded from levy of service tax under section 65(105)(zzze) read with section 65(25a) of the Finance Act, 1994?	service tax purposes. Levy of service tax is entirely governed by the provisions contained in the Finance Act, 1994 and the rules made thereunder. “Charity” is defined as “aid given to the poor, the suffering or the general community for religious, educational, economic, public safety, or medical purposes”, and “charitable” is defined as “dedicated to a general public purpose, usually for the benefit of needy people who cannot pay for the benefits received” [Black’s Law Dictionary]. Whether a club or association is engaged in activity having objectives which are of a charitable nature or not is to be determined purely on the basis of the facts and circumstances of the case.
(ii) Club or association [Section (105)(zzze)]	23.08.07	Services provided by a resident welfare association to its members under club or association service [section 65(105) (zzze)] is exempted from service tax vide notification No.8/2007-Service Tax, dated 01.03.07, subject to the condition that the total consideration received from an individual member by the said association for providing the said services does not exceed three thousand rupees per month. Whether a resident welfare association registered as a co-operative society with the Registrar of Co-operative Societies is entitled for the benefit of service tax exemption under notification No.8/2007-	A resident welfare association, even if it is registered as a co-operative society with the Registrar of Co-operative Societies, is eligible to avail of exemption from levy of service tax vide notification No.8/2007-Service Tax, dated 01.03.2007 provided the following conditions are satisfied, namely:- (i) The exemption is available for the services specified under section 65(105)(zzze) of the Finance Act, 1994 and provided or to be provided by the association to its members. (ii) The sole criterion for membership of the resident welfare association is the residential status of a person in a residential complex or locality

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		Service Tax, dated 01.03.2007 or not?	i.e., membership of the association is restricted to the residents of the complex or locality. (iii) The value of total consideration received from an individual member by the association for providing the services does not exceed Rs.3,000/- per month.
Construction of complex [Section (105)(zzzh)]	23.08.07	Whether service tax is liable under construction of complex service [section 65(105)(zzzh)] on builder, promoter, developer or any such person,- (a) who gets the complex built by engaging the services of a separate contractor, and (b) who builds the residential complex on his own by employing direct labour?	(a) In a case where the builder, promoter, developer or any such person builds a residential complex, having more than 12 residential units, by engaging a contractor for construction of the said residential complex, the contractor in his capacity as a taxable service provider (to the builder / promoter / developer / any such person) shall be liable to pay service tax on the gross amount charged for the construction services under 'construction of complex' service [section 65(105)(zzzh)]. (b) If no other person is engaged for construction work and the builder / promoter / developer / any such person undertakes construction work on his own without engaging the services of any other person, then in such cases,- (i) service provider and service recipient relationship does not exist, (ii) services provided are in the nature of self-supply of services. Hence, in the absence of service provider and service recipient relationship and the services provided are in the nature of self-supply of services, the question of providing taxable service to any person by any other person does not arise.

Particulars	Date of issue of clarification	Issue	Clarification
(i) Transport of passenger embarking in India for international journey by air [Section (105)(zzzo)]	23.08.07	An international journey commencing from an Indian airport involves stopover / transfer at intermediate airports outside India before reaching the destination (say Mumbai-Dubai-London-New York). Whether service tax would be liable in such case on the value indicated in the ticket for the entire journey or only on that part of the value attributable to the first sector (Mumbai-Dubai) of the journey?	Aim of the passenger is to travel from Mumbai to New York. Actual destination of the international journey is the criterion to decide the value of the service (in this case, New York). Stopover / transfer at intermediate airports, being merely incidental and part of the main journey, is of no relevance or consequence for levy of service tax under section 65(105)(zzzo) read with section 66. Service tax in such cases is leviable on the total consideration of a single composite service relating to the entire journey. i.e., value indicated on the ticket for the entire journey.
(ii) Transport of passenger embarking in India for international journey by air [Section (105)(zzzo)]	23.08.07	An international journey (say Delhi-Mumbai-London) includes travel in a domestic sector (Delhi – Mumbai) as part of the international journey. Whether service tax is liable on the value of whole journey or after excluding the value attributable to the domestic sector from the total value of the ticket?	In this case, the journey is a single composite journey. The aim of the passenger is to travel from India to a place outside India. Part of the travel in the domestic sector cannot be segregated from the single journey. Service tax is, therefore, leviable on the total value of the ticket treating the domestic sector as integral part of the international journey without excluding the value attributable, if any, to travel in the domestic sector.
(iii) Transport of passenger embarking in India for international journey by air [Section (105)(zzzo)]	23.08.07	An international journey commences from an airport outside India and completed at an airport outside India but including a sector wherein the passenger disembarks and subsequently embarks at an Indian airport as part of international journey (say Sydney-Mumbai-Dubai-Singapore-Sydney).	In this case, the journey being a single one and the aim of the passenger is not to travel from India to a place outside India, service tax is not leviable under section 65(105)(zzzo).

Particulars	Date of issue of clarification	Issue	Clarification
		Whether service tax is liable for Mumbai-Dubai sector only or on the total value of the ticket?	
(iv) Transport of passenger embarking in India for international journey by air [Section (105)(zzzo)]	23.08.07	Whether ticket issued outside India for an international journey commencing from India (say Delhi–London) is liable to service tax?	Service tax is payable by the service provider, namely aircraft operator, for the taxable service provided. Place of purchase/ issue of ticket is of no relevance or consequence to determine the levy of service tax under section 65(105)(zzzo) read with section 66. Service tax is leviable as long as the passenger embarks in India for an international journey, in any class other than economy class.
(v) Transport of passenger embarking in India for international journey by air [Section (105)(zzzo)]	23.08.07	Whether service tax is liable on the total value of the ticket or only half the value of the ticket in the case of round trip / return ticket (say Delhi-London-Delhi)?	Service tax is leviable on the total value of the ticket.
Services involved in the execution of works contract [Section (105)(zzzza)]		Whether CENVAT credit of duty paid on capital goods and service tax paid on input services can be taken by a service provider who opts to pay an amount equivalent to two per cent. of the gross amount charged for the works contract instead of paying service tax at the rate specified in section 66, under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, notified vide notification No.32/2007-Service Tax dated 22.05.07?	Rule 3(2) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 provides that the provider of taxable service opting to pay service tax under the composition scheme is not entitled to take CENVAT credit of duty on inputs, used in or in relation to the said works contract, under the provisions of the CENVAT Credit Rules, 2004. There is no restriction under notification No.32/2007-Service Tax dated 22.05.07 to take CENVAT credit of duty paid on capital goods and service tax paid on input services.
(i) Miscellaneous	23.08.07	Sovereign/public authorities perform functions assigned to them under the law in force, known as “statutory functions”. For example, Regional Reference Standards	Activities assigned to and performed by the sovereign / public authorities under the provisions of any law are statutory duties. The fee or amount collected as per the

Particulars	Date of issue of clarification	Issue	Clarification
		Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments; Regional Transport Officers (RTO) issue fitness certificate to motor vehicles; Directorate of Boilers inspects and issues certificates for boilers; or Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant laws. Authorities providing such functions, required to be performed as per law, may collect specific amount or fee and the amount so collected is deposited into government account. Whether such activities of a sovereign / public authority, performed under a statute, can be considered as 'provision of service' for the purpose of levy of service tax and the amount or fee collected, if any, for such purposes can be treated as consideration for the services provided?	provisions of the relevant statute for performing such functions is in the nature of a compulsory levy and are deposited into the Government account. Such activities are purely in public interest and are undertaken as mandatory and statutory functions. These are not to be treated as services provided for a consideration. Therefore, such activities assigned to and performed by a sovereign / public authority under the provisions of any law, do not constitute taxable services. Any amount / fee collected in such cases are not to be treated as consideration for the purpose of levy of service tax. However, if a sovereign / public authority provides a service, which is not in the nature of statutory activity and the same is undertaken for a consideration (not a statutory fee), then in such cases, service tax would be leviable as long as the activity undertaken falls within the scope of a taxable service as defined.
(ii) Miscellaneous	23.08.07	Department of Posts provides a number of services. What is the status of those services for the purpose of levy of service tax?	(i) Following services provided by Department of Posts are not liable to service tax. Basic mail services known as postal services such as post card, inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations. Transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services. (ii) In addition to the services

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			mentioned in (i) above, Department of Posts also provides a number of services such as courier services (Speed Post), insurance services (Postal Life Insurance), agency or intermediary services on commission basis (distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills), which are also provided by other commercial organizations. Such services are liable to service tax under appropriate taxable services.
(iii) Miscellaneous	23.08.07	A taxable service provider outsources a part of the work by engaging another service provider, generally known as sub-contractor. Service tax is paid by the service provider for the total work. In such cases, whether service tax is liable to be paid by the service provider known as sub-contractor who undertakes only part of the whole work.	A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor. Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.

CIRCULAR NO. 97/8/2007 DATED 23.08.2007

This Circular has been issued to consolidate the procedural issues relating to service tax, including those relating to availment and utilization of CENVAT credit. This circular supersedes all previous circulars/clarifications/instructions issued on these subjects. It is, however, clarified that this circular is intended only to clarify the scope of the Act and the rules, and therefore, in the event of any

inadvertent inconsistency or contradiction between this circular and the provisions of the Act or the rules, the latter shall prevail. The relevant portions of the Circular are reproduced below:

1. Issuance of invoices, bills, challans, consignment notes and other documents: Rule 4B of the Rules prescribes that the goods transport agency shall issue a consignment note, which would be serially numbered and would contain the names of the consignor and consignee, the vehicle registration number, details of goods transported, details of place of origin and destination, and the person (consignor / consignee/goods transport agency) liable to pay service tax. In case of less container load (LCL) cargo, where the goods transport agent is not aware of the vehicle registration number at the time when he receives the goods and issues consignment note, he may mention the non-availability of vehicle registration number on the copy issued to the consignor. However, after he comes to know about the vehicle registration number, he should mention the same, consignment note-wise, in the records maintained by him and produce the same in case of verification. Similarly, in case of trans-shipment of goods en-route (i.e. where the goods covered under a consignment note are shifted from one vehicle to another), the records of registration numbers of the vehicles carrying such goods under a consignment note must be recorded as soon as the said information is available to the goods transport agent. These procedural relaxations are provided for such special cases only and, in all other cases, mention of vehicle registration number on the consignment note, at the time of its issue would continue to remain a mandatory requirement.

2. Delayed return: To avoid late fee, the taxpayer must ensure timely filing of return. In case of returns filed late, the appropriate late fees should be paid at the time of filing the return, without waiting for any communication or notice from the department. Mere non-submission of evidence of payment of late fee along with the return is, however, not a ground for refusal to allow filing of the return.

3. Audit: The selective audit of service taxpayers and other assessees like input service distributors, may be done by the jurisdictional central excise officer (authorized for the purpose) or by an audit party deputed by the Comptroller and Auditor General of India. Rule 5 of the Rules makes it mandatory for every assessee to make available the records, on demand, for inspection and examination to such authorized person/audit party.

4. Adjudication of cases: Central Board of Excise & Customs (CBEC) has directed that in respect of demands for an amount upto one thousand rupees towards short payment/non-payment of service tax, if the service provider, on the default being pointed out, pays the service tax along with interest within a period of one month of the default in payment, the penalty should be waived, taking recourse to the provisions under section 80 of the Act. In other cases, i.e. where amount of service tax involved is over Rs.1,000 penal action prescribed under sections 76, 77 and 79 would be attracted.

5. Revision of orders: Any issue against which an appeal has been filed by the service taxpayer before Commissioner (Appeals) cannot be revised. Thus, if an order deals with several issues and the party files an appeal only in respect of a few issues, the Commissioner may pass revisional order in respect of only such remaining issues against which an appeal has not been filed by the party. The principles of natural justice shall be followed while passing an order in revision.

6. CENVAT Credit: With effect from 10.9.2004, under CENVAT Credit Rules, 2004, CENVAT Credit across goods and services has been allowed. This circular deals only with certain commonly raised issues relating to certain provisions of these rules that relate to service tax credit. The following are the issues which have been examined in this circular:

(a) ISSUE: Whether a manufacturer or taxable service provider having credit balance in his account can utilize that credit for payment of service tax on goods transport by road, as a consignor or as a consignee?

COMMENTS: In terms of rule 3(4) of the Rules, CENVAT credit can be utilized for the following payments:

(a) any duty of excise payable on any final product;

(b)

(c)

(d) service tax on any output service

In terms of the CENVAT Credit Rules, 'output service' means any taxable service provided by the provider of taxable service to the service receiver. Further, the definition of 'provider of taxable service' includes a person liable to pay service tax. Therefore, reading the two definitions in conjunction, it is clear that, to form 'output service', taxable service has to be actually provided by the 'provider of taxable service'. Even if due to a legal fiction, a consignor or a consignee qualifies to fall under the definition of 'a person liable to pay service tax' (and consequently a 'provider of taxable service'), it cannot be said that he has actually provided any taxable service. The service provided by a Goods Transport Agent (GTA) for which the consignor or the consignee is made liable to pay service tax does not become an 'output service' for such consignor or the consignee. Therefore, the service tax payable by the consignor or consignee on transportation of goods by road cannot be paid through credit accumulated by such consignor or consignee. For example, a manufacturer of steel sheets procures duty paid steel ingots as input and avails CENVAT credit of the excise duty paid on ingots. He clears his finished goods, i.e., steel sheets on payment of excise duty and sends the same to his customer, engaging the service of a goods transport agency. In this case, he pays service tax on service received by him for transportation of the goods. However, the input credit taken on steel ingots cannot be used for payment of service tax applicable to goods transport agency. The reason is that the such manufacturer (consignor) is not the service provider. The transport service is being provided by the 'goods transport agency' and the excise assessee pays the service tax only for the reason that the liability for payment of service tax has been shifted to the service receiver. Accordingly, the consignor or the consignee has to pay service tax in cash on goods transport by road service.

(b) ISSUE: Whether a consignee can take credit of the amount paid as service tax either by himself (as consignee) or by the consignor or by the Goods Transport Agency?

COMMENTS: As per Rule 3 of the CENVAT Rules, 2004, CENVAT Credit of, inter alia, service tax leviable and paid on any 'input services' can be taken. The rule does not distinguish as to who (i.e. the GTA, the consignor or the consignee himself) has paid the aforesaid tax. The only condition required to be satisfied is that the consignee must be a manufacturer of excisable goods or a provider of taxable service and the service must be in the nature of 'input service' for such activity. In case of inward transportation of inputs or capital goods, such service (being specifically mentioned under the definition of 'input service') would qualify to be called as 'input service' and, thus, the service tax paid (by any of the persons mentioned above) on it would be eligible as credit to the receiver if he is either a manufacturer of excisable goods or a provider of taxable service.

(c) ISSUE: Up to what stage a manufacturer/consignor can take credit on the service tax paid on goods transport by road?

COMMENTS: This issue has been examined in great detail by the CESTAT in the case of M/s Gujarat Ambuja Cements Ltd. vs CCE, Ludhiana [2007 (006) STR 0249 Tri-D]. In this case, CESTAT has made the following observations:-

"the post sale transport of manufactured goods is not an input for the manufacturer/consignor. The two clauses in the definition of 'input services' take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport service credit cannot go beyond transport upto the place of removal. The two clauses, the one dealing with general provision and other dealing with a specific item, are not to be read disjunctively so as to bring about conflict to defeat the laws' scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions".

Similarly, in the case of M/s Ultratech Cements Ltd vs CCE Bhavnagar 2007-TOIL-429-CESTAT-AHM, it was held that after the final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input. The above observations and views explain the scope of the relevant provisions clearly, correctly and in accordance with the legal provisions. In conclusion,

a manufacturer / consignor can take credit on the service tax paid on outward transport of goods up to the place of removal and not beyond that.

In this connection, the phrase 'place of removal' needs determination taking into account the facts of an individual case and the applicable provisions. The phrase 'place of removal' has not been defined in CENVAT Credit Rules. In terms of sub-rule (t) of rule 2 of the said rules, if any words or expressions are used in the CENVAT Credit Rules, 2004 and are not defined therein but are defined in the Central Excise Act, 1944 or the Finance Act, 1994, they shall have the same meaning for the CENVAT Credit Rules as assigned to them in those Acts. The phrase 'place of removal' is defined under section 4 of the Central Excise Act, 1944. It states that,-

"place of removal" means-

- (i) a factory or any other place or premises of production or manufacture of the excisable goods;
 - (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be stored without payment of duty ;
 - (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;
- from where such goods are removed."

It is, therefore, clear that for a manufacturer /consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer /consignor may claim that the sale has taken place at the destination point because in terms of the sale contract /agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place.

(d) A doubt has been raised regarding admissibility of CENVAT credit on service tax paid in respect of mobile phones. In the Service Tax Credit Rules, 2002, it was prescribed that credit of service tax was admissible only on telephone connection installed in the business premises. A clarification to this effect was also issued vide circular No. 59/8/2003-ST, dated 20.6.2003, in the context of the Service Tax Credit Rules, 2002. However, in the CENVAT Credit Rules, 2004 no such condition has been prescribed. Therefore, w.e.f. 10.9.2004, credit of service tax paid in respect of mobile telephone service is admissible, provided the mobile phone is used for providing output service or used in or in relation to manufacture of finished goods.

RECENT AMENDMENTS IN DIRECT TAXES AND INDIRECT TAXES

Students are advised to study thoroughly the Supplementary Study Paper-2007 on Direct taxes and Indirect taxes for the Final Course. This contains the amendments made by the Finance Act, 2007 as well as the relevant Notifications/Circulars issued up to 30.04.2007. 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 [2007] – 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.