Service tax

1 Background

Service tax and GST are taxes of 21st century. Service tax was imposed for first time on 3 services w.e.f. 1-7-1994 and its scope is increasing every year. Highlights of service tax are as follows –

Liability of service tax

- Service tax is imposed under powers of Entry 97 of List I of Seventh Schedule to Constitution of India. It was introduced w.e.f. 1-7-1994 and its scope is being expanded every year. Service tax is not payable if service is provided in J&K.
- Service tax is payable under Finance Act, 1994; on about 109 taxable services as defined in section 65(105) of Finance Act, 1994. 'Service provided or to be provided' is 'taxable event'. Thus, service tax is payable when advance is received.
- Service requires two parties. One cannot give service to himself. Service tax cannot be levied on value of goods. Service tax and Vat are mutually exclusive.
- General rate of service tax is 10.30% (including education cess and SAH education cess) w.e.f. 24-2-2009 [During period 11-5-2007 to 23-2-2009, it was 12.36%].

Person liable to pay service tax

- Service tax is payable by service provider. In few cases, tax is payable by service receiver, under reverse charge method [Section 68(2)].

Value for purpose of service tax

- Service tax is payable on gross amount charged for service provided or to be provided [section 67] (excluding material cost). Tax is payable on reimbursement of expenses which are part of service, but not on payments made by service provider as 'pure agent' of service receiver.
- If value is not ascertainable, valuation can be on basis of similar service or on basis of cost.
- Gross amount charged is taken as inclusive of service tax and then tax should be calculated by making back calculations.

- Service tax is payable only when bill amount is received from service receiver. However, in case of service provided to associated enterprises, service tax is payable as soon as book entry is made.

Exemption from service tax

- Small service providers whose total value of services provided (including exempt and non-taxable services) is less than Rs 10 lakhs in previous year are not required to pay service tax in current financial year till they reach turnover of Rs 10 lakhs. Clubbing provisions can apply. Registration is required if turnover exceeds Rs 9 lakhs per annum.
- The exemption is not available if service is provided under brand name of other person.
- Services provided to SEZ unit or developer for consumption within SEZ are exempt. In case of specified services utilised for export, refund is admissible.
- Services provided by RBI are exempt but service provided to RBI are not exempt.

Classification of service

- The classification of services will be determined according to terms specified in various sub-clauses of section 65(105). [section 65A(1)].
- If *prima facie*, a taxable service is classifiable under two or more sub-clauses of section 65(105), classification shall be effected as per following rules – (a) Specific description to be preferred over a general description (b) Classification should be as per essential character in case of composite services (c) Service which appears earlier in list, if service cannot be classified on above basis.
- Service should be predominantly a taxable service. An indivisible/composite contract cannot be vivisected and part of it subjected to tax.

Cenvat Credit

- Service provider can avail Cenvat credit of service tax paid on input services and excise duty paid on inputs and capital goods. The credit can be utilised for payment of service tax on output services.
- Definition of input service is wide. Any service in relation to business is ‘input service’.
- Credit can be availed on basis of proper and complete specified original duty paying documents.
- If assessee is providing both taxable and exempt services and if input services are common,

Cenvat credit can either be taken on proportionate basis or 8% 'amount' is required to be paid on exempted services.

Registration

- Service provider should register within 30 days from date of commencement of providing taxable service. Application should be in form ST-1 [Rule 4(1)]. Income Tax PAN, address proof, evidence of constitution of firm/company, list of directors/partners are the most important document required. Registration will be deemed to have been granted if not received within seven days [Rule 4(5)].
- Person providing services from more than one premises or offices can apply for centralised registration [Rule 4(2)]
- Input Service Distributors require registration.

Procedures to be followed

- Assessee should prepare invoice in respect of his services. The Invoice should be prepared within 14 days from date of completion of taxable service or receipt of payment towards the value of taxable service, whichever is earlier. Invoice should contain prescribed details [Rule 4A]
- If the assessee is an individual or proprietary firm or partnership firm, the tax is payable on quarterly basis within 5 days at the end of quarter (within 6 days in case of e-payment) *except in March.* Service tax is payable by other assessees by 5th of the month following the month in which payments are received toward value of taxable services (by 6th in case of e-payment) *except in March* [rule 6(1) of Service Tax Rules].
- Service tax on value of taxable services received during month of March or quarter of March is required to be paid by 31st March.

Payment of service tax

- Service tax is *not* payable on basis of amounts charged in the bills/invoice, but only on amounts *actually received* during the relevant period.
- A person liable to pay service tax can pay any amount in advance towards future service tax liability. After such payment he should inform Superintendent of Central Excise within 15 days. When he adjusts the advance, he should indicate details in the subsequent return filed.
- Tax is payable by GAR-7 challan using appropriate accounting code. E-payment is compulsory to

those who are paying service tax of more than Rs 50 lakhs per annum. For others, e-payment is optional.

- Mandatory interest for late payment of service tax is 13% [section 75]. It cannot be reduced or waived.

Returns under service tax

- Every person liable to pay service tax has to submit half yearly return in form ST-3 in triplicate within 25 days of the end of the half-year [Rule 7]. Late fees upto Rs 2,000 are payable if return is filed late.
- Assessment is basically self assessment. Provisional assessment is permissible.

Demands

- The service tax is administered by excise department. Adjudication order is issued by excise officer.
- If service tax was short paid, demand can be raised within period of one year from 'relevant date'. If the short payment or non-payment was on account of suppression of facts or wilful mis-statement with intention to evade, demand can be raised within period of five years.
- Order passed by Central Excise Officer can be rectified by him within two years. Only mistake apparent from records can be rectified.
- The Commissioner of Central Excise was empowered to revise the orders passed by adjudicating authority subordinate to him within two years of the original order, but not afterwards. No revision could be made if appeal against such order is pending with Commissioner (Appeals). Now, after Budget 2009, provision is made for departmental appeal before Commissioner (Appeals) and provision of revision of order by Commissioner have been omitted.

Penalties and appeals

- If service tax is not paid or belatedly paid, penalty will be minimum Rs. 200 per day or @ 2% per month, whichever is higher, starting with the first day after due date till date of actual payment of outstanding amount. Penalty cannot exceed the service tax which was payable.
- If non-payment was on account of fraud, suppression of facts etc., penalty shall not be less than amount of service tax but can be upto twice the amount of service tax amount of service tax not levied or not paid or erroneously refunded [section 78].

- Penalty can be reduced if sufficient cause is shown [section 80].
- Appeal against order of authority lower than Commissioner lies with Commissioner (Appeals) [section 85]. Appeal against order of Commissioner (Appeals) or Commissioner lies with Appellate Tribunal (Customs, Excise and Service Tax Appellate Tribunal) [Section 86]. Further appeal lies with High Court and Supreme Court.
- Appeals can be filed both by assessee and department.

Export of Service

- No service tax is payable if taxable service is exported as per Export of Service Rules.
- No tax is payable on export of service. If paid, it is refundable.
- Rebate/refund of service tax paid on input services is obtained if taxable service is exported.
- Common conditions in respect of *all* taxable services, for treating the service as export of service are - (**a**) The service should be provided from India and used outside India ***and*** (**b**) Payment for such service is received by the service provider in convertible foreign exchange. In addition, there are some conditions based on the category of service (e.g. immovable property outside India, service performed outside India, recipient is located outside India).

Import of service

- In case of import of service, tax is payable by recipient of services under method of 'reverse charge'. Tax should be paid by cash i.e. GAR-7 challan and then Cenvat credit can be availed as it is his input service.
- Tax is payable only when service is received in India.
- To determine the issue whether a provision of service is 'import of service', services have been classified in three categories. Criteria for each category has been specified e.g. immovable property India, service performed in India, recipient is located in India.

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

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

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

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

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

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

1-1 Rate of Service Tax Section 66 of Finance Act, 1994 (which is a charging section) states that there shall be levied a tax (hereinafter referred to as the service tax) at the rate of 12%of value

5 Procedures of Service tax

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

5-1 Registration

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5-2 Invoice by service provider

Assessee should prepare invoice in respect of his services. The Invoice should be prepared within 14 days from date of completion of taxable service or receipt of payment towards the value of taxable service, whichever is earlier.

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

(1) Name, address and registration number of person providing taxable service

(2) Name and address of person receiving taxable service

(3) Description, classification and value of taxable service provided or to be provided and

(4) Service tax payable on the taxable service

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

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

97/8/2007-ST dated 23-8-2007.

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

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

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

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

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

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

5-3 Payment of tax

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

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

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

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

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

***Payment of tax in advance* -** A system similar to PLA in Central Excise has been introduced in service tax. A person liable to pay service tax can pay any amount in advance towards future service tax liability. After such payment he should inform Superintendent of Central Excise within 15 days. When he adjusts the advance, he should indicate details in the subsequent return filed *- Rule 6(1A) of Service Tax Rules, w.e.f. 1-3-2008* [Really, why intimation is required every time?. Even if not informed, it can at the most be taken as a procedural lapse].

5-4 Self Adjustment of excess tax paid in earlier period

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

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

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

Adjustment upto Rs 1,00,000 only permissible - Excess amount paid and proposed to be adjusted should not exceed Rs. 1,00,000 for the relevant month or quarter [rule 6(4B)(iii)]. [Till 1-3-2008, adjustment upto Rs 50,000 was permissible]. Really now any amount of tax without limit can be paid in advance as per rule 6(1A) as discussed above. Hence, provisions in rule 6(4A) are not much relevant now.

Adjustment in subsequent month/quarter - Adjustment can be made in the succeeding month or quarter [rule 6(4A)] [Rule does not say that adjustment can be made in subsequent month or quarter *only*. As per section 13 of General Clauses Act, unless there is anything repugnant to the subject or context, the word singular includes plural and vice versa. Hence, it can be argued that adjustment can be made in any subsequent month/s or quarter/s].

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

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

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

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

5-5 Payment of service tax

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

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

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

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

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

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

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

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

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

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

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

5-6 Returns

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

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

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

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

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

Electronic filing of return - Department has introduced e-filing of service tax return on experimental

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

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

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

5-7 Provisional assessment

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

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

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

6 Adjudication

Central Excise Officers have been empowered to adjudicate in following -

(*a*) Demand of service tax and its recovery - section 73.

(*b*) Rectification of mistake by amending own order - section 74.

(*c*) Imposition of penalty - section 83A (*d*) Refund of service tax - section 11B of Central Excise Act made applicable to Service Tax.

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

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

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

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

Rectification

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

Revision **–** Earlier, there was provision for revision by Commissioner or order passed by authority lower than him. This provision has been deleted in Budget, 2009, w.e.f. 19-8-2009.

6-1 Appeals

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

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

Tribunal is final fact finding authority.

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

6-2 Penalties

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

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

***Penalty for non-registration, non-maintenance of records, incorrect invoices etc.* -** Heavy penalties can be imposed under section 77 of Finance Act, 1994, for various offenses like non-registration, non-maintenance of books of account, not furnishing information, not attending summons, issuing incorrect invoice etc.

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

of taxable services referred in section 65(105) of Finance Act, 1994. In addition

5 Procedures of service tax

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

5-1 Registration

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5-2 Invoice by service provider

Assessee should prepare invoice in respect of his services. The Invoice should be prepared within 14 days from date of completion of taxable service or receipt of payment towards the value of taxable service, whichever is earlier.

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

(1) Name, address and registration number of person providing taxable service

(2) Name and address of person receiving taxable service

(3) Description, classification and value of taxable service provided or to be provided and

(4) Service tax payable on the taxable service

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

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

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

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

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

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

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

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

5-3 Payment of tax

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

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

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

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

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

***Payment of tax in advance* -** A system similar to PLA in Central Excise has been introduced in service tax. A person liable to pay service tax can pay any amount in advance towards future service tax liability. After such payment he should inform Superintendent of Central Excise within 15 days. When he adjusts the advance, he should indicate details in the subsequent return filed - *Rule 6(1A) of Service Tax Rules, w.e.f. 1-3-2008* [Really, why intimation is required every time?. Even if not informed, it can at the most be taken as a procedural lapse].

5-4 Self Adjustment of excess tax paid in earlier period

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

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

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

Adjustment upto Rs 1,00,000 only permissible - Excess amount paid and proposed to be adjusted should not exceed Rs. 1,00,000 for the relevant month or quarter [rule 6(4B)(iii)]. [Till 1-3-2008, adjustment upto Rs 50,000 was permissible]. Really now any amount of tax without limit can be paid in advance as per rule 6(1A) as discussed above. Hence, provisions in rule 6(4A) are not much relevant now.

Adjustment in subsequent month/quarter - Adjustment can be made in the succeeding month or quarter [rule 6(4A)] [Rule does not say that adjustment can be made in subsequent month or quarter *only*. As per section 13 of General Clauses Act, unless there is anything repugnant to the subject or context, the word singular includes plural and vice versa. Hence, it can be argued that adjustment can be made in any subsequent month/s or quarter/s].

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

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

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

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

5-5 Payment of service tax

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

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

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

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

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

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

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

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

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

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

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

5-6 Returns

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

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

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

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

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

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

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

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

5-7 Provisional assessment

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

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

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

6 Adjudication

Central Excise Officers have been empowered to adjudicate in following -

(*a*) Demand of service tax and its recovery - section 73.

(*b*) Rectification of mistake by amending own order - section 74.

(*c*) Imposition of penalty - section 83A

(*d*) Refund of service tax - section 11B of Central Excise Act made applicable to Service Tax.

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

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

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

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

Rectification

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

Revision – Earlier, there was provision for revision by Commissioner or order passed by authority lower than him. This provision has been deleted in Budget, 2009, w.e.f. 19-8-2009.

6-1 Appeals

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

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

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6-2 Penalties

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

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Penalty for non-registration, non-maintenance of records, incorrect invoices etc. - Heavy penalties can be imposed under section 77 of Finance Act, 1994, for various offenses like non-registration, non-maintenance of books of account, not furnishing information, not attending summons, issuing incorrect invoice etc.

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

, education cess and SAH education cess is payable. Thus, total service tax was 12.36% during. 11-5-2007 to 23-2-2009.

Service tax rate has been reduced to 10% w.e.f. 24-2-2009 *vide* Notification No. 8/2009-ST dated 24-2-2009. Thus, total service tax payable is 10.3% in respect of taxable services provided on or after 24-2-2009.

This tax was first time introduced with effect from 1-7-1994 on three services. The rate was 5%. It was subsequently increased to 8% w.e.f. 14-5-2003. It was enhanced to 10% w.e.f. 10-9-2004. Service tax rate was 12% plus education cess of 2% (total 12.24%) w.e.f. 18-4-2006 till 10-5-2007. It was 12.36% during 11-5-2007 to 23-2-2009.

Relevant rate of service tax - The rate relevant is the date on which service was provided. Date of billing or date of receipt of payment is not relevant [see case law under 'Taxable event'].

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

1-2 Taxable Event in Service Tax

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

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

(*a*) *Entering into contract for service* - Entering into contract for providing service. Once you enter into a contract, it is certainly '*service to be provided*'. (Service tax is actually payable after payment is received, but receipt of advance is not a taxable event. It only defers the liability).

(*b*) *Provision of service* - This will happen in cases where contract for providing service was entered into *before* the service became taxable, but service was provided *after* the service became a 'taxable service'.

1-3 Person liable to pay Service tax

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

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

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

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

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

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

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

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

1-4 Service on sub-contract basis

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

2 Value of Taxable Service

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

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

- Gross amount charged for taxable services can be before, during or after provision of service [section 67(3)].

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

- If consideration is not wholly or partly consisting of money, value will be determined by service provider in terms of rule 3.
- As per rule 3(a) of Service Tax Valuation Rules, valuation shall be on basis of gross amount charged by service provider for similar services.
- If value cannot be determined on basis of rule 3(a), valuation shall be on basis of equivalent money value of such consideration, which shall not be less than cost of provision of such services [rule 3(b) of Service Tax Valuation Rules]
- Central Excise Officer can reject 'value' determined by service provider and determine 'value' for purpose of service tax payment [rule 4].
- Rules 5 and 6 make provisions for certain specific inclusions and exclusions for valuation
- Payments made by service provider as 'pure agent' of service receiver and recovered from service receiver are excluded for purpose of valuation [rule 5(2)]
- In case of services provided from outside India, actual consideration received will be relevant for valuation [rule 7(1)].

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

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

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

2-1 Calculation of service tax by back calculations

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

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

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

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

AV	=	1.000 Z
Duty @ 10.30%	=	0.1030 × Z
Sub-Total	=	1.1030 × Z
Now :		
1.1030 × Z	=	1,000
Hence, 'Z'	=	1,000/1.1030
i.e. Z	=	906.61

Thus, 'Z', i.e. Assessable Value is Rs 906.62 and service tax @ 10% will be Rs 90.66. Education cess @ 2% of service tax will be Rs 1.82. SAH education cess is Rs 0.91. Thus, total tax will be Rs 93.39.

If Bill is of Rs 1,103.00 (Rs 1,000 plus service tax of 103.00) and customer pays only Rs 1,000, the 'value' will be Rs 906.61 and tax payable will be Rs 93.39 by making back calculations - Para 6.5 of FAQ released by CBE&C in November 2007 (12 STT 1 (St) = 9 STR C3).

2-2 Reimbursement of expenses or 'Out of pocket' expenses

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

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

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

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

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

2-3 Valuation in case of indivisible contracts

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

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

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

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

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

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

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

3 Exemptions from service tax

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

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

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

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

Exemption to services provided to SEZ – The provision has been drastically changed w.e.f. 20-5-2009. Services provided to Special Economic Zone (SEZ) unit or SEZ developer will be exempt if the services are wholly consumed within SEZ. If the services are consumed wholly or partly outside SEZ, the services will be taxable at the hands of service provider [During the period 3-3-2009 to 20-5-2009, all services provided to SEZ unit or SEZ developer were taxable at the hands of service provider and the SEZ unit/developer was required to claim refund]. Now, w.e.f. 20-5-2009, the service provider to SEZ unit or SEZ developer will have to charge and pay service tax as per normal procedure only when service is wholly or partly consumed outside SEZ. These services will be exempt from service tax at hands of SEZ or SEZ developer by way of refund. The SEZ or SEZ Developer will have to file refund claim as per procedure prescribed in Notification No. 9/2009-ST dated 3-3-2009. If the service is wholly consumed within SEZ, the service provider is not required to charge service tax and hence no question of any refund.

Service provided by SEZ - SEZ is exempt from service tax.

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

3-1 General Exemption to small service providers

The small service providers whose turnover of taxable services from one or more premises did not exceed Rs. eight lakhs in 2006-07 will be exempt from service tax in next financial year i.e. in 2007-08 upto the turnover of Rs. eight lakhs. The provisions are prescribed in Notification No. 6/2005-ST dated 1-3-2005 (The exemption limit was Rs four lakhs upto 31-3-2007). However, if value of taxable turnover exceeds Rs 8 lakhs in 2007-08, there will be not exemption at all in 2008-09.

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

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

- The provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services.
- Where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services.

- The taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; will not be eligible for exemption available to small service providers.
- Person providing taxable service in excess of Rs. seven lakhs per annum (but less than Rs. eight lakhs) will have to register with Superintendent of Central Excise under Service Tax provisions [Notification No. 26/2005-ST dated 7-6-2005], though they will be eligible for exemption if turnover is less than Rs. eight lakhs per annum.

3-2 Specific Exemptions

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

Some important exemptions are as follows –

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

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

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

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

4 Classification of service

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

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

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

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

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

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

5 Procedures of Service tax

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

5-1 Registration

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5-2 Invoice by service provider

Assessee should prepare invoice in respect of his services. The Invoice should be prepared within 14 days from date of completion of taxable service or receipt of payment towards the value of taxable service, whichever is earlier.

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

(1) Name, address and registration number of person providing taxable service

(2) Name and address of person receiving taxable service

(3) Description, classification and value of taxable service provided or to be provided and

(4) Service tax payable on the taxable service

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

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

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

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

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

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

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

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

5-3 Payment of tax

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

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

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

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

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

***Payment of tax in advance* -** A system similar to PLA in Central Excise has been introduced in service tax. A person liable to pay service tax can pay any amount in advance towards future service tax liability. After such payment he should inform Superintendent of Central Excise within 15 days. When he adjusts the advance, he should indicate details in the subsequent return filed *- Rule 6(1A) of Service Tax Rules, w.e.f. 1-3-2008* [Really, why intimation is required every time?. Even if not informed, it can at the most be taken as a procedural lapse].

5-4 Self Adjustment of excess tax paid in earlier period

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

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

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

Adjustment upto Rs 1,00,000 only permissible - Excess amount paid and proposed to be adjusted should not exceed Rs. 1,00,000 for the relevant month or quarter [rule 6(4B)(iii)]. [Till 1-3-2008, adjustment upto Rs 50,000 was permissible]. Really now any amount of tax without limit can be paid in advance as per rule 6(1A) as discussed above. Hence, provisions in rule 6(4A) are not much relevant now.

Adjustment in subsequent month/quarter - Adjustment can be made in the succeeding month or quarter [rule 6(4A)] [Rule does not say that adjustment can be made in subsequent month or quarter *only*. As per section 13 of General Clauses Act, unless there is anything repugnant to the subject or context, the word singular includes plural and vice versa. Hence, it can be argued that adjustment can be made in any subsequent month/s or quarter/s].

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

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

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

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

5-5 Payment of service tax

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

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

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

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

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

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

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

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

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

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

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

5-6 Returns

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

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

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

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

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

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

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

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

5-7 Provisional assessment

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

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

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

6 Adjudication

Central Excise Officers have been empowered to adjudicate in following -

(*a*) Demand of service tax and its recovery - section 73.

(*b*) Rectification of mistake by amending own order - section 74.

(*c*) Imposition of penalty - section 83A

(*d*) Refund of service tax - section 11B of Central Excise Act made applicable to Service Tax.

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

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

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

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

Rectification

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

Revision – Earlier, there was provision for revision by Commissioner or order passed by authority lower than him. This provision has been deleted in Budget, 2009, w.e.f. 19-8-2009.

6-1 Appeals

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

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

Tribunal is final fact finding authority.

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

6-2 Penalties

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

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

***Penalty for non-registration, non-maintenance of records, incorrect invoices etc.* -** Heavy penalties can be imposed under section 77 of Finance Act, 1994, for various offenses like non-registration, non-maintenance of books of account, not furnishing information, not attending summons, issuing incorrect invoice etc.

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

1 Export of Services

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

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

Exemption or Rebate of Service tax

Exporter of service has three options -

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

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

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

1. Immovable property should be situated abroad [rule 3(i)]
2. Service should be at least partly performed outside India [rule 3(ii)]

3. Service can be provided firm Indian but recipient should be located outside India and order should be received from outside India [rule 3(iii)]
4. Services which not be treated as 'export of services' under any situation.

Services provided to 'installations, structures and vessels in the continental shelf of India' and the EEZ is not export of service - Services provided to 'installations, structures and vessels in the continental shelf of India and the EEZ by Indian service provider from India in these zones, it will be treated as service provided within India and he will be liable to pay service tax, i.e. this will not qualify as 'export of service'.

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

- Notification No. 11/2005-ST dated 19-4-2005, providing for rebate of service tax and education cess paid on taxable services exported i.e. tax paid on output services
- Notification No. 12/2005-ST dated 19-4-2005, providing for rebate of excise duty paid on inputs and service tax paid on input services, which are used in providing exported taxable services.

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

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

2 Import of Services

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

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

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

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

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

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

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

Services provided to 'installations, structures and vessels in the continental shelf of India' and the EEZ is 'import' of service **-** Services provided to 'installations, structures and vessels in the continental shelf of India and the EEZ by person outside India will be 'Import of Service' and the person receiving the service from outside India will be liable to pay service tax under reverse charge method.

If service is provided by Indian service provider from India in these zones, it will be treated as service provided within India and he will be liable to pay service tax, i.e. this will not qualify as 'export of service'.

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

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

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

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

Service receiver avail Cenvat credit of service tax paid by him **-** Though the person receiving the service is liable to pay service tax, the service is his 'input service'. Para 4.2-13 of MF(DR) circular No. B1/4/2006-TRU, dated 19-4-2006 confirms as follows 'Where such service is used as an input for providing any taxable output, the service tax paid on such service can be taken as input credit'

1 Advertising Agency's Service

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 1-11-1996 ***What is liable to tax*** *Any service provided or to be provided to any person, by an advertising agency (see* **1.2***) in relation to advertisement (see* **1.3***) in any manner [section 65(105)(e)]* **1.2** *"Advertising agency" means any person (earlier, the words were 'commercial concern' upto 1-5-2006) engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant [section 65(3)].* **1.3** *"Advertisement" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas [section 65(2)]*	***What is covered*** u Preparation of advertisement material, hoardings, neon signs etc., Preparation of advertisement films u Getting advertisements published in newspapers or TV or cinema theatres or by way of hoarding, neon signs etc. u DAVP may be liable to service tax, as 'any person' can be 'Advertising Agency'. ***What is not covered?*** u Preparation of advertisement material, sign boards, hoardings (as it is sale of goods). u Sale of TV rights, sponsorship money and logo money is not 'advertising agency' service. ***What is covered under different head?*** u Display of advertisement on web, cinema theatre, commercial time on TV are taxable under *'Sale of space or time for advertisement'* u Advertisement in yellow pages and business directories is taxable under *'Sale of space or time for advertisement'* u Canvassing i.e. space selling is taxable under Business Auxiliary Service. u Rental charges for space are covered under 'Sale of space or time for advertisement' ***Valuation*** u Tax only on commission, not on advertisement charges paid to media or TV. u Service tax is not payable on discount or incentives received from media ***Other issues*** *Accounting Code* - Service Tax : **00440013.** *Payment of*

	interest, penalty, etc. : **00440016.** *Rule for determining export or import of service* : **3(*iii*)**

2 Air Travel Agent's Services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 1-7-1997 ***What is liable to tax*** **2.1** Any service provided or to be provided *to any person*, by an air travel agent (see **2.1**) in relation to the booking of passage for travel by air [section 65(105)(1)]	***What is covered*** Booking of passage by air Sub-agents also liable. ***What is covered under different head?*** GSA (General Sales Agent) appointed by foreign airlines are taxable under 'Business Auxiliary Service'

2.2 'Air travel agent' means any person engaged in providing any service connected with the booking of passage for travel by air [Section 65(4)].	Hotel booking under Tour Operator Service ***Valuation*** Tax on commission not on airfare Option to pay service tax @ 0.60% of basic fare in case of domestic booking and @ 1.20% of the basic fare in case of international bookings, of passage for travel by air, during any calendar month, plus education cess @ 2% and SAH education cess @ 1%. Option cannot be changed during a financial year [Rule 6(7)] ***Other issues*** *Accounting Code - Service Tax* : **00440032.** *Payment of interest, penalty, etc.* : **00440033.** *Rule for determining export or import of service* : **3(*ii*)**

3 Architect's Services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 16-10-1998	***What is covered*** Designing or planning of construction of buildings, bridges, dams etc. Services concerning planning, design or beautification of

What is liable to tax **3.1** Any service provided or to be provided to any person, by an architect [see **3.2**] in his professional capacity in any manner [Section 65(105)(p)] **3.2** "Architect" means any person whose name is, for the time being, entered in the register of architects maintained under section 23 of the Architects Act, 1972 and also includes any commercial concern engaged in any manner, whether directly or indirectly, in rendering services in the field of architecture [Section 65(6)]	spaces. ***What is not covered?*** Actual execution of work is not Architect's service. ***Valuation*** No service tax is payable on supply of materials, items of furniture or decoration. ***Other issues*** *Accounting Code - Service Tax* : **00440072.** *Payment of interest, penalty, etc.* : **00440073.** *Rule for determining export or import of service* : **3(*ii*)**

4 Authorised Service Station's Services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax

When the tax was levied	What is covered
16-7-2001 and scope expanded later. ***What is liable to tax*** **4.1** Any service provided or to be provided to any person, by an authorised service station [see **4.2**], in relation to any service, repair, reconditioning or restoration of motor cars [see 4.3], light motor vehicles [see 4.4] or two wheeled motor vehicles, in any manner [section 65(105)(zo)] **4.2** "Authorised service station" means any service station, or centre, authorised by any motor vehicle manufacturer, to carry out any service, repair, reconditioning or restoration of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer [Section 65(9)] **4.3** 'Motor car' means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage [Section 65(72) read with MV Act]. (It would cover cars, jeep or vans). **4.4** Light Motor Vehicle (LMV) means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, *excluding* the driver [section 65(62)]. **4.5** 'Motor vehicle' means any mechanically propelled vehicle adapted for use upon roads, whether the power or propulsion is transmitted thereto from internal or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle run on fixed rails or a vehicle of special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding thirty five cubic centimeters [section 65(73) read with section 2(28) of MV Act].	Any service, repair, reconditioning or restoration of motor car, LMV, two wheelers Free services during warranty for which reimbursement is obtained from manufacturers ***What is not covered?*** Service provided at the time of purchase of new vehicle. Free services at the time of sale for which no payment received. Service to transport vehicle, LMV for carrying goods, buses, trucks, excavator, omnibus, road-roller, tractor, or invalid carriage. ***What is covered under different head?*** Commission or rent paid by finance or insurance companies to vehicle dealers under BAS or renting of immovable property as the case may be. ***Valuation*** No service tax on sale of spare parts Cost of paint used in painting or consumables is includible in 'value' (i.e. no deduction) ***Other issues*** *Accounting Code - Service Tax* : **00440181.** *Payment of interest, penalty, etc.* : **00440182.** *Rule for determining export or import of service* : **3(*ii*)**

5

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 16-7-2001 and scope expanded later. ***What is liable to tax*** **5.1** Any service provided or to be provided to any person, by a banking company or a financial institution including NBFC, or any other body corporate or commercial concern, in relation to banking and other financial services [see **5.3**] [section 65(105)(zm)] **5.2** Any service provided or to be provided to any person, by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorised money changer (other than those covered in para 5.1) [Section 65(105)(zzk)] **5.3** "Banking and other financial services" means - (*a*) the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern, namely - (*i*) Financial leasing services including equipment leasing and hire-purchase. *Explanation.* – For the purposes of this item, "financial leasing" means a lease transaction where– (i) contract for lease entered into between two parties for leasing of a specific asset (ii) such contract is for use and occupation of the asset by the lessee (iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and (iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment (*ii*) (Omitted) (*iii*) Merchant banking services; (*iv*) Securities and foreign exchange (forex) broking; and purchase or sale of foreign currency including money changing (*v*) Asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services (*vi*) Advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy; (*vii*) Provision and transfer of information and data	***What is covered*** All services as specified in para **5.3** (see left column). These cover financial leasing, merchant banking, foreign exchange broking, asset management, advisory and other auxiliary financial services, banker to an issue, lending, DD, LC, money transfer, bank guarantee, bill discounting, safe vaults, operation of bank accounts. Cash management Back commission, loan application processing charges. Cooperative Banks liable. ***What is not covered?*** Hire purchase taxable but not hire purchase finance. As per Board circular, Simple chit funds not taxable but business chit funds taxable. This circular has been squashed by AP High Court. No service tax on entry and exit load charged by mutual fund to the investor [now, as per SEBI, no entry load w.e.f. 1-8-2009] Basic postal services not covered but courier, insurance or agency services taxable. ***What is covered under different head?*** Operating lease or hire taxable under 'supply of tangible goods for use' service. ***Valuation*** Option to pay service tax calculated at the rate of 0.25% of the gross amount of foreign currency exchanged [Rule 6(7B)]. ***Exemptions*** Services provided to Government for tax collection exempt - Notification No. 13/2004-ST dated 10-9-2004. Services provided by RBI exempt – Notification No. 22/2006-ST dated 31-5-2006 (services provided *to* RBI are not exempt) No service tax on interest on loans **-** rule 6(2)(iv) Interest on overdraft, cash credit facility and discounting of bills/bills of exchange/cheques is exempt - Notification No. 29/2004-ST dated 29-9-2004

processing; (*viii*) Banker to an issue services; (*ix*) Other financial services namely, lending; issue of pay order, demand draft, cheque, letter of credit and bill of exchange; transfer of money including telegraphic transfer, mail transfer and electronic transfer, providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults; operation of bank accounts. (*b*) foreign exchange broking and purchase or sale of foreign currency, including money changing provided by a foreign exchange broker or an authorised dealer in foreign exchange or an authorised money changer, other than those covered under sub-clause (a) *Explanation*.— For the purposes of this clause, it is hereby declared that 'purchase or sale of foreign currency, including money changing' includes purchase or sale of foreign currency, whether or not the consideration for such purchase or sale, as the case may be, is specified separately [Section 65(12)]	Tax on financial leasing only on 10% of interest plus management fee, processing fee, documentation charges and administration charges - Notification No. 4/2006-Service Tax dated 1.3.2006. Tax on service of business chit fund is payable on 70% of value - Notification No. 1/2006-ST dated 27-5-2008 [The levy has been squashed by AP HC] Inter-bank transactions of purchase and sale of foreign currency are exempt from service tax w.e.f. 7-7-2009, when undertaken by scheduled banks – Notification No. 19/2009-ST dated 7-7-2009. ***Other issues*** Invoice need not be serially numbered and name and address of person receiving service need not be mentioned [*proviso* to rule 4A(1) of Service Tax Rules] *Accounting Code - Service Tax* : **00440173.** *Payment of interest, penalty, etc.* : **00440174.** *Rule for determining export or import of service* : **3(*iii*)**

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied	***What is covered***
1-7-2003 and scope expended later. Commission agent taxable w.e.f. 9-7-2004.	Services as specified in para 6.2 [see left] like promotion or marketing of goods or services, customer care service, procurement of goods or services for client, production or processing of goods (which is not 'manufacture'), providing service on behalf of client and specified incidental services.
What is liable to tax	Service of commission agents.
6.1 Any service provided or to be provided to a client, by *any person* in relation to business auxiliary service [see **6.2**] [section 65(105)(zzb)].	Purchase agents.
6.2 'Business auxiliary service' means any service in relation to —	Sale of lottery tickets (issue is debatable)
(*i*) Promotion or marketing or sale of goods produced or provided by or belonging to the client; or	Celebrities acting as Brand ambassadors [ordinary models may not be covered]
(*ii*) Promotion or marketing of service provided by the client; *Explanation*.— For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "service in relation to promotion or marketing of service provided by the client" includes any service provided in relation to promotion or marketing of games of chance, organised, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo or	Processing of loan papers and verifying documents for Bank [contrary decision that service to Bank of analyzing credentials of customers who approached them for retail finance is not taxable] Call centers and transcription centres. Sub-contractor providing service on behalf of client. Commission of mutual fund agents.
(*iii*) any customer care service provided on behalf of the client; or	Commission paid to auto dealers by finance companies and NBFC.
(*iv*) procurement of goods or services, which are inputs for the client; or *Explanation* - For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client	*Del credere* agent. Back office processing relating to sale, production or marketing.
(*v*) production or processing of goods for, or on behalf of, the client; or	Bottling and packing of liquor is manufacture but goods are to 'excisable' and hence service tax is payable.
(*vi*) provision of service on behalf of the client; or	
(*vii*) a service incidental or auxiliary to any activity specified in sub-clauses (*i*) to (*vi*), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,	***What is not covered?*** Job work if it amounts to 'manufacture' of 'excisable goods' is not taxable, even if not done under Cenvat provisions
and *includes* services as a commission agent, but does	Commission paid by company to its directors (even if linked with performance or with financial results of the

not include *any activity that amounts to manufacture of excisable goods* and *includes* services as a commission agent, but does not include any activity that amounts to "manufacture" within the meaning of clause (*f*) of section 2 of the Central Excise Act, 1944 *Explanation* - For the removal of doubts, it is hereby declared that for the purposes of this clause,— (*a*) "Commission agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person — (i) deals with goods or services or documents of title to such goods or services; or (ii) collects payment of sale price of such goods or services; or (iii) guarantees for collection or payment for such goods or services; or (iv) undertakes any activities relating to such sale or purchase of such goods or services. (*b*) -- Omitted [Section 65(19)]	company) not taxable. Same principle will apply to commission paid to salesmen. Service of collection of blood samples and sending the same to principal lab. Dharamkanta i.e. issuing weighment slip is not Business Auxiliary Service. Purchase and sale of goods. Ginning and pressing of cotton. Contract hatching of eggs. Trading in service is not provision of service. ***What is covered under different head?*** Collection of bills may be covered under Recovery Agent's service Packaging will get covered under 'Packaging Activity' service. Stock Exchanges, commodity exchanges, stock clearing house services taxable under different head. ***Valuation*** Tax payable on gross value of services ***Exemptions*** Following services in relation to ***agriculture, printing, textile processing or education*** are fully exempt - (a) procurement of goods or services, which are inputs for the client; or (b) production or processing of goods for, or on behalf of, of the client; or (c) provision of service on behalf of the client; or (d) service incidental or auxiliary to any activity specified in sub-clauses (a) to (c) above [Notification No. 14/2004-ST dated 10-9-2004]. Job work exempt if the goods after processing are returned back to client (raw material supplier) for use in or in relation to manufacture of 'other goods' by the client. The 'other goods' should be such that appropriate duty should be payable on such goods - Notification No. 8/2005-ST dated 1-3-2005. Job workers of parts and accessories of cycles, cycle rickshaws and hand operated sewing machines have to pay service tax is payable on 70% of gross amount if gross amount is inclusive of cost of inputs and input services. The 'exemption' is available if job worker does not avail any Cenvat Credit – Notification No. 1/2006-ST dated 1-3-2006. Services of commission agents in relation to sale or purchase of agricultural produce are exempt - Notification No. 13/2003-ST dated 20-6-2003.

	Job work done in gem, jewellery and diamonds sector are exempt - Notification No. 21/2005-ST dated 7-6-2005. ***Job work in respect of pharmaceutical products exempted -*** Exemption has been granted to business auxiliary services in relation to manufacture of pharmaceutical products, medicines, perfumery, cosmetics or toilet preparations containing alcohol which are charged to excise duty under Medial and Toilet Preparations (Excise Duties) Act, 1955 have been fully exempted from service tax - Notification No. 32/2009-ST dated 1-9-2009. ***Sub-broker on stock exchange exempted from BAS*** - Services of sub-broker are not liable under 'stock broker' service w.e.f. 1-9-2009. They have also been exempted under Business Auxiliary Service also *vide* Notification No. 31/2009-ST dated 1-9-2009. Thus, they are completely out of service tax net. ***Other issues*** *Accounting Code - Service Tax* : **00440225.** *Payment of interest, penalty, etc.* : **00440226.** *Rule for determining export or import of service* : **3(*iii*)**

7

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 1-5-2006. ***What is liable to tax*** **7.1** Any service provided or to be provided; to any person, by any other person, in relation to support services of business or commerce [see **7.2**], in any manner [Section 65(105)(*zzzq*)] **7.2** "Support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing. *Explanation* -For the purposes of this clause, the expression 'infrastructural support services' includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security [Section 65(104c)].	***What is covered*** BPO type services Infrastructure support Business Centers. Services provided by shipping companies to postal department of mail handling. Service of distribution of electricity (issue is arguable). ***What is not covered?*** Legal services not taxable Screening of movie by theatre owner is not a support service Contract hatching of eggs not taxable. Only support or assistance activity covered, independent activity on its own accord not taxable under this head. ***Other issues*** *Accounting Code - Service Tax* : **00440366.** *Payment of interest, penalty, etc.* : **00440367.** *Rule for determining export or import of service* : **3(*iii*)**

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 16-8-2002. ***What is liable to tax*** **8.1** Any service provided or to be provided to any person, by a cargo handling agency in relation to cargo handling services [see **8.2**] [Section 65(105)(zr)] **8.2** 'Cargo handling service' means loading, unloading, packing or unpacking of cargo and includes,— (*a*) cargo handling services provided for freight in special containers or for noncontainerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and (*b*) service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking, but does not include, handling of export cargo or passenger baggage or mere transportation of goods [section 65(23)]	***What is covered*** Cargo handling for freight, services in container freight terminal, CFS, packing with transportation Movers and packers service. ***What is not covered?*** Handling of export cargo or passenger baggage Mere handling of coal or iron ore in mines is not 'cargo handling' [May be taxable under mining service]. Stevedoring (loading and unloading) in port is cargo handling service and not port service. If it is for export goods, there is no service tax. Material loading and unloading incidental to transport of goods is not 'cargo handling'. Cargo handling in port is 'cargo handling service' and not 'port service' ***What is covered under different head?*** Mere transportation is under Goods Transport Agency (GTA) service. Supply of labour will be under manpower recruitment and supply service. Storage of empty containers will be taxable under 'Storage and Warehousing Service'. ***Valuation*** Tax not on transportation charges if charged on actual basis [strong *prima facie* view of Tribunal] ***Exemptions*** Cargo handling services relating to agricultural produce or goods intended to be stored in a cold storage are exempt - Notification No. 10/2002-ST dated 16-8-2002. ***Other issues*** *Accounting Code - Service Tax* : **00440189.** *Payment of interest, penalty, etc.* : **00440190.** *Rule for determining export or import of service* : **3(*ii*)**

9

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied	***What is covered***
16-6-2005.	Cleaning services such as disinfecting, exterminating or sterilising of objects or premises provided to commercial or industrial building or premises.
What is liable to tax	***What is not covered?***
9.1 Any service provided or to be provided to any person, by any other person, in relation to cleaning activity [see **9.2**] [section 65(105)(zzzd)].	Cleaning of goods i.e. movable property.
9.2 "Cleaning activity" means cleaning, including specialised cleaning services such as disinfecting, exterminating or sterilising of objects or premises, of — (i) commercial or industrial buildings and premises thereof; or (ii) factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof, - - but does not include such services in relation to agriculture, horticulture, animal husbandry or dairying [Section 65(24b)]	Cleaning of residential buildings and premises. Cleaning services in relation to agriculture, horticulture, animal husbandry or dairying ***Other issues*** *Accounting Code - Service Tax* : **00440318.** *Payment of interest, penalty, etc.* : **00440319.** *Rule for determining export or import of service* : **3(*ii*)**

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied	***What is covered***
16-7-1997.	Both clearing and forwarding operations required. Only clearing or only forwarding service is not sufficient.
What is liable to tax	Receiving goods, warehousing and dispatch, preparing invoices on behalf of Principal.
10.1 Any service provided or to be provided to any person, by a clearing and forwarding agent (see **10.2**) in relation to clearing and forwarding operations in any manner [Section 65(105)(j)].	Services of coal merchants, who are acting as buyer's agents Providing marketing and product support services.
10.2 "Clearing and forwarding agent" means any person who is engaged in providing any service, either directly or indirectly, connected with clearing and forwarding operations in any manner to any other person and includes a consignment agent [Section 65(25)].	***What is not covered?*** Consignment Agent, who has right to sale goods on behalf of Principal, is not C&F Agent (even if definition of C&F Agent includes 'consignment agent') [He may get covered under BAS] Simple buying and selling of goods. ***What is covered under different head?*** Service of ICD and CFS are taxable under 'storage and warehousing' services. Simple storage service is taxable under 'storage and

	warehousing' services. Mere procuring or booking orders for the Principal by an agent on commission basis would not be 'Clearing and forwarding Agent service'. It will go under BAS. Service of commission agent will be taxable under Business Auxiliary Service. ***Valuation*** Tax only on commission, not on reimbursable expenses like godown rent, loading/unloading, freight, telephone, rent, salary etc. ***Other issues*** *Accounting Code - Service Tax* : **00440045.** *Payment of interest, penalty, etc.* : **00440046.** *Rule for determining export or import of service* : **3(*ii*)**

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 16-6-2005. ***What is liable to tax*** **11.1** Any service provided or to be provided to its members, by any club or association [see **11.2**] in relation to provision of services, facilities or advantages for a subscription or any other amount [section 65(105)(zzze)]. **11.2** "Club or association" means any person or body of persons providing services, facilities or advantages, for a subscription or any other amount, to its members, but does not include— (i) any body established or constituted by or under any law for the time being in force; or (ii) any person or body of persons engaged in the activities of trade unions, promotion of agriculture, horticulture or animal husbandry; or (iii) any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature; or (iv) any person or body of persons	***What is covered*** Services, facilities or advantages to members of club or for a subscription or a charge. Holiday resort provide facility of accommodation to its members on time sharing basis. ***What is not covered?*** Association engaged in public service and which are of a charitable, religious or political nature are not taxable. 'Charitable purpose' includes relief to poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship. Body established by or under law, trade union, promotion of agriculture, horticulture or animal husbandry, press or media are not taxable.

associated with press or media [section 65(25a)].	Trade or industrial associations should not be taxable. ***Valuation*** Service tax will be payable on life membership fees. Amount charged for food or beverages is not taxable. ***Exemptions*** Services of housing societies or Resident Welfare Associations to their members are exempt if the monthly contribution is less than Rs 3,000 - Notification No. 8/2007-ST dated 01-03-2007. ***Other issues*** *Accounting Code - Service Tax* : **00440322.** *Payment of interest, penalty, etc.* : **00440323.** *Rule for determining export or import of service* : **3(*ii*)**
Statutory Definition of Service liable to tax	**Coverage & Service liable to tax**
When the tax was levied 1-7-2003. ***What is liable to tax*** **12.1** Any service provided or to be provided to any person, by a commercial training or coaching center [see **12.2**] in relation to commercial training or coaching [see **12.3**] [Section 65(105)(zzc)] **12.2** 'Commercial training or coaching centre' means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include pre-school coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force [section 65(27)]. **12.3** 'Commercial training or coaching' means any training or coaching provided by a commercial training or coaching centre [section 65(26)].	***What is covered*** Only private coaching or training services are covered. Computer training or coaching Institutes are liable to service tax. Coaching imparted to students of standards 1 to 9 taxable. Postal or interactive online coaching is taxable. ***What is not covered?*** Training or coaching is taxable – not 'education' which is broader. Teaching in Government recognised institutes will not be a taxable service. A society registered under Societies Act is not liable as it is not 'commercial' coaching institute and hence not taxable [Department has not accepted this view] Pre-school coaching not taxable. Training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law. Services provided by recognised colleges for training of competitive examinations or entrance tests not taxable. Home tuitions not taxable. Training provided by employer free not taxable but if

	outside agency provides service, it will be taxable. Continuous education programmes for professional development and/or creating awareness of latest developments but not to prepare the candidates or not to impart skills etc. is not commercial training. These are not taxable. ***What is covered under different head?*** ***Valuation*** Service tax is not payable on value of material supplied [Department has not accepted this view] ***Exemptions*** Commercial training which forms essential part of course leading to recognised certificate/diploma exempt - Notification No. 10/2003-ST dated 20-6-2003. Vocational and recreational training Institutes are exempt - Notification No. 24/2004-ST dated 10-9-2004. ***Other issues*** *Accounting Code - Service Tax* : **00440229.** *Payment of interest, penalty, etc.* : **00440230.** *Rule for determining export or import of service* : **3(*ii*)**

Statutory Definition of Service liable to tax	**Coverage & Service liable to tax**
When the tax was levied Tax on commercial or industrial construction service taxable w.e.f. 10-9-2004 and on residential complex w.e.f. 16-6-2005. ***What is liable to tax*** **13.1** Any service provided or to be provided to any person, by any other person, in relation to commercial or	***What is covered*** Industrial and commercial construction and construction of residential complex having ***more than*** 12 residential units (flats/houses) is taxable. Repairs, alteration, renovation of existing building is also subject to tax. Approved plan and municipal regulations to determine whether building is for commerce or industry**.**

industrial construction service [see **13.3**] [Section 65(105)(*zzq*)]

13.2 Any service provided or to be provided to any person, by any other person, in relation to construction of complex [see **13.4 and 13.5**] [section 65(105)(zzzh)]

13.3 *"*Commercial or industrial construction service" means— (a) construction of a new building or a civil structure or a part thereof; or (b) construction of pipeline or conduit; or (c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or (d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit,

which is— (i) used, or to be used, primarily for; or (ii) occupied, or to be occupied, primarily with; or (iii) engaged, or to be engaged, primarily in,

commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams [Section 65(25b)].

13.4 'Construction of complex' means— (a) construction of a new residential complex [see **13.5**] or a part thereof; or (b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or (c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex [Section 65(30a)]

13.5 "Residential complex" means any complex comprising of— (i) a building or buildings, having more than twelve residential units; (ii) a common area; and (iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, - - located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person. - - *Explanation* — For the removal of doubts, it is hereby declared that for the purposes of this clause,— (a) "personal use" includes permitting the complex for use as residence by another person on rent or without consideration (b) "residential unit" means a single house or a single apartment intended for use as a place of residence [Section 65(91a)].

Post construction stand alone services relating to completion or finishing are taxable.

Sub-contractors providing the construction services (to main contractor or to any other person) will be liable to service tax.

Repairs of roads is taxable? [The issue is arguable].

What is not covered?

Services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Construction of educational, religious, Government buildings etc. not taxable, as it is not commercial or industrial construction.

Residential complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person - "personal use" includes permitting the complex for use as residence by another person on rent or without consideration.

Construction by builder or developer for personal use of customer (even if it is in residential complex).

Construction of one house in residential complex is not taxable if direct contract given by individual for residential purposes to builder or developer.

Construction of single house or residential complex with 12 or less than 12 residential units is not taxable.

What is covered under different head?

If Vat/sales tax is payable on goods involved in the contract, the service will be classifiable under 'works contract' service tax.

Maintenance or management of immovable property has been made taxable under 'Maintenance or Repair Services'.

Valuation

Value is the gross value of taxable services.

However, any person providing taxable service of commercial or industrial construction or construction of complex can opt to pay service tax on 33% of gross amount charged. *This is at the option of service provider* This relaxation is *not* available if only completion and finishing services are provided - Notification No. 1/2006-ST dated 1-3-2006. The partial exemption is available only if the gross amount charged includes value of goods and materials supplied or provided or used by provider of the commercial or industrial construction of service for providing such service (*Explanation* to Notification No. 1/2006-ST]. However, value of land is not required to be added as it is neither goods nor material.

	This simple method is not available in case the service provider provides only completion and finishing services (as in such cases, material content will be much less). ***Exemptions*** Construction and works contract services relating to port or other port are exempt. However, services of completion and finishing, repair, alteration, renovation, restoration, maintenance or repair provided in relation to existing port or other port are not exempt - Notification No. 25/2007-ST dated 22-5-2007 ***Other issues*** *Commercial or Industrial Construction - Date of Introduction* : **10-9-2004.** *Accounting Code - Service Tax* : **00440290.** *Payment of interest, penalty, etc.* : **00440291.** *Construction of Residential Complex - Date of Introduction* : **16-6-2005** *Accounting Code - Service Tax* : **00440334.** *Payment of interest, penalty, etc.* : **00440335.** *Rule for determining export or import of service* (for both types of services) : **3(*i*)**

14

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied	***What is covered***

MBA (FINANCE) TIT BHOPAL,CFA(USA) LEVEL 1,NCFM,AMFI,CS(INTER)CA(INTER)
MY CONTACT NO- 9179982731

7-7-1997. ***What is liable to tax*** **14.1** Any service provided or to be provided; *to any person*, by a consulting engineer (see **14.2**) in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering including the discipline of computer hardware engineering *Explanation.*— For the purposes of this sub-clause, it is hereby declared that services provided by a consulting engineer in relation to advice, consultancy or technical assistance in the disciplines of both computer hardware engineering and computer software engineering shall also be classifiable under this sub-clause [Section 65(105)(g)]. **14.2** "Consulting engineer" means any professionally qualified engineer or any body corporate or any other firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to any person in one or more disciplines of engineering [Section 65(31)]	Technical assistance, training, software support are all 'taxable services' Services of Valuation taxable**.** Only services provided by qualified engineer taxable. ***What is not covered?*** Royalty payment for use of technology and know-how cannot be equated with any services provided by foreign collaborator. Hence, no service tax is payable on such royalty payment. Transfer of technical know-how is not a consulting engineering service. Contract should be predominantly consultancy contract. An indivisible contract cannot be vivisected. Sale of drawings is sale of goods and not service. Contract for execution of a project is not consulting engineering service. Execution services are not covered under this head. Design and development of moulds for manufacture of parts required by customer is not 'service rendered by consulting engineer'. Contract for Operations and Maintenance of plant is not Management Consultancy service or consulting engineering service. ***Exemption*** Cess is payable under section 3 of Research and Development Cess Act, 1986, on transfer of technology. If such cess is payable, the consulting engineer will be granted exemption from service tax to the extent of cess paid - Notification No. 18/2002-ST dated 16-12-2002. Thus, if value of service is Rs 100, tax payable is Rs 12 and cess paid is Rs 5, net service tax actually payable will be Rs 7. ***Other issues*** *Accounting Code - Service Tax* : **00440057.** *Payment of interest, penalty, etc.* : **00440058.** *Rule for determining export or import of service* : **3(*iii*)**

14A

Statutory Definition of Service liable to tax	**Coverage & Service liable to tax**
When the tax was levied 1-9-2009. ***What is liable to tax*** **14A.1** Any service provided or to be provided to any person, by any other person, in relation to cosmetic surgery or plastic surgery is a taxable service, but does not include any surgery undertaken to restore or reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, degenerative diseases, injury or trauma [section 65(105)(zzzzk)]	***What is covered*** Cosmetic surgery and plastic surgery undertaken to preserve or enhance physical appearance or beauty Abdominoplasty (tummy tuck); bletharoplasty (eyelid surgery); mammoplasty; buttock augmentation and lift; rhinoplasty (reshaping of nose); otoplasty (ear surgery); Rhytidectomy (face lift); liposuction (removal of fat from the body); brow lift; cheek augmentation; facial implants; lip augmentation; forehead lift; cosmetic dental surgery; orthodontics; aesthetic dentistry; laser skin surfacing etc. ***What is not covered?*** Normal medical services Reconstructive surgery undertaken to restore one's appearance, anatomy or bodily functions affected due to congenital defects, developmental abnormalities, degenerative diseases, injury or trauma etc. These processes could be undertaken to correct impairment caused by burns, fractures or congenital abnormalities like cleft lip etc. ***Other issues*** *Rule for determining export or import of service* : **3(*iii*)**
	Coverage & Service liable to tax

Statutory Definition of Service liable to tax	
When the tax was levied 1-11-1996. What is liable to tax **15.1** Any service provided or to be provided *to any person*, by a courier agency (see **15.2**) in relation to door-to-door transportation of time sensitive documents, goods (see **15.3**) or articles [Section 65(105)(f)] **15.2** "Courier agency" means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles [Section 65(33)] **15.3** 'Goods' has the meaning assigned to it in section 2(7) of Sale of Goods Act [section 65(50)].	***What is covered*** Door-to-door transportation of time sensitive documents, goods or articles. 'Angadias' who provide courier services are liable to pay service tax Co-loaders i.e. persons providing services to courier liable (earlier circular withdrawn). Transporters who are rendering "Express Cargo Service" for door delivery will be held as taxable since they deliver goods on 'time sensitive' basis on door to door basis. ***What is not covered?*** Basic postal services not taxable. However, courier services (Speed Post), insurance services (Postal Life Insurance), agency or intermediary services on commission basis which are also provided by other commercial organizations, are taxable - Ref Code 999.02/23.8.07 of CBE&C Circular No. 96/7/2007-ST dated 23-8-2007. ***What is covered under different head?*** Money transfer through courier will get covered under Banking and other Financial Services. ***Franchisee not eligible for small service provider's exemption*** If courier service is provided through franchise, the franchisee may not be eligible for exemption available to small service providers as he is providing service under brand name of other. ***Export and import of service*** It is 'export of service', but not exempt as payment is received in Indian Rupees. It is also 'import of service' since partly performed in India. ***Other issues*** *Accounting Code - Service Tax* : **00440014.** *Payment of interest, penalty, etc.* : **00440018.** *Rule for determining export or import of service* : **3(*ii*)**

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 15-6-1997. ***What is liable to tax*** **16.1** Any service provided or to be provided *to any person*, by a custom house agent (see **16.2**) in relation to the entry or departure of conveyances or the import or export of goods [section 65(105)(h)] **16.2** "Custom house agent" means a person licensed, temporarily or otherwise, under the regulations made under section 146(2) of the Customs Act, 1962 [Section 65(35)].	***What is covered*** Only services in relation to 'entry or departure of conveyances or the import or export of goods' will be taxable. ***What is not covered?*** Expenses incurred on behalf of client. ***Valuation*** Activity of CHA relates to entry or departure of conveyances or import or export of goods any customs station. It cannot extend beyond it. Charges collected for freight, cartage, MSIL/JWG charges, examination charges, DO fees, Bill of Lading fee, CFS charges, storage and handling etc. do not pertain to CHA service. In case of charges collected by CHA for activities not related to CHA, he is not liable to pay service tax. Even if he earns profit on these activities, it is not includible in value of CHA services. Payments made by CHA on behalf of client such as statutory levies (cess, customs duties, port dues etc.) and various reimbursable expenses are not to be included for computing service tax. ***Other issues*** *Accounting Code - Service Tax* : **00440026.** *Payment of interest, penalty, etc.* : **00440027.** *Rule for determining export or import of service* : **3(*ii*)**

17 Erection, Commissioning and Installation

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 1-7-2003 and scope expanded later. ***What is liable to tax*** **17.1** Any service provided or to be provided to any person, by a commissioning and installation agency (see **17.2**) in relation to erection, commissioning or installation (see **17.3**) [Section 65(105)(zzd)] **17.2** 'Commissioning and installation agency' means any agency providing service in relation to erection, commissioning or installation [section 65(29)]. **17.3** "Erection, commissioning or installation" means any service provided by a commissioning and installation agency, in relation to,— (*i*) erection, commissioning or installation of plant, machinery, equipment or structures, whether prefabricated or otherwise; or (*ii*) installation of— (a) electrical and electronic devices, including wirings or fittings therefor; or (b) plumbing, drain laying or other installations for transport of fluids; or (c) heating, ventilation or air-conditioning including related pipe work, ductwork and sheet metal work; or (d) thermal insulation, sound insulation, fire proofing or water proofing; or (e) lift and escalator, fire escape staircases or travelators; or (f) such other similar services [Section 65(39a)	***What is covered*** Erection, commissioning or installation of plant, machinery, electrical devices, plumbing, insulation, lifts and similar services. Service will cover all electrical contractors and plumbers. However, general wiring may not be taxable, since only wiring relating to electrical and electronic devices is covered. 'Fluid' includes water and hence ordinary plumbing will also get covered. ***What is not covered?*** If Vat/sales tax is payable on goods involved in the contract, the service will be classifiable under 'works contract' service tax. Erection of Civil Structure not taxable under this head. Laying of pipeline is not activity of erection. It is not setting up a pipeline but constructed one. Long distance pipeline is not a 'plant'. Hence, laying of pipeline is not taxable under this head. ***Valuation*** Value of erection, commissioning or installation may, *at the option of assessee*, be taken as 33% of gross amount of contract and service tax will be payable accordingly, if he does not avail any Cenvat credit. The gross amount charged will include value of plant, machinery, equipment, structures, parts and other material sold - Notification No. 1/2006-ST dated 1-3-2006. Service tax is payable even if excise duty paid on entire value of contract including erection charges. ***Other issues*** *Accounting Code - Service Tax* : **00440233.** *Payment of interest, penalty, etc.* : **00440234.**

	Rule for determining export or import of service : **3(*ii*)**

18 Franchise Services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 1-7-2003 and scope expanded later. ***What is liable to tax*** **18.1** Any service provided or to be provided to a franchisee, by the franchisor (see **18.2**) in relation to franchise (see **18.3**) [Section 65(105)zze)] **18.2** 'Franchisor' means any person who enters into franchise with a franchisee and includes any associate of franchisor or a person designated by franchisor to enter into franchise on his behalf and the term 'franchisee' shall be construed accordingly [section 65(48)]. **18.3** "Franchise" means an agreement by which the franchisee is granted representational right to sell or manufacture goods (see **18.4**) or to provide service or undertake any process identified with franchisor, whether or not a trademark, service mark, trade name or logo or any such symbol, as the case may be, is involved [Section 65(47)] **18.4** 'Goods' has the meaning assigned to it in section 2(7) of Sale of Goods Act. [section 65(50)].	***What is covered*** Some well known examples of franchise are - Coca-Cola, Pepsi, NIIT, Aptech, McDonald etc. If vocational training is provided through franchisee, the service will be taxable under 'franchisee service'. License Production Agreements where principal allows production of goods bearing his brand name by another person would be covered. If rights are granted for rendering services identified with the principal on his behalf, such services by the principal to the service recipient would be taxable. If courier service is provided through franchise, the franchisee will not be eligible for exemption available to small service providers as he is providing service under brand name of other. ***Other issues*** *Accounting Code - Service Tax* : **00440237.** *Payment of interest, penalty, etc.* : **00440238.** *Rule for determining export or import of service* : **3(*iii*)**

19 Information Technology Software Service

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 16-5-2008. ***What is liable to tax*** **19.1** Any service provided or to be provided to any person, by any other person in relation to information technology software (see **19.2**) for use in the course, or furtherance, of business or commerce, including,— (*i*) development of information technology software, (*ii*) study, analysis, design and programming of information technology software, (*iii*) adaptation, upgradation, enhancement, implementation and other similar services related to information technology software, (*iv*) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the start-up phase of a new system, specifications to secure a database, advice on proprietary information technology software (*v*) providing the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology	***What is covered*** Almost all services in relation to IT software are covered in the definition. ***What is covered under other heads?*** Some services relating to software will get covered under other heads like commercial coaching, consulting engineer, technical inspection/certification, maintenance and repair, Management Consultancy, Internet Telecommunication, Business Auxiliary Service etc. ***Whether service tax can be levied on IT software as such?*** Software, branded as well as tailor made, has been held as goods by Supreme Court. It is also specified as 'goods' in both Central Excise and Customs Tariff. Many States are imposing Vat on sale of branded as well as unbranded software. The issue is whether 'development of information technology software' itself is a taxable service or 'service in relation to development of information technology software' is a taxable service. ***Service tax if software downloaded from internet*** If software is downloaded from internet from abroad, it will be 'import of service' and service tax will be payable by recipient under reverse charge method, except in cases where recipient is an individual and he can establish that the downloaded software is not for business and commerce - confirmed in para 4.1.5 of

software products (*vi*) providing the right to use information technology software supplied electronically [section 65(105)(zzzze)] **19.2** "Information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment [section 65(53a)] [The words 'acquiring' in sub-clauses (v) and (vi) above were replaced by the word '*providing*' with retrospective effect from 16—5-2009. This is only a correction of drafting mistake].	CBE&C TRU letter F. No.334/1/2008-TRU dated 29-2-2008. ***Valuation*** Service tax is payable on gross value of services. If IT software is supplied, Even assuming that service tax is payable, deduction is available of value of goods. Hence, 'value' should be 'Nil'. ***Other issues*** *Accounting Code - Service Tax* : **00440452.** *Payment of interest, penalty, etc.* : **00440450.** *Rule for determining export or import of service* : **3(*iii*)**

20 Intellectual Property Services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 10-9-2004. ***What is liable to tax*** **20.1** Any service provided or to be provided to any person, by the holder of intellectual property right (see **20.2**), in relation to intellectual property service (see **20.3**) [Section 65(105)(zzr)] . **20.2** "Intellectual property right" means any right to intangible property, namely, trademarks, designs, patents or any other similar intangible property, under any law for the time being in force, but does not include copyright [Section 65(55a)] **20.3** 'Intellectual property service' means, - (*a*) transferring temporarily; or (*b*) permitting the use or enjoyment of, any intellectual property right [Section 65(55b)]	***What is covered*** Transferring temporarily; or permitting the use or enjoyment of, any intellectual property right. Brand licensing by brand name owner. ***What is not covered?*** Copyright service is excluded. Permanent transfer of Intellectual Property is not taxable. Technical know-how (which is not patented) should not be taxable under this head. ***Exemption*** Cess is payable under section 3 of Research and Development Cess Act, 1986, on transfer of technology. If such cess is payable, the holder of intellectual property right will be granted exemption from service tax to the extent of cess paid. - Notification No. 17/2004-ST dated 10-9-2004. Thus, if value of service is Rs 100, tax payable is Rs 12 and cess paid is Rs 5, net service tax actually payable will be Rs 7. ***Other issues***

	Accounting Code - Service Tax : **00440278.** *Payment of interest, penalty, etc.* : **00440279.** *Rule for determining export or import of service* : **3(*iii*)**

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 16-10-1998. ***What is liable to tax*** **21.1** Any service provided or to be provided to any person, by an interior decorator (see **21.2**) in relation to planning, design or beautification of spaces, whether manmade or otherwise, in any manner [Section 65(105)(q)] **21.2** "Interior Decorator" means any person engaged, whether directly or indirectly, in the business of providing by way of advice, consultancy, technical assistance or in any other manner, services relating to planning, design or beautification of spaces whether manmade or otherwise and includes a landscape designer [Section 65(59)]	***What is covered*** Planning, design or beautification of spaces Advice, consultancy, technical assistance relating to planning, design or beautification of spaces Landscape designing. Vastu/Feng shui consultants ***What is not covered?*** No tax on manufacture of furniture, execution of civil work etc. ***Valuation*** No tax on material, furniture, and temporary structures. ***Other issues*** *Accounting Code - Service Tax* : **00440076.** *Payment of interest, penalty, etc.* : **00440077.**

	Rule for determining export or import of service : **3(*i*)**

21A LEGAL CONSULTANCY SERVICE

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 1-9-2009. ***What is liable to tax*** **21A.1** Any service provided or to be provided to a business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner , is a 'taxable service': *Provided* that any service provided by way of appearance before any court, tribunal or authority shall not amount to taxable service. *Explanation.*—For the purposes of this sub-clause, "business entity" includes an association of persons, body of individuals, company or firm, but does not include an individual.	***What is covered*** Advice, consultancy or assistance in any branch of law, in any manner by law firms. ***What is not covered?*** Any service of appearance before any court of law or any statutory authority. ***Service provided by or to individual.*** ***Other issues*** *Rule for determining export or import of service* : **3(iii)**

22

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 1-7-2003 scope expanded later. ***What is liable to tax*** **22.1** Any service provided or to be provided to any person, by any person in relation to management, maintenance or repair (see **22.2**) [Section 65(105)(zzg)] **22.2** "Management, maintenance or repair" means any service provided by— (i) any person under a contract or an agreement; or (ii) a manufacturer or any person	***What is covered*** Services provided during the warranty period by the dealer or any other authorized person is taxable. Software maintenance is taxable. AMC contracts taxable. Service to customers on behalf of manufacturer during warranty taxable when charges paid by manufacturer of OE equipment. ***What is not covered?***

authorised by him, - - in relation to, — (a) management of properties, whether immovable or not (b) maintenance or repair of properties whether immovable or not; or (c) maintenance or repair including reconditioning or restoration, or servicing of any goods (see **22.3**) or equipment, excluding motor vehicle. *'Explanation.*– For the removal of doubts, it is hereby declared that for the purposes of this clause - (a) "goods" includes computer software (b) 'properties' includes information technology software [Section 65(64)]. **22.3** 'Goods' has the meaning assigned to it in section 2(7) of Sale of Goods Act. [section 65(50)].	Services to motor vehicles not taxable under this head This service cannot be got covered under 'works contract service'. Operation and Maintenance (O&M) contract is not taxable, as per Tribunal decisions. ***Repairs of roads, airports taxable?*** Road repairs are taxable as per Board circular. However, this has been specifically excluded from 'construction services'. Hence. It is doubtful if these can be taxed under this head. ***What is covered under different head?*** Maintenance charges collected by housing society/Resident Welfare Association can get covered under club or association service, but exempt if chares upto Rs 3,000 per month. ***Valuation*** Service tax is not payable on value of material. However, in case of AMC contracts, it is difficult to find value of material. In *Wipro GE Medical Systems* v. *CST* (2009) 18 STT 508 (CESTAT), assessee had adopted 30% of total contract towards value of services. This was considered as reasonable [However, there is no statutory provision to support such valuation]. ***Other issues*** *Accounting Code - Service Tax* : **00440245.** *Payment of interest, penalty, etc.* : **00440246.** *Rule for determining export or import of service* : **3(*ii*)**

23 Management or business Consultant's Services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 16-10-1998, scope elaborated later. ***What is liable to tax*** **23.1** Any service provided or to be provided to any person, by a management or business consultant in connection with the management of any organisation or business in any manner [Section 65(105)(r)]	***What is covered*** Service in connection with the management of any organisation or business. ERP software consultancy taxable. No qualification is required.. ***What is not covered?*** Executory services would not fall under 'consultancy

23.2 "Management or *business* consultant" means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organisation or *business* in any manner and includes any person who renders any advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management [Section 65(65)]	services'. Services of supervision and implementation is not a consulting service. Operation and Maintenance (O&M) contract is not Management Consultancy service. Maintenance of labour records by industrial law practitioners. ***What is covered under different head?*** Services rendered in relation to merger and acquisition will be taxed under Banking and other Financial services. ***Other issues*** *Accounting Code - Service Tax* : **00440116.** *Payment of interest, penalty, etc.* : **00440117.** *Rule for determining export or import of service* : **3(*iii*)**

24 Mandap Keeper's Services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 1-7-1997. ***What is liable to tax*** **24.1** Any service provided or to be provided to any person, by a mandap keeper (see **24.2**) in relation to the	***What is covered*** Social function includes marriage and taxable Service provided as a caterer are included Services of hotel or restaurant will be taxable if it provides 'mandap' services.

use of a mandap (see **24.3**) in any manner including the facilities provided or to be provided to such person in relation to such use and also the services, if any, provided or to be provided as a caterer (see **24.4**) [Section 65(105)(m)] **24.2** "Mandap keeper" means a person who allows temporary occupation of a mandap for consideration for organising any official, social or business function. *Explanation*.–For the purposes of this clause, social function includes marriage [Section 65(67)] **24.3** "Mandap" means any immovable property as defined in section 3 of the Transfer of Property Act, 1882 (see **24.5**) and includes any furniture, fixtures, light fittings and floor coverings therein let out for consideration for organising any official, social or business function. *Explanation*.– For the purposes of this clause, social function includes marriage [Section 65(66)] **24.4** "Caterer" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion [Section 65(24)] **24.5** 'Immovable property' does not include timber, growing crops or grass. [Section 3 of Transfer of Property Act]	***What is not covered?*** Political meetings, film shooting is not social function and not taxable. Drama and music performances whether covered – there are contrary views. ***What is covered under different head?*** If it is temporary structure, service will be taxed under Pandal or Shamiana Contractor's Service. Renting of art gallery will get covered under Business Exhibition Service. ***Valuation*** If the mandap keeper provides catering services also and if his bill indicates that his bill is inclusive of charges for catering services, he has to pay service tax only on 60% of his gross charges to client, if he does not avail Cenvat credit. Catering service means supply of substantial meal - Notification No. 1/2006-ST dated 1-3-2006. High tea or unlimited breakfast is 'substantial meal'. No tax on general donations received. ***Exemption*** Use of precincts of a religious place as *mandap* is exempted from service tax - notification No. 14/2003-ST dated 20-6-2003. ***Other issues*** *Accounting Code - Service Tax* : **00440035.** *Payment of interest, penalty, etc.* : **00440036.** *Rule for determining export or import of service* : **3(*ii*)**

25 Manpower Recruitment or Supply Agency's services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 7-7-1997.	***What is covered*** Academic/educational institutes providing recruitment services are taxable.

What is liable to tax

25.1 Any service provided or to be provided to any person, by a manpower recruitment or supply agency (see **25.2**) in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner - *Explanation*.—For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, recruitment or supply of manpower includes services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and authenticity of documents submitted by the candidate [Section 65(105)(k)]

25.2 "Manpower recruitment or supply agency" means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person [Section 65(58)]

Services of labour contractors are taxable.

Service of providing employees of Agency to business or industrial organizations for a specific period is taxable.

Pre-recruitment services also covered.

What is not covered?

No service tax if employees hired directly without intermediary

Execution of work on contract basis is not manpower supply service.

Mere charge on man-hour basis does not mean it is manpower supply service.

Valuation

Service tax is to be charged on the full amount of consideration for the supply of manpower, whether full-time or part-time. The value includes recovery of staff costs from the recipient e.g. salary and other contributions. For example, if labour charges are Rs. 1,00,000, provident fund, ESIC etc. towards the labour is Rs. 10,000 and service charges for procuring labour are (say) Rs. 12,000, service tax should be payable only on Rs. 1,22,000 (Issue is arguable).

No tax on reimbursement of expenses incurred on behalf of Principal.

Other issues

Accounting Code - Service Tax : **00440060.** *Payment of interest, penalty, etc.* : **00440060.**

Rule for determining export or import of service : **3(*iii*)**

26 Outdoor Caterer's Services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 10-9-2004. ***What is liable to tax*** **26.1** Any service provided or to be provided to any person, by an outdoor caterer [Section 65(105)(zzt)] **26.2** "Outdoor caterer" means a caterer (see **26.3**) engaged in providing services in connection with catering at a place other than his own, but including a place provided by way of tenancy or otherwise by the person receiving such services [Section 65(76a)] **26.3** "Caterer" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion [Section 65(24)]	***What is covered*** Catering at a place other than his own, but including a place provided by the person receiving such services Supply of food to airlines for in-flight service to passengers is taxable. Canteen service taxable if service provided to employer but not when service directly provided to employees. Catering services provided on railway taxable. ***What is not covered?*** Home delivery of food not taxable ***Valuation*** Outdoor caterer can opt to pay service tax on 50% of his Bill amount if the Bill or challan issued indicates that it is inclusive of charges for supply of substantial meal, and he does not take Cenvat credit. In *LSG Sky Chefs* v. *CST* (2009) 19 STT 440 (CESTAT), assessee, who was providing catering services to airlines, paid service tax on amounts collected towards handling, transportation and loading charges but not on cost of food as it paid sales tax/Vat on cost of food. It was held that service tax cannot be imposed on value of goods – same view in *The Grand Ashok* v. *CST* (2009) 19 STT 435 (CESTAT). ***Other issues*** *Accounting Code - Service Tax* : **00440051.** *Payment of interest, penalty, etc.* : **00440052.** *Rule for determining export or import of service* : **3(*ii*)**

27 Pandal or Shamiana Contractor's service

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 10-9-2004. ***What is liable to tax*** **27.1** Any service provided or to be provided to any person, by a pandal or shamiana contractor in relation to a pandal or shamiana (see **27.2**) in any manner and also includes the services, if any, provided or to be provided as caterer (see **27.3**) [Section 65(105)(zzw)] **27.2** 'Pandal or shamiana' means a place specially prepared or arranged for organizing an official, social or business function. *Explanation*.–For the purposes of this clause, social function includes marriage [Section 65(77a)] **.** **27.3** "Caterer" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion [Section 65(24)]	***What is covered*** 'Pandal or shamiana' is temporary structure prepared or arranged for organizing an official, social or business function. Social function includes marriage Supply of furniture, fixtures, lights and lighting fittings, floor coverings and other articles for use in pandal or shamiana taxable even if the contractor himself does not supply 'pandal or shamiana'. ***What is not covered?*** No tax on religious functions. ***What is covered under different head?*** If it is permanent structure, service will be taxed under 'mandap' service. ***Valuation*** If a pandal or shamiana contractor provides catering services of full meals, tax will be payable only on 70% of the gross amount charged to client, if he does not avail any Cenvat credit - Notification No. 1/2006-ST dated 1-3-2006. ***Other issues*** *Accounting Code - Service Tax* : **00440054.** *Payment of interest, penalty, etc.* : **00440055.** *Rule for determining export or import of service* : **3(*ii*)**

28 Photography Services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 16-7-2001. ***What is liable to tax*** **28.1** Any service provided or to be provided to any person, by a photography studio or agency (see **28.2**) in relation to photography (see **28.3**), in any manner [Section 65(105)(zb)] **28.2** "Photography studio or agency" means any professional photographer or any person engaged in the business of rendering service relating to photography [Section 65(79)] **28.3** "Photography" includes still photography, motion picture photography, laser photography, aerial photography or fluorescent photography [Section 65(78)]	***What is covered*** "Photography" includes still photography, motion picture photography, laser photography, aerial photography or fluorescent photography ***What is not covered?*** Preparing voter's identity card for Election Commission is not 'business activity' and hence not taxable X-ray or CT scan will not be covered. ***What is covered under different head?*** Collection centre not taxable under photography services. They may get covered under Business Auxiliary Service. ***Valuation*** In *Shilpa Colour Lab* v. *CCE* (2007) 8 STT 102 = 8 VST 554 (CESTAT), *Sudha Digital Images* v. *CCE* (2008) 17 STT 288 (CESTAT), *Sood Studios* v. *CCE* (2009) 19 STT 453 (CESTAT) etc., it has been held that deduction of value of material used while providing photography service will be available [There are contrary views also]. ***Other issues*** *Accounting Code - Service Tax* : **00440127.** *Payment of interest, penalty, etc.* : **00440130.** *Rule for determining export or import of service* : **3(*ii*)**

29 Practicing CA/ICWA/CS Services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied	***What is covered***
16-10-1998.	Service by a Practising Chartered Accountant/Cost Accountant/Company Secretary in his professional capacity.
What is liable to tax	Verification of books, accounting procedure and recording, certification, management consultancy, acting as liquidator, trustee all taxable.
29.1A Any service provided or to be provided to any person, by a Practising Chartered Accountant (see **29.2**) in his professional capacity in any manner [Section 65(105)(s)]	***What is not covered?***
	Authorship, directorship, teaching, preparation of electricity bills etc are not taxable as not provided under professional capacity.
29.1B Any service provided or to be provided to any person, by a Practising Cost Accountant (see **29.3**) in his professional capacity in any manner [Section 65(105)(t)]	***What is covered under different head?***
29.1C Any service provided or to be provided to any person, by a Practising Company Secretary (see **29.4**) in his professional capacity in any manner [Section 65(105)(u)]	Services of electricity billing and related services to electricity distribution company not taxable as not in professional capacity (This may get covered under BAS, but borderline case).
29.2 "Practising Chartered Accountant" means a person who is a member of the Institute of Chartered Accountants of India and is holding a certificate of practice granted under the provisions of the Chartered Accountants Act, 1949 and includes any concern engaged in rendering services in the field of chartered accountancy [Section 65(83)]	***Valuation*** Tax is payable on reimbursement of expenses incurred while providing professional service. ***Exemptions***
29.3 "Practising Cost Accountant" means a person who is a member of the Institute of Cost and Works Accountants of India and is holding a certificate of practice granted under the provisions of the Cost and Works Accountants Act, 1959 and includes any concern engaged in rendering services in the field of cost accountancy [Section 65(84)]	Services provided by practising CA/CWA/CS in his professional capacity to a client, relating to representing before any statutory authority in the course of proceedings initiated under any law for the time being in force, by way of issue of notice, are exempt from service tax. (Notification No. 25/2006-ST dated 13-7-2006).
29.4 "Practising Company Secretary" means a person who is a member of the Institute of Company Secretaries of India and is holding a certificate of practice granted under the provisions of the Company Secretaries Act, 1980 and includes any concern engaged in rendering services in the field of company secretaryship [Section 65(85)]	***Other issues*** *Accounting Code - Service Tax* : **00440092, 096 and 100** *Payment of interest, penalty, etc.* : **00440093, 097 and 101 (CA, CWA and CS respectively)** *Rule for determining export or import of service* : **3(*ii*)**

30 Real Estate Agent's Services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 16-10-1998. ***What is liable to tax*** **30.1** Any service provided or to be provided to any person, by a real estate agent (see **30.2**) in relation to real estate [Section 65(105)(v)] **30.2** 'Real Estate Agent' means a person who is engaged in rendering any service in relation to sale, purchase, leasing or renting, of real estate and includes a real estate consultant (see **30.3**) [Section 65(88)] **30.3** 'Real Estate Consultant' means a person who renders in any manner, either directly or indirectly, advice, consultancy or technical assistance, in relation to evaluation, conception, design, development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate [Section 65(89)]	***What is covered*** Service in relation to sale, purchase, leasing or renting, of real estate. Services of Real estate consultant. Advice, consultancy or technical assistance relating to real estate. ***Other issues*** *Accounting Code - Service Tax* : **00440104.** *Payment of interest, penalty, etc.* : **00440105.** *Rule for determining export or import of service* : **3(*i*)**

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31 Rent-a-cab services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 1-4-2000. ***What is liable to tax*** **31.1** Any service provided or to be provided to any person, by a rent-a-cab scheme operator (see **31.2**) in relation to the renting of a cab (see **31.3**) [Section 65(105)(o)] **31.2** 'Rent-a-cab scheme operator' means any person engaged in the business of renting of cabs (see **31.3**) [Section 65(91)] **31.3** "Cab" means— (i) a motorcab (see **31.4**) or (ii) a maxicab (see **31.5**) or (iii) any motor vehicle (see **31.6**) constructed or adapted to carry more than twelve passengers, excluding the driver, for hire or reward. Provided that the maxicab referred to in sub-clause (ii) or motor vehicle referred to in sub-clause (iii) which is rented for use by an educational body imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre, shall not be included within the meaning of cab [Section 65(20)] **31.4** 'Motor cab' means any motor vehicle constructed or adapted to carry not more than 6 passengers excluding driver, for hire or reward [Section 2(25) of Motor Vehicles Act, 1988] **31.5** "Maxi cab" has the meaning assigned to it in section 2(22) of the Motor Vehicles Act, 1988 (see **31.7**) [Section 65(70)] **31.6** Motor Vehicle has the meaning assigned to it in	***What is covered*** If a driver is provided with cab, it is still rent-a-cab service Service is taxable even if provided on sub-contract basis. Providing buses, maxicab to companies for transport of their employees or children of employees is taxable. ***What is not covered?*** Renting of Maxicab or motor vehicle rented for use by an educational body (other than a commercial training or coaching centre) is not taxable [However, motor cab, even if rented to an educational body, is leviable to service tax]. Schools providing buses for transport of the students are not taxable, whether the buses are owned by the school or are hired from outside Ambulances are not meant for carrying passengers for hire or reward. Hence, service tax liability does not arise. ***Valuation*** Service tax is payable only on 40% of the gross amount charged by the operator for providing taxable service, if the Rent-a-cab operator does not avail Cenvat credit. Tax should not be payable on parking charges, toll fees etc. recovered from customer as this is not part of 'rent-a-cab' service.

section 2(28) of Motor Vehicles Act (see **31.8**) [section 65(73)]. **31.7** 'Maxi cab' means any motor vehicle constructed or adapted to carry more than 6 passengers, but not more than 12 passengers, excluding the driver, for hire or reward [Section 2(22) of Motor Vehicles Act, 1988] (These vehicles are more popularly known as vans, sumo etc). **31.8** 'Motor vehicle' means any mechanically propelled vehicle adapted for use upon roads, whether the power or propulsion is transmitted thereto from internal or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle run on fixed rails or a vehicle of special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding thirty five cubic centimeters [section 2(28) pf Motor Vehicles Act].	***Other issues*** *Accounting Code - Service Tax* : **00440048.** *Payment of interest, penalty, etc.* : **00440049.** *Rule for determining export or import of service* : **3(*ii*)**

32 Renting of Immovable Property

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 1-6-2007. ***What is liable to tax*** **32.1** Any service provided or to be provided; to any person, by any other person in relation to renting of immovable property (see **32.2**) for use in the course or furtherance of business or commerce [Section 65(105)(zzzz)] *Explanation 1.-* For the purposes of this sub-clause, "immovable property" includes - 1. building and part of a building, and the land appurtenant thereto; 2. land incidental to the use of such building or part of a building; 3. the common or shared areas and facilities relating thereto; and 4. 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***- 1. vacant land solely used for agriculture, aquaculture, farming, forestry, animal	***What is covered*** Only renting for use in business or commerce covered and not renting for residential purposes. Renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce taxable. Use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings is covered. Renting includes allowing use of space on non-exclusive basis. Lease of factory by lessor to lessee is taxable. Plant and Machinery permanently attached to earth is part of 'immovable property' but not machinery attached to earth only for beneficial use. ***What is not covered?*** Renting of vacant land, land used for educational, sports, circus, entertainment and parking purposes; and building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities are not taxable. However renting for commercial coaching classes is taxable. Renting of immovable property by a religious body or to a religious body; or renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a

husbandry, mining purposes;

2. vacant land, whether or not having facilities clearly incidental to the use of such vacant land;

3. land used for educational, sports, circus, entertainment and parking purposes; and

4. building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

Explanation 2. - For the purposes of this sub-clause, 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 [Section 65(105)(zzzz)]

32.2 "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 -

1. renting of immovable property by a religious body or to a religious body; or

2. 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 center (see **32.3**);

Explanation 1 – For the purposes of this clause, "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.

Explanation 2 – For the removal of doubts, it is hereby declared that for the purposes of this clause "renting of immovable property" includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property [Section 65(90a)]

32.3 'Commercial training or coaching centre' means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include pre-school coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by

commercial training or coaching center is excluded.

Renting of theatre by theatre owner to distributor of film is not taxable

Valuation

Deduction of property tax will be allowed from value in respect of property tax actually paid (and not on payable basis). Deduction will be on *pro rata* basis. Service tax is payable only on rent actually received from service receiver.

Construction service is not input service?

As per para No. 096.01 / 04.01.08 of CBE&C circular dated 4-1-2008**,** Construction service is not 'input service' for service of 'renting of immovable property and hence its Cenvat credit is not available [highly disputable issue. Validity seems doubtful].

Service tax on Renting of immovable property held invalid

Levy of service tax on renting of immovable property has been held in *Home Solution Retail India Ltd*. v. *UOI* (2009) 20 STT 129 (Del HC DB), with reason that there is no value addition. There is no decision about constitutional validity. It is easily possible for Government to get over the decision by making retrospective amendment. Hence, advisable to continue payment of taxes.

Whether separate exemption is available in case of renting of property jointly owned

The phrase used in the notification No. 6/2005-ST dated 1-3-2005 is 'exempts taxable services of aggregate value not exceeding ten lakh rupees'. Thus, the exemption is '*qua service*' and not '*qua service provider*'. In this case, service is one and indivisible, though there may be more than one service providers. Hence, in my view, in such cases, separate exemption to each co-owner will *not* be available.

Other issues

Accounting Code - Service Tax : **00440406.** *Payment of interest, penalty, etc.* : **00440407.**

Rule for determining export or import of service : **3(*i*)**

law for the time being in force [section 65(27)].	

33 Sale of advertising space or time

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 1-5-2006. ***What is liable to tax*** **33.1** Any service provided or to be provided; to any person, by any other person, in relation to sale of space or time for advertisement, in any manner; but does not include sale of space for advertisement in print media and sale of time slots by a broadcasting agency or organisation *Explanation 1.*- For the purposes of this sub-clause, "sale of space or time for advertisement" includes, - (*i*) providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or	***What is covered*** Sale of space or time for advertisement. Providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, or on billboards, public places, buildings, conveyances, cell phones, automated teller machines, internet. Selling of time slots on radio or television by a person, other than a broadcasting agency or organisation Aerial advertising Sale of space in yellow pages, business directories ***What is not covered?*** Sale of space for advertisement in print media. "Print

motion pictures or music albums, or on billboards, public places, buildings, conveyances, cell phones, automated teller machines, internet; (*ii*) selling of time slots on radio or television by a person, other than a broadcasting agency or organisation, and (*iii*) aerial advertising. Explanation 2. — For the purposes of this sub-clause, "print media" means,— (i) "newspaper" as defined in section 1(1) of the Press and Registration of Books Act, 1867; (ii) "book" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (see **33.2**), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes [section 65(105)(*zzz*m)]. **33.2** 'Book' includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed. - - 'newspaper' means any printed periodical work containing public news or comment on public news. - - 'Printing' includes cyclostyling and printing by lithography [Section 1(1) of Press and Registration of Books Act, 1867]	media" means "newspaper" and "book". However, service tax is payable on advertisements in business directories, yellow pages and trade catalogues. ***Other issues*** *Accounting Code - Service Tax* : **00440354.** *Payment of interest, penalty, etc.* : **00440355.** *Rule for determining export or import of service* : **3(*iii*)**

34 Security Agency's Services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 16-10-1998. ***What is liable to tax*** **34.1** Any service provided or to be provided to any person, by a security agency (see **34.2**) in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity [Section 65(105)(w)] **34.2** "Security Agency" means any person engaged in the business of rendering services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the	***What is covered*** Security of any movable or immovable property or person. Investigation, detection or verification of any fact or activity. Safe deposit locker (can also come under Banking and Financial Services, if provided by Bank). Security Services and other commercial services provided by police department taxable. Services of Central Industrial Security Force, Police, CBI are also taxable, if charged and paid for. Services provided by ex-service men or charitable

services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel [Section 65(94)]	organisations also taxable. ***Valuation*** Service tax is payable on gross amount including ESI, PF and wages of guards. The amount should be inclusive of service tax and then back calculations should be made. ***Other issues*** *Accounting Code - Service Tax* : **00440108.** *Payment of interest, penalty, etc.* : **00440109.** *Rule for determining export or import of service* : **3(*ii*)**

35 Site formation and clearance, excavation and earthmoving and demolition

Statutory Definition of Service liable to tax	**Coverage & Service liable to tax**
When the tax was levied 16-6-2005. ***What is liable to tax*** **35.1** Any service provided or to be provided to any person, by any other person, in relation to site formation and clearance, excavation and earthmoving and demolition (see **35.2**) and such other similar activities [section 65(105)(zzza)] **35.2** "Site formation and clearance, excavation and earth moving and demolition" includes, — (i) drilling, boring and core extraction services for construction, geophysical, geological or similar purposes; or (ii) soil	***What is covered*** Services in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities. Drilling, boring and core extraction services for construction, geophysical, geological or similar purposes Soil stabilization. Horizontal drilling for the passage of cables or drain pipes

stabilization; or (iii) horizontal drilling for the passage of cables or drain pipes; or (iv) land reclamation work; or (v) contaminated top soil stripping work; or (vi) demolition and wrecking of building, structure or road, - - but does not include such services provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies [Section 65(97a)]	Land reclamation work. Contaminated top soil stripping work. Demolition and wrecking of building, structure or road ***What is not covered?*** Services in relation to agriculture, irrigation, watershed development. Drilling, digging, repairing, renovating or restoring of water sources or water bodies. ***Exemptions*** Services of the site formation and clearance, excavation and earthmoving and demolition and such other similar activities, provided to any person by any other person in the course of *construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, ports or other ports*, from the whole of service tax [Notification No. 17/2005-ST dated 7-6-2005]. ***Other issues*** *Accounting Code - Service Tax* : **00440306.** *Payment of interest, penalty, etc.* : **00440307.** *Rule for determining export or import of service* : **3(*i*)**

36 Sponsorship service

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 1-5-2006. ***What is liable to tax*** **36.1** Any service provided or to be provided; to any body corporate or firm, by any person receiving sponsorship (see **36.2**), in relation to such sponsorship, in any manner, but does not include services in relation to sponsorship of sports events [Section 65(105)(zzzn)]	***What is covered*** Naming an event after the sponsor, displaying the sponsor's company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition. Service tax is leviable only when the sponsor is any body corporate or firm. ***What is not covered?***

36.2 "Sponsorship" includes naming an event after the sponsor, displaying the sponsor's company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition; but does not include any financial or other support in the form of donations or gifts, given by the donors subject to the condition that the service provider is under no obligation to provide anything in return to such donors [Section 65(99a)]	Sponsorship of sports events is excluded Any financial or other support in the form of donations or gifts, given by the donors is not taxable, if the service provider is under no obligation to provide anything in return to such donors. Reverse charge - Person liable for payment of tax In case of sponsorship service provided to a body corporate or firm located in India, the body corporate or firm receiving such sponsorship service will be liable to pay service tax [rule 2(1)(d)(vii)] (organizer of event not liable). If the recipient of sponsorship service is located outside India, service tax is required to be paid by the service provider who is in India ***and not by the recipient***. ***Other issues*** *Accounting Code - Service Tax* : **00440358.** *Payment of interest, penalty, etc.* : **00440359.** *Rule for determining export or import of service* : **3(*iii*)**

37 Stock broker's Services

Statutory Definition of Service liable to tax	**Coverage & Service liable to tax**
When the tax was levied 1-7-1994. Service tax on sub-broker exempted w.e.f. 1-9- 2009. ***What is liable to tax*** **37.1** Any service provided or to be provided to any person, by a stock-broker (see **37.2**) in connection with the sale or purchase of securities (see **37.3**) listed on recognised stock exchange (see **37.4**) [Section	***What is covered*** Service by a stock-broker to any person in connection with the sale or purchase of securities listed on recognised stock exchange. Jobbing and arbitrance is taxable. Service provided by one broker to other taxable. ***What is not covered?*** No service tax if no brokerage collected from client.

65(105)(a)] **37.2** "Stock-broker" means a person who has either made an application for registration or is registered as a stock-broker or sub-broker, as the case may be, in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992 [Section 65(101)] . **37.3** "Securities" has the meaning assigned to it in section 2(h) of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) [Section 65(93)] **37.4** "Recognised stock exchange" has the meaning assigned to it in section 2(f) of the Securities Contracts (Regulation) Act, 1956 [Section 65(90)]	Services of sub-broker are not liable under 'stock broker' service w.e.f. 1-9-2009. They have also been exempted under Business Auxiliary Service also *vide* Notification No. 31/2009-ST dated 1-9-2009. Thus, they are completely out of service tax net. ***Valuation*** The value of taxable services shall include the commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker. No tax on turnover charges payable to stock exchange. Transaction charges collected and paid over to stock exchange are not part of value of taxable service. Handling charges for delivery of scrips are not part of value of taxable service. ***Other issues*** *Accounting Code - Service Tax* : **00440008.** *Payment of interest, penalty, etc.* : **00440009.** *Rule for determining export or import of service* : **3(*ii*)**

38 Storage and warehousing of goods Services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax

When the tax was levied	What is covered
16-8-2002. ***What is liable to tax*** **38.1** Any service provided or to be provided to any person, by a storage or warehouse keeper in relation to storage and warehousing (see **38.2**) of goods (see **38.3**) [Section 65(105)(zza)] . **38.2** 'Storage and warehousing' includes storage and warehousing services for goods, including liquids and gases but does not include any service provided for storage of agricultural produce or any service provided by a cold storage [Section 65(102)] **38.3** 'Goods' has the meaning assigned to it in section 2(7) of Sale of Goods Act. [section 65(50)].	Services in relation to storage and warehousing of goods, including liquids and gases. Storage outside the port premises is taxable. Storage of empty containers taxable. ***What is not covered?*** Service provided for storage of agricultural produce or any service provided by a cold storage excluded. Cloakroom facilities provided at railway stations, bus stations etc. not taxable. Storage of own goods (sugar) as per statutory requirement of keeping buffer stock is not rendering of service, even if Government is giving subsidy. ***What is covered under different head?*** Mere renting of premises is not 'storage and warehousing' service. It will be taxable under renting of immovable property service. ***Other issues*** *Accounting Code - Service Tax* : **00440193.** *Payment of interest, penalty, etc.* : **00440194.** *Rule for determining export or import of service* : **3(*ii*)**

39 Supply of tangible goods for Use Services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied	***What is covered***

16-5-2008. ***What is liable to tax*** **39.1** Any service provided or to be provided to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances [section 65(105)(zzzzj)].	Supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances ***What is not covered?*** If there is transfer of right of possession and effective control of machinery, equipment and appliances, Vat will apply and not service tax, as it is deemed sale of goods. If contract is for doing some work, it is not contract for supply of tangible goods for use. ***Exemptions*** Hire of goods carriage to GTA for transport of goods by road is exempt, but conditions are very difficult to comply with, since the exemption is subject to condition that service provider providing services should mention the name and address of the goods transport agency and also the name and date of the consignment note, by whatever name called, issued in his behalf. It is possible that the service might be provided on continuous basis and linking each service to a particular consignment note of GTA may be very difficult, if not impossible - Notification No. 1/2009-ST dated 5-1-2009. ***Other issues*** *Accounting Code - Service Tax* : **00440445.** *Payment of interest, penalty, etc.* : **00440447.** *Rule for determining export or import of service* : **3(*iii*)** (It will be export if tangible goods located outside India and import if tangible goods located in India). Machinery, equipment, appliance, vehicles, aircrafts, vessels etc. supplied during course of providing taxable service of ‘supply of tangible goods for use’ is ‘input’ for providing the taxable service. Hence, excise duty/CVD paid on such machinery, equipment, appliance, vehicles, aircrafts, vessels etc. will be eligible for Cenvat credit. This clarification applies only in respect of service of ‘supply of tangible goods for use’

40 Technical inspection, certification, technical testing and analysis Services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 1-7-2003. ***What is liable to tax*** **40.1A** Any service provided or to be provided to any person, by a technical inspection and certification agency (see **40.2**), in relation to technical inspection and certification (see **40.3**) [Section 65(105)(zzi)] **40.1B** Any service provided or to be provided to any person, by a technical testing and analysis agency (see **40.4**), in relation to technical testing and analysis (see **40.5**) [Section 65(105)(zzh)] **40.2** 'Technical inspection and certification agency' means any agency or person engaged in providing service in relation to technical inspection and certification [section 65(109)]. **40.3** 'Technical inspection and certification' means inspection or examination of goods or process or material or information technology software or any immovable property to certify that such goods or process or information technology software or material or immovable property qualifies or maintains the specified standards, including functionality or utility or quality or safety or any other characteristic or parameters, but does not include any service in relation to inspection and certification of pollution levels [section 65(108)] **40.4** Technical testing and analysis agency means any agency or person engaged in providing service in relation to technical testing and analysis [section 65(107)]. **40.5** 'Technical testing and analysis' means any service in relation to physical, chemical, biological or any other scientific testing or analysis of goods or material or information technology software or any immovable	***What is covered*** ***What is not covered?*** Medical testing and diagnosis of human beings and animals has been excluded from service tax. Service in relation to inspection and certification of pollution levels is excluded Testing or analysis service provided in relation to human beings or animals is excluded Testing and certification done under statutory provisions is not taxable. ***What is covered under different head?*** Collection centers may get covered under Business Auxiliary Service. ***Exemptions*** Testing and analysis of water quality by Government laboratories exempt, subject to prescribed conditions - Notification No. 6/2006-Service Tax dated 1.3.2006. Exemption to clinical testing of newly developed drugs - Notification No. 11/2007-ST dated 1-3-2007. ***Other issues*** *Accounting Code - Service Tax* : **00440249.** *Payment of interest, penalty, etc.* : **00440250** (for both type of services) *Rule for determining export or import of service* : **3(*ii*)** (for both type of services)

property, but does not include any testing or analysis service provided in relation to human beings or animals. *Explanation* - For the removal of doubts, it is hereby declared that for the purposes of this clause, “technical testing and analysis” includes testing and analysis undertaken for the purpose of clinical testing of drugs and formulations; but does not include testing or analysis for the purpose of determination of the nature of diseased condition, identification of a disease, prevention of any disease or disorder in human beings or animals - [section 65(106)].	

41 Telecommunication services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 1-7-1994 and scope expanded later. ***What is liable to tax*** **41.1** Any service provided or to be provided; to any person, by the telegraph authority (see **41.2**) in relation to telecommunication service (see **41.3**) [Section 65(105)(zzzx)] **41.2** 'Telegraph authority' has the meaning assigned to it in section 3(6) of Indian Telegraphs Act, 1885 and includes a person who has been granted a licence under the first proviso to section 4(1) of that Act [Section 65(111)]. **41.3** "Telecommunication service" means service of any description provided by means of any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence or information of any nature, by wire, radio, optical, visual or other electro-magnetic means or systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception by a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of the Indian Telegraphs Act, 1885 and includes – *(i)* voice mail, data services, audio tex services, video tex services, radio paging; *(ii)* fixed telephone services including provision of access to and use of the public switched telephone network for the transmission and switching of voice, data and video, inbound and outbound telephone service to and from national and international destinations; *(iii)* cellular mobile telephone services including provision of access to and use of switched or non-switched	***What is covered*** Comprehensive coverage of all telecom services as per definition (see left column). Tax is payable on international in-bound roaming services provided in India. Inter-connection services and rent and access charges to DOT taxable. ***What is not covered?*** Shop keeper selling SIM card is not liable as he is not 'telegraph authority'. ***What is covered under different head?*** Service in relation to on-line information and database access or retrieval, a broadcasting agency or organisation in relation to broadcasting and internet telephony excluded (since covered under another head). ***Only service provided by telegraph authority taxable, not by agents etc.*** Telecommunication service is taxable only when provided by 'Telegraph Authority' i.e. who has been granted license under Indian Telegraphs Act. Thus, agents selling seem cards etc. are not liable under this head. Liability in case of 'roaming facility' on cellular phone is on Home Operator. ***Valuation*** Value for purpose of service tax in case of service tax

networks for the transmission of voice, data and video, inbound and outbound roaming service to and from national and international destinations;

(iv) carrier services including provision of wired or wireless facilities to originate, terminate or transit calls, charging for interconnection, settlement or termination of domestic or international calls, charging for jointly used facilities including pole attachments, charging for the exclusive use of circuits, a leased circuit or a dedicated link including a speech circuit, data circuit or a telegraph circuit;

(v) provision of call management services for a fee including call waiting, call forwarding, caller identification, three-way calling, call display, call return, call screen, call blocking, automatic call-back, call answer, voice mail, voice menus and video conferencing;

(vi) private network services including provision of wired or wireless telecommunication link between specified points for the exclusive use of the client;

(vii) data transmission services including provision of access to wired or wireless facilities and services specifically designed for efficient transmission of data; and

(viii) communication through facsimile, pager, telegraph and telex, but does not include service provided by-

(a) any person in relation to on-line information and database access or retrieval or both referred to in sub-clause *(zh)* of clause (*105);*

(b) a broadcasting agency or organisation in relation to broadcasting referred to in sub-clause (zk) of clause *(105);* and

(c) any person in relation to internet telephony referred to in sub-clause *(zzzu)* of clause *(105) [*section 65(109a)].

on SIM card is net price at which card sold to dealer and not MRP.

Tax not payable on initial deposit, but payable if initial deposit adjustments made from deposits.

Service tax is payable on reconnection charges.

Service tax is payable on net amount after discount.

No service tax on surcharge collected on account of delayed payment.

In case of PCO, service tax is payable on net amount received by telegraph authority from PCO, i.e. discounted price.

Exemption

Notification No. 3/1994-ST dated 30-6-1994 exempts following telecom services (a) Departmentally run public telephones for local calls (b) Guaranteed public telephone operating only for local calls (c) Free telephones at airports and hospitals where no bills are being issued.

Sale of SIM card

There are contrary decisions. In my view, when a customer purchases SIM card, he actually purchases talk time. The intrinsic value of SIM cars (as material content) is negligible. Predominantly it is telecom service.

In *Bharat Sanchar Nigam Ltd*. v. *UOI* (2006) 3 SCC 1 = 152 Taxman 135 = 3 STT 245 = 282 ITR 273 = 3 VST 95 = 145 STC 91 = AIR 2006 SC 1383 (SC 3 member bench), it has been held that what a SIM card represents is ultimately a question of fact. If the SIM card is not sold by the assessee to the subscribers but is merely part of the services rendered by service providers, then a SIM card cannot be charged separately to sales tax. If the parties intended that the SIM card would be a separate object of sale, it would be open to the sales tax authorities to levy sales tax thereon. If the sale of SIM card is merely incidental to the service being provided and only facilitates the identification of subscriber, their credit and other

	details, it would not be assessable to sales tax. In any event, cost of service cannot be included in the value of SIM card by relying on 'aspects' doctrine. ***Is tax payable on free telephone service provided to employees, dealers etc. ?*** In my view, it can still be argued that service tax is not payable on free services (at least for past period), for the following reasons - **(a)** As per rule 6(1), service tax is payable only where payment is received towards value of taxable services. In this case, no 'payment' is received **(b)** Even if tax is paid, Cenvat credit can be availed, since obviously, it is an input service of the service provider. Hence, payment of tax will be a revenue neutral exercise. In respect of future, the service provider may pay service tax by TR-6/GAR-7 challan and avail Cenvat credit of service tax so paid, to avoid petty disputes. ***Other issues*** *Accounting Code - Service Tax* : **00440398.** *Payment of interest, penalty, etc.* : **00440399.** *Rule for determining export or import of service* : **3(*iii*)**

42 Tour operator's Services

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 1-4-2000 and scope expanded later. ***What is liable to tax*** **42.1** Any service provided or to be provided to any person, by a tour operator (see **42.2**) in relation to a tour (see **42.3**) [section 65(105)(n)]. **42.2** 'Tour operator' means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle (see **42.4**) or a contract carriage (see **42.6**) by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 or the rules made thereunder *Explanation* — For the purposes of this clause, the expression "tour" does not include a journey organised or arranged for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field [Section 65(115)] **42.3** 'Tour' means a journey from one place to another irrespective of the distance between such places	***What is covered*** 'Tour' means a journey from one place to another irrespective of the distance between such places. Planning, scheduling, organising or arranging tours. Tours in a tourist vehicle or a contract carriage but not on a stage carriage permit ***What is not covered?*** Tour services by vehicle with stage carriage permit. Journey organised or arranged for use by an educational body, other than a commercial training or coaching centre. Buses/vehicles provided for transport of employees will be taxable under 'rent-a-cab' service. Call taxi service where charge is on basis of distance is not taxable. Plying taxi from airport to destination on pre-paid basis, is not tour operator service. ***What is covered under different head?*** Person booking tickets for buses is not tour operator (However, he may be liable under BAS).

[section 65(113)].

42.4 "Tourist vehicle" has the meaning assigned to it in section 2(43) of the Motor Vehicles Act, 1988 (see **42.5**) [Section 65(114)]

42.5 A tourist vehicle means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed [Section 2(43) of Motor Vehicles Act]

42.6 'Contract carriage' means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether express or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum— (*a*) on a time basis, whether or not with reference to any route or distance; or (*b*) from one point to another;- - and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, - - and includes— (*i*) a maxi-cab; and (*ii*) a motor-cab notwithstanding that separate fares are charged for its passengers [Section 2(*7*) of the Motor Vehicles Act].

Any journey between two places is not 'tour'

As per Compact Oxford Reference Dictionary, 'tour' means 1. a journey for pleasure in which several different places are visited. 2. a short trip to view or inspect something. 'Tour operator' means a travel agent specialising in package holidays.

In *Usha Breco Ltd*. v. *CCE* (2007) 8 STT 191 (CESTAT), it has been held that statutory definition of 'tour' does not confer an entirely artificial meaning on the commonly understood word of 'tour'. The word 'irrespective of distance' in the definition of tour only means there could be no argument that tour should be to a distant place. It does not give such artificial meaning to the word 'tour' as to make any movement in a tourist bus a 'tour'.

Exemptions

In case of package tour, service tax is payable on 25% of gross amount charged, if no Cenvat credit is availed - Notification No. 1/2006-ST dated 1-3-2006.

Tax only on 10% amount when operator only provides booking services - Notification No. 1/2006-ST dated 1-3-2006.

Tax payable 40% in case of tours other than package tours, if no Cenvat credit is availed - Notification No. 1/2006-ST dated 1-3-2006.

Tour operator having contract carriage permit for inter-state or intra-state transportation of passengers are exempted w.e.f. 7-7-2009. The exemption will *not* be available if he uses the contract carriage for tourism, conducted tours, charter or hire service – Notification No. 20/2009-ST dated 7-7-2009.

Other issues

Accounting Code - Service Tax : **00440063.** *Payment of interest, penalty, etc.* : **00440064.**

Rule for determining export or import of service : **3(*ii*)**

\43 Transport of goods In containers by rail service

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 1-5-2006 on transport in containers and on all rail transport w.e.f. 1-9-2009. However, transport of goods by rail other than containers has been fully exempted. ***What is liable to tax*** Any service provided or to be provided; to any person, by any other person, in relation to transport of goods by rail, in any manner, is a 'taxable service' [section 65(105)(zzzp)].	***Transport of goods by rail except by containers is exempt -*** There has been some flip flap in respect of service tax on transport of goods by rail. Service tax was imposed on transport of goods by rail. The tax was to be effective from 1-9-2009 and in fact, Notification Nos. 28/2009-ST and 29/2009-ST dated 31-8-2009 were issued granting full exemption to certain goods. However, it seems Government had sudden change of heart and revised Notification Nos. 33/2009-ST and 34/2009-ST both dated 1-9-2009 have been issued, within 24 hours of the earlier notifications!. Now, transport of all goods by rail (other than transport of goods in containers by rail by any person other than Government Railway) has been completely exempted *vide* Notification No. 33/2009-ST dated 1-9-2009. Thus, the position as existing prior to Budget 2009 has been restored i.e. only transport of goods in container by rail by any person *other than* Government Railway, will be liable to service tax on 30% of the gross value charged [Notification No. 1/2006-ST dated 1-3-2006,

	as amended vide Notification No. 34/2009-ST dated 1-9-2009]. ***Other issues*** *Accounting Code - Service Tax* : **00440262.** *Payment of interest, penalty, etc.* : **00440263.** *Rule for determining export or import of service* : **3(*ii*)**

43 Transport of Goods by Road Service

Statutory Definition of Service liable to tax	**Coverage & Service liable to tax**
When the tax was levied 1-1-2005. ***What is liable to tax*** **43.1** Any service provided or to be provided to any person, by a goods transport agency (see **43.2**), in relation to transport of goods (see **43.3**) by road in a goods carriage (see **43.4**) [Section 65(105)(zzp)] **43.2** 'Goods transport agency' means any person who (earlier the words were 'commercial concern which' upto Finance Act, 2006 i.e. upto 1-5-2006) provides service in relation to transport of goods by road and issues consignment note, by whatever name called [Section 65(50b)] **43.3** 'Goods' has the meaning assigned to it in section	***What is covered*** Service by a goods transport agency, in relation to transport of goods by road in a goods carriage. Service tax is not on all goods transport. Tax is payable only when consignment note (Lorry Receipt) is issued. ***Valuation*** GTA service will be liable to service tax @ 25% of normal service tax – Notification No. 13/2008-ST dated 1-3-2008. Tax should be paid by GAR-7 challan and not by utilization of Cenvat credit (Then, he can avail Cenvat credit of tax so paid by him as it is his input service). Tax payable on transport charges and not demurrage charges or octroi, entry tax paid by GTA and recovered

2(7) of Sale of Goods Act. [section 65(50)]. **43.4** 'Goods carriage' has the meaning assigned to it section 2(14) of the Motor Vehicles Act, 1988 [Section 65(50a)]	from customer. ***Exemptions*** Transport of fruits, vegetables, eggs or milk by road is exempt If total amount charged for all consignments carried in a goods carriage does not exceed Rs. 1,500, it is exempt. If gross Amount charged on individual consignment transported in a goods carriage does not exceed Rs. 750. it is exempt *Reverse charge - Person liable for payment of service tax* Consignor or consignee who is paying freight will be liable to pay service tax in most of the cases, except when both consignor and consignee are individuals. Goods Transport Agency (GTA) should issue invoice showing service tax but is not required to pay service tax. **Exemption as small service provider not available** Exemption as available as small service provider is not available when service tax is payable by consignor/consignee. ***Certain services provided to GTA exempted*** Certain taxable services provided to a goods transport agency (GTA) have been exempted *vide* notification No.1/2009–ST dated 5-1-2009. In most of the cases, the exemption will not be available. ***Other issues*** *Accounting Code - Service Tax* : **00440262.** *Payment of interest, penalty, etc.* : **00440263.** *Rule for determining export or import of service* : **3(*ii*)**

44 Works Contract Service

Statutory Definition of Service liable to tax	Coverage & Service liable to tax
When the tax was levied 1-6-2007. ***What is liable to tax*** **44.1** Any 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 *Explanation* - For the purposes of this sub-clause, "works contract" means a contract wherein, –	***What is covered*** Only specified contracts covered if Vat/sales tax paid on works contract. Builder/developer not liable but contractor doing work for builder/developer is liable (issue is arguable). Petty contractor can claim exemption as small service provider. ***What is not covered?*** Works contract in respect of roads, airports, railways,

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(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 [see **44.2**] 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; [section 65(105)(zzzza)]

44.2 'Construction of complex' means— (a) construction of a new residential complex [see **44.3**] or a part thereof; or (b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or (c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex [Section 65(30a)]

44.3 "Residential complex" means any complex comprising of— (i) a building or buildings, having more than twelve residential units; (ii) a common area; and (iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, - - located within a premises

transport terminals, bridges, tunnels and dams, are excluded.

Only specified works contracts are covered. Other works contract (e.g. maintenance, job work, processing etc.) are not covered under this head.

Contract for sale of flat is not construction contract.

A builder entering into contract for sale of flat or a developer entering into contract for construction of an individual flat for personal residential use of client are not liable to pay service tax.

Activity done for self is not works contract

Valuation

Broadly, two options are available to service provider –

(a) Calculate value of service as per rule 2A of Service Tax (Determination of Value) Rules, 2006 (in short 'Valuation Rules) and pay service tax at normal rate on such 'value'. In such case, assessee can avail Cenvat credit of input services, inputs and capital goods

(b) Pay service tax under 'composition scheme' at 4.12% of 'gross amount charged for works contract' (inclusive of education cess and SAH education cess), under 'Works Contract (Composition Scheme for Payment of Service tax) Rules, 2007'. As per rule 3(2) of Composition Scheme, the assessee cannot avail Cenvat credit of inputs. Thus, the assessee can avail Cenvat credit of input services and capital goods.

In both the cases, Vat/sales tax will not be included in the 'value' for purpose of calculating service tax.

Exemptions

Construction and works contract services relating to ports exempt, but no exemption to finishing or repairing services - Notification No. 25/2007-ST dated 22-5-2007.

Other issues

and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person. - - *Explanation* — For the removal of doubts, it is hereby declared that for the purposes of this clause,— (a) “personal use” includes permitting the complex for use as residence by another person on rent or without consideration (b) “residential unit” means a single house or a single apartment intended for use as a place of residence [Section 65(91a)].	*Accounting Code - Service Tax* : **00440410.** *Payment of interest, penalty, etc.* : **00440411.** *Rule for determining export or import of service* : **3(*i*)**