Indirect taxes

Service tax

Amended FA 2010

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Notifications and circulars up to 31.07.2010

Chapter 3 Service tax

Service tax is an indirect tax levied on Services
•Services tax was imposed by chapter V of Finance Act 1994
•No separate "Service Tax Act".
•Service tax is imposed every year by making amendment to the Finance Act 1994
• Central excise department has been entrusted to look after the administration of service 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.

Coverage of Service tax

The following is various legislatures to cover Service tax

Finance Act, 1994 [Sections 64 to 96]
•Service Tax Rules, 1994
•Service Tax (Registration of Special Category of Persons) Rules, 2005.
•Export of Services Rules, 2005.
•Cenvat Credit Rules 2004
•Service Tax (Advance Rulings) Rules,2003
•Taxation of Services (Provided from Outside India and Received in India) Rules, 2006
•Service Tax (Determination of Value) Rules, 2006.
•Authority for Advance Rulings (Customs, Central Excise and Service Tax) Procedure Regulations, 2005
•Central Excise (Appeals) Rules 2001
•Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982
•Service tax circulars, notifications and case laws

Approaches to levy Service tax

Selective or comprehensive coverage of service tax: The levy of a service tax can be based on either of the following 2 approaches:
1. Comprehensive coverage/approach
2. Selective coverage/approach

1. Comprehensive coverage/approach: The comprehensive approach contemplates taxation of all services and a negative list is given in case some services are to be exempted.

2. Selective coverage/approach: In the case of selective approach, only selective are subject to service tax. In this case, the legislator attempts to specify and list the services that would be taxable and the scope of coverage of each service. There is no residuary category for taxing all services.

Applicability of Service tax

Service tax extends to whole of India except the state of Jammu and Kashmir.
•There shall be no service tax on the services provided/consumed in the state of Jammu and Kashmir.
• However if service provider is in the state of Jammu and Kashmir and provides services to anyone outside the state of Jammu and Kashmir then service tax shall be imposed on such services rendered

Charging Section Sec 65(105) and Sec 66
Service tax is imposed on taxable services provided or to be provided in future, by the service provider.
•Services to be provided in future shall be chargeable to service tax only if the advance payment for it is received
•Taxable services are mentioned in section 65(105) of Finance Act 1994
•Total 110 + services listed in Sec 65(105),which are liable for service tax.
Taxable Event is for service tax is date of rendering of Service
•All taxable Services charged to Service tax @ 10.3%
Alternate rate of service tax in case of certain services: Rule 6 (7) (7A)
Although service tax is levied at the basic rate of 10% but in case of certain services, an alternative Optional rate is also provided. Some of these are as under:
1. Specified **immovable properties** an optional composition tax rate of **4%** of gross value has been provided.
2. In case of **life insurance services** alternate mode of discharge of service tax liability has been provided and the rate of service tax in this case is **1%** of total premium.
3. In case of **Air Travel Agents services,** the Air Travel Agent, shall have the option to pay service tax of an amount calculated as under:
In case of domestic bookings – **0.6%** of the basic fare. In case of international bookings – **1.2%** of the basic fare
4. In case of foreign exchange dealer , 0.25% on the Gross amount of currency exchanged.

Small Service Providers Exemption: Notification No. 6/2005(Small service providers
Each year service receipt up to 10 lakhs exempt , If previous year service rendered up to 10 lakhs.
Conditions
•Exemption is optional;
•Exemption limit not for individual service or individual premise – aggregate value of 10 lakhs is exempt.
No Cenvat credit of Input+ Input Service + Capital goods can be availed till limit of 10 lakhs.
Calculation of monetary limits for Rs. 10 lakhs
•Where the previous year's value of taxable service provided exceeds Rs. 10 lakhs, service tax would be payable even if the current year's turnover is less than Rs. 10 lakhs.
•Where the previous year's turnover is Rs. 10 lakhs or below and the current year's turnover exceeds Rs. 10 lakhs, no service tax is payable up to Rs. 10 lakhs if the specified conditions are complied with.
•Further, the sum total of first consecutive payments **'received'** during the financial year towards the taxable services up to Rs. 10 lakhs would be exempt.
The payments received towards wholly exempt services are to be excluded for determining the amount of Rs. 10 lakhs
10 lakhs Small Service Provider exemption not applicable
•Where taxable services are provided by a person under a brand name / trade name of **another** person whether registered or not.
Thus, service provided by a person under his own brand name would not be affected by this restriction and would be entitled for the exemption.
Where service tax is payable by a person As a receiver of service (reverse charge) e.g.
•Services provided by Non-residents / foreign companies who do not have an office in India

•Services provided by insurance agents
•Service provided by a mutual fund distributor
–As a payer of service - for transport services
Thus, the exemption would apply only in cases where service tax is payable as a provider of service.

All taxable services are exempt under following situations
Provided to United Nation or International Organization;
•Provided to SEZ Unit or Developer of SEZ(subject to certain conditions).
•Provided to RBI;
•Provided by RBI;
•Provided to Foreign Diplomatic Missions / Consulates;
•Provided for personal use of member (or his family) of a Foreign Diplomatic Mission/ Consulates;
•Cost of goods or material sold by service provider to the receiver of such services. Notification No. 12/2003.
•Export of services i.e. services rendered abroad. Notification No. 9/2005.
•Exemption available to small service providers (10 lakhs)

Services provided to EOU - Services provided to EOU/EHTP/STP are **not** exempt from service tax. EOU/EHTP/STP 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

Condition for getting exemption from Service tax for SEZ- Notification No 15/2009 dt 20.05.2009

Where the services are consumed wholly within SEZ

Procedure to be followed :

Approval of list of services

The developer or units of SEZ shall get the services required in relation to the authorized operations in the S EZ approved from the Approval Committee

Actual use of specified services

The developer or units of SEZ claiming the exemption actually uses the services in relation to the authorised operations in the SEZ

Exemption from payment of service tax

In case of the services consumed wholly within the sez, the exemption can be claimed by the developer or units SEZ without following the refund route.

No CENVAT credit of service tax paid on specified services

No CENVAT credit of service tax paid on the specified services used in relation to the authorized operations in the Special Economic Zone.

Exemption under no other notification claimed

Exemption on the specified services used in relation to the authorized operations in the Special Economic Zone shall not be claimed except under this notification

Proper records of receipts and utilization of services

The developer or unit of a special economic zone shall maintain proper account of receipt and utilization of the taxable services for which exemption is claimed.

II. Where the aforesaid services are consumed partially or wholly outside SEZ

The above referred same procedure to be followed, exemption is provided to the services consumed within the SEZ following the refund route, first they and claim refund as per prescribed procedure.

Partial exemption in respect of Materials/ goods and services involved in service: Notification No 12/2003 [applicable to all taxable service]

That part of value of service = Value of goods and material sold in course of service shall be exempt if the following conditions are satisfied

Conditions:

•Invoice of service shall separately show the value of goods and material;

•Cenvat Credit of input shall not be availed [However, Cenvat Credit of input service and capital goods can be taken

Calculation of service tax when service tax not charged

Where a service provider not collected service tax or not charged service tax

•Service Provider has to pay service tax treating the value service is inclusive of Service tax

•Service tax is to be calculated using backward calculation as below

Taxable value of service = amount collected x 100/100 + Rate of service tax

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

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

Assessable Value (AV) = 1000 x 100/110.3 = 906.62 .Assessable Value is Rs. 906.62 and service tax @ 10% will be Rs. 90.67. Education cess @ 2% of service tax will be Rs. 1.81 . SAH education cess 1% is Rs. 0.91 . Thus, total service tax inlcluding ec will be Rs.93.38

Short Recovery or excess Recovery of Service tax

•Where there is short recovery of the billed amount, service provider should revise the bill Otherwise he shall be liable to pay service tax on the full amount which has been billed to service receiver.

•Where there is excess recovery from a client or customer then such excess amount can be refunded to such client or customer, or it should pay to Government.

Reverse Charge in case of Service tax

Normally service Provider will have to pay service tax. But in the following cases service Receiver has to pay service tax

Service	ST to be paid by
Insurance Auxiliary Service of Insurance Agent	Insurer
Service provided by a person from outside India	Service receiver in India (except in case of individual where the service received for personal purposes)
Goods transport Agency – when either Consignor or Consignee is of "specified category	Person paying the freight to GTA
Business Auxiliary Service of Distribution of Mutual Fund	Mutual Fund or Asset Management Company
Sponsorship service	Body Corporate or Firm receiving such service 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

Service tax Valuation: **Sec 67 and Service tax Valuation Rules 2006**
Free service No service tax liability
Sec 67 (1)

Situation	Value
Where total consideration is monetary consideration	Taxable Value = Gross Amount Charged Exclusive of ST
Where consideration is in kind [“non-monetary consideration”] ⍰ Wholly in Kind ⍰ Partly in Kind	Taxable Value= Monetary Equivalent of “non-monetary consideration” **Rule 3 of Service Tax Valuation Rules, 2006** **Method-1**: Taxable Value= GAC by service provider for similar service provided to third party **Method-2**: Taxable Value = [Monetary Consideration + Mkt Value of Non-Monetary Consideration] **[but it shall not be** **less than the cost of provisioning of service**
Where consideration is “not- quantifiable”	Taxable Value = Value determined in prescribed manner No manner prescribed so far – but it is practically best judgment assessment

Other points
Consideration also includes any amount which is payable for the taxable services provided or to be provided.
2. Money includes any currency, Cheque, promissory note, letter of credit, draft, pay order, travelers Cheque, money order, postal remittance and other similar instruments but does not include currency that held for its numismatic value.
3. Gross amount charged include payment by Cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment.
4. Service tax is payable on the gross amount and not on the net amount.
5. Section 67 provides that the amount charged has to be in relation to services rendered**.**
Rejection of Value by CEO Rule 4
- Where the CEO is satisfied that the value so determined by the service provider is not in accordance with the provisions of the Act or these rules, he shall issue SCN, why cannot fix the value at the amount specified in SCN
- The C E O after providing reasonable opportunity of being heard, determine the value of such taxable service as per provisions of the Act and these rules

Treatment of Reimbursement of Expenses for Service
Cost/Exp incurred by Service provider and then recovered from service receiver ---
Treatment of such recovery in valuation is as below:

Where such cost/exp was incurred in the capacity of “PURE AGENT” of service receiver [Pure Agent:-- 4 features: I)Separate agreement to act as pure agent ii) No title over the goods/services so procured iii) Does not use such goods/services iv) Recovery cost on actual basis	Such costs/expenses are not includible in valuation
All Other cases	Such costs/expenses are includible in valuation

Commission Costs etc (list) includible in Service for valuation purpose (Rule 6)
Rule 6, provides the list of certain items includible/excludible in valuation in case of certain specific services. They are as below:

Inclusions:

(i) 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
(ii) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;
(iii) The amount of premium charged by the insurer from the policy holder;
(iv) The commission received by the air travel agent from the airline;
(v) The commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;
(vi) the reimbursement received by the authorized service station, from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer;
(vii) The commission or any amount received by the rail travel agent from the Railways or the customer;
(viii) the remuneration or commission, by whatever name called, paid to such agent by the client engaging such agent for the services provided by a clearing and forwarding agent to a client rendering services of clearing and forwarding operations in any manner; and
(ix) The commission, fee or any other sum, by whatever name called, paid to such agent by the insurer appointing such agent in relation to insurance auxiliary services provided by an insurance agent.

Exclusions

(i) Initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;
(ii) The airfare collected by air travel agent in respect of service provided by him;
(iii) The rail fare collected by rail travel agent in respect of service provided by him;
(iv) Interest on loans.
(v) The taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger (Notification No 15/2010 dt.27.02.2010

Actual consideration to be the value of taxable service provided from outside India Rule 7
The value of taxable service received shall be such amount as is equal to the actual consideration charged for the services provided or to be provided.
Notwithstanding above, the value of taxable services in respect of Services partly performed in India, shall be the total consideration paid by the recipient for such services including the value of service partly performed outside India

Classification of Service- Sec 65 A

If one service – classifiable into more than 1 category

i) Choose specific over general
ii) If Composite service – determine which service provides the essential character and classify composite service into that
iii) Choose first in numerical order

Service tax payment Rule 6

As and when Payment is received

•ST is payable only on the amount received
•Service tax is payable even advance payments received
•Service tax is payable even amount received in installments or on part payments received
•Any amount received whether before or after provisioning of Service shall attract Service tax upon its receipt.
•Free Service- Sec 67 not applicable -No ST payable

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.

Due dates: Service tax had to be paid on a monthly / quarterly basis depending upon the status of the service provider as below

Service provider	**Due dates April to February/ April to December -3 QTRS**	**Due date for the month of March and Quarter ending March**
Individuals and Firms (Quarterly Payment	5th of the following the Quarter ended June, Sep, Dec	31^{st} March
Others (Monthly)	5th of the following month	31^{st} March
E payment	6^{th} instead of 5^{th}	31^{st} March

1. Asessee who paid Service tax 10 lakhs in Previous year or they have already paid 10 lakhs in current year they should pay tax electronically.).
2. If the last date for paying tax is a public holiday, tax may be paid on the next working day.
3. Tax is paid by debit to CENVAT account (if credit available) or through GAR – 7 challan.
4. The date of presentation of Cheque to the designated bank shall be deemed to be the date of payment of service tax (But the Cheque is honored).
5. If tax has been paid to Government for service not provided, then the excess payment made to Government may be adjusted in future dues, provided, the excess is refunded to customer.
6. Service Tax collected by the Service provider/ Service receiver as the case may be, should be remitted within the due date to the credit of the Central Government.
7. Rounding off of tax: The payment of service tax should be round of in multiple of Rupees. Where such amount includes 50 paise of more it should be increased to one rupee and if it is less than 50 paise it should be ignored.

Self Adjustment of Excess service tax paid

1. In case of reason not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification, adjustment cannot be made
2. On account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit.
3. In case other than specified in clause 2 above, for example difficult to accurately estimate the amounts he is going to receive from his customers in last two days in the month of march the excess amount paid may be adjusted with a monetary limit of rupees **One lakh** for a relevant month or quarter, as the case may be
4. The details and reasons for such adjustment shall be intimated to the jurisdiction Superintendent of Central Excise within a period of fifteen days from the date of such adjustment. 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

5. 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.

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.

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].

Excess collection of tax – Sec. 73A & 73B

1. The service provider shall not collect tax in excess of what he pays to the Government.

2. The case his collection is more than his payment, he shall promptly deposit the excess with Government or refund the amount collected excess to the customer.

3. Any delay in this regard attracts payment of interest @ 13% p.a.

Service tax abatements in case of certain specific services: Notification No 1/2006

Certain % of "Gross Amount Charged" is Exempt, if the service includes the cost of materials, goods and other items. No Cenvat credit.ST payable on Taxable value The following are the details

Sl No.	Nature of Service	Abatement Allowed	Taxable Value	Remarks
(i)	Rent-A-Cab Scheme Operator's Service	60%	40%	Service include fuel cost
(ii)	Tour-Operator's Service 4 Package Tour [i.e., accommodation cum-transport, part of tour] 4 Non-package Tour [say,	75% 60% 90%	25% 40% 10%	
(iii)	Mandap Keeper Service	40%	60%	Service include supply of food
(iv)	Convention services	40%	60%	Service include supply of food
(v)	Outdoor Catering	50%	50%	Service include supply of food

(vi)	Pandal & Shamiana Contractor's Service	30%	70%	Service include supply of food provided
(vii)	Commercial or Industrial Building Construction Service	67%	33%	Service including the value of materials
(viii)	Residential Complex Construction Service	67%	33%	includes value of material
(ix)	Erection, Commissioning & Installation	67%	33%	includes value of material
(x)	Transport of goods in Containers by Rail	70%	30%	Service including the value of materials.
(xi)	Business Auxiliary Service in relation to production/ processing of PARTS and ACCESSORIES which are used in the manufacture of "Cycles / Cycle Rickshaws / Hand-operated Sewing Machines."	30%	70%	inclusive of cost of inputs and input services, whether or not supplied by the client
(xii)	Goods Transport Agency	75%	25%	Tax on amount in his Invoice [Payment will be made by consignor/consignee who is actually paying freight]]
(xiii)	Chit fund	70%	30%	

Service tax Registration Sec 69 / Rule 4

Persons requiring Registration

Person	Time Limit
Person liable for payment of Service tax (Normally Service providers and in some cases service receivers – reverse charge	Within 30 days of service becoming taxable ,if business is commenced later on, then within 30 days of commencement of business
Service exempt – no liability for payment Service Tax – Aggregate value of service exceeding 9 lacs	Within 30 days of value exceeding 9 lacs
Input Service Distributor	Within 30 days of commencement of business

The following persons who are receivers of service liable to pay service are required to be Registered

	Category of Service	Specified Person
1	General Insurance Business	Insurer of Re-insurer
2	Insurance Auxiliary Service provided by an Insurance Agent.	Insurance Company
3	Service provided by a Goods Transport Agency for transport of goods by road.	Person Liable: Specified Consignor/ Consignee who pays or is liable to pay freight should pay the Service Tax. Specified consignor or consignee includes – (i) Factory; (ii) Company; (iii) Corporation, (iv) Society; (v) Co-operative Society; (vi) Registered Dealer of Excisable
4	Business Auxiliary Services provided by Mutual Fund Distributors in relation to distribution of Mutual Fund	Asset management Company
5	Sponsorship Service provided to any Body Corporation or Firm	Body Corporate or Firm,
6	Any Taxable Service provided by any person from a country other than India u/s 66A.	Person receiving such service

Premises to be registered

S No	Premises details	Registration required
1	Single Premise, Single Service or Single premises multiple services	Single Registration
2	Multiple Premises, Single Service/Multiple Services	Centralized Billing System or Centralized Accounting System not in existence - Registration required for all premises registration with Superintendent of Central Excise] Centralized Billing System or Centralized Accounting System in existence - Registration only those premises where CBS/CAS is in existence with Commissioner of Central Excise

Procedure for Registration

Registration should be made in Application by form No ST-1 duly filled up and signed along with self certified copy of PAN

Other enclosures normally required are MOA, AOA in case of Company, Partnership deed in case of Firm, Power of Attorney copy in case of appointment of Manager, declaration about date of commencement of service/business. Board resolution in case of director who sign the application and returns and records.

Document to be Submitted with ST-1 As per Hyderabad-IV, Trade Notice No. 76/2003, dated 6-11-2003

•Proof of address of the premises office sought to be registered

•PAN number of the assessee

•List of Branches offices or premises of the assessee

•Brief note on accounting system adopted by the assessee
•Branch-wise series of invoices maintained along with a sample copy thereof
•Previous years audited balance sheet along with gross trial balance of different branches
•Details of records accounts maintained at different branches and Central Office
Bank account numbers of the Branches and Central Office through which the receipts are deposited, transacted

The application will be scrutinized and registration certificate will be granted in form N0 ST-2 within 7 days)
STC code i.e. registrationnumber- 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 - 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.
•Penalty for failure to obtain registration - Rs. 5000/ Rs 200 per day whichever is higher
Change in the Constitution of firm
•Intimate any change in the details furnished in ST1 to AC/DC
–Within 30 days of such change
Surrender of Registration
•Every registered assessee, who ceases to provide the taxable service for which he is registered, shall surrender his registration certificate immediately. rule 4(7)
•Assessee should file up-to-date returns and apply for cancellation. Registration may not be cancelled if any demands are pending.

Records and Returns under Service tax

Invoice by Service Provider
Invoice should be raised and 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 in the Invoice for complying with requirements of Cenvat Credit Rules to facilitate availment of Cenvat credit by recipient
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 Para 5.3 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

Invoice in case of continuous service/Periodical billing

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) .

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.

Maintenance of Records Rule 5

No separate form has been prescribed.

- Records can be kept in electronic form also.
- Record should normally include

(1) Register for value of services billed giving bill wise details

(2) Register for value of services received/collected giving bill wise details

(3) Register for Cenvat credit for Credit available, utilized and balance as per Cenvat credit rules 9

(4) Usual financial records such as cash, bank book general ledger, copies of invoices and Bank statements etc.,

- Records should be preserved for a period of five years.
- They should be made available for inspection by departmental officers

Returns to be filed under Service tax

Person liable for payment of Service tax	April to September - Due date October 25th October to March – Due date April 25th
Service exempt – no liability for payment of Service Tax – Aggregate value of service exceeding 9 lacs	April to September - Due date October 25th October to March – Due date April 25th
Input Service Distributor	April to September - Due date October 30 th October to March – Due date April 30 th

ST return can be revised to correct error or omission – revised return can be filed within 90 days. From the date of filing ST3. Revised return can be filed only when the original ST3 filed in time. If return is revised, then Relevant Date for the purposes of sending SCN shall be "Date of
filing of revised return" [Rule 7-B of STR, 1994]

Where the St paid(Gross) was Rs. 10 lakhs or more returns to be filed electronically

Documents to be attached along with return

The following documents that are to be attached along with ST-3

1. Copies of GAR-7 challans, for payments made. (Now it is not mandatory. 20 digit CIN to be quoted)
2. Memorandum ST-3A, incase of provisional payment of tax.
3. In case of first return, details of accounts maintained in relation to service tax should be

furnished to superintendent of Central Excise, at the time of filing first half yearly return i.e., ST-3, a list of all accounts maintained by him in relation to service tax including memorandum received from his branch office

Penalty of belated filing of service tax return

Sec 70 has been amended by FA, 2007. It provides for payment of late fees for belated return .As per Rule 7C. Amount to be paid for delay in furnishing is as below

Period of delay	Late fee payable
(i) 15 days from the due date	Rs 500/-
(ii) beyond 15 but not later than 30 days from the due	Rs 1,000/-
(iii) beyond 30 days from the due date	Rs 1000 plus Rs 100 for every day from the 31st day till the date of furnishing the said return

Provided that the total amount of late fee shall not exceed Rs.2000/-.

Penalty can be waived if no tax was payable

Where the gross amount of service tax payable is nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty**.**

Department is required to accept late return even non submission of proof of 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.

E filing of Returns

 Mandatory where the Service tax paid is Rs. 10 lakhs(Gross) during PY or already paid Rs. 10 lakhs in CY. Optional- Other cases

Basic Requirement -PAN Based Service Tax Code (STC)

Procedure

File Application to Divisional AC/DC in Annexure ‘A’ with a Trusted e-mail id & a Contact No.

AC/DC will Provide User id & Password within Ten Days of receipt of Application through e-mail

You can Change Password File return on www. aces.gov.in

Condonation of Delay

Only for those using e-filing Facility first time

Assessee has faced technical difficulties

Delay of 1 month shall be condoned as per Circular No. 71/2004

Import of Services

Import of Service [Service provided from outside India and received in India]
Charge of Service Tax on services received from outside India Sec 66 A

Person residing out of India, Providing or to be provided service having (SP)	**Person residing In India,(Service Receiver)**
(i)established a business or has a fixed establishment or	(i)established a business or has a fixed establishment or
(ii) or has his permanent address or usual place of residence	(ii) or has his permanent address or usual place of residence

Taxable service shall be treated as if the recipient had himself provided the service in India and Service recipient is liable to pay service tax
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.
A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.
Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted

Non Applicability of Service recipient liability
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. I.e. personal purpose. In such a cases as per charging section 65 (105), Service provider, Nonresident liable to pay service tax
Taxation of Service (Provided from outside India and received in India) Rules 2006

Rule 3: It provides Criteria for charge in case of import of services, as below

Immovable Property Criteria	Immovable property situation in India
Performance Based Criteria	Service is physically performed in India (whether wholly or partly)
Residuary Excluding 2: a) Foreign Travel Air b) Travel by Cruise Service	*Provided in relation to Business or Commerce* *Service recipient is located in India*

Rule 4 Service recipients shall get him registered.
Rule 5 the service imported into India for which service recipient is liable for payment of ST Shall not be treated as “Output Service” for the purpose of using Cenvat credit of other services for payment of such amount.

India” includes the installations, structures and vessels in the Continental Shelf and Exclusive Economic Zone (UP to 200 nautical miles) of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.

Liability of Service tax in case of import of services

S No	Nature of Transaction	Liability of service tax
1	Services performed by Nonresident in India	Liability is on recipient (If recipient deals with foreign establishment,)
2	Services performed by Nonresident outside India, but consumed in India	Liability is on recipient
3	Services performed and consumed Outside India but paid from India	No ST Liability
4	Services performed and consumed Outside India but paid from India, Accounted in India books	No ST Liability
5	Services performed and consumed Outside India but paid by branch outside India but claimed as reimburse of expenditure from Indian H O	ST liability may arise

Export of Services/ Export of service rules 2005

Rule 3

Immovable Property Criteria	Immovable property situation in India
Performance Based Criteria	Service is physically performed in India (whether wholly or partly)
Residuary Excluding 2: a) Foreign Travel Air b) Travel by Cruise Service	*Provided in relation to Business or Commerce Service recipient is located in India* *Other cases ---Service receiver is located outside India* ***at the time of provision of service is made.***

<u>Additional Conditions for all 3 categories</u>:
1)Service must be provided from India and used outside India
2) Payment must be received in convertible Foreign Exchange.

How to export service
2-Options
Export without payment of Service tax (Rule 4 of Export of Service Rules, 2005)
Pay ST and then claim rebate (Rule 5 of Export of Service Rules, 2005)
[Rebate is also admissible of related input and input service]

"India" includes the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof

Exemption to specified taxable services used for export of goods
Notification No. 40/2009 ST dated 30.09.2009 has amended Notification No.17/2009 ST dated 07.07.2009 which exempts Service provided for transport of export goods through national waterway, inland water and coastal shipping (zzzzl)
The exporter shall-.produce the Bill of Lading or a Consignment Note or a similar document by whatever name called, issued in his name; and produce evidence to the effect that the said transport is provided for export of relevant goods.

SERVICE TAX RETURN PREPARERS SCHEME

Service Tax Return preparers Scheme:

1. Definitions:

a. **Service Tax Return Preparer:** It refers to an individual who has been authorized to act as a "Service Tax Return Preparer" under a scheme framed under this section.

b. **Specified Classes of persons:** It refers to persons specified in the Scheme, who are required to furnish a return required to be field under section 70.

2. Power of Board: The CBEC is empowered to frame a scheme for furnishing return of income by any specified classes through a Service Tax Return Preparer.

3. Duty of Service Tax Return Preparer: Every Service Tax Return Preparer should assist the specified classes of persons to prepare and furnish the service tax return in the manner specified in the scheme.

4. Structure of the Scheme: The scheme framed by the Board may provide for the following
–Manner in which and the period for which the Service Tax Return Preparer shall be authorized,

a. Educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Service Tax Return, Preparer,

b. Code of Conduct for the Service Tax Return Preparer,

c. Duties and Obligations of the Service Tax Return Preparer,

d. Circumstances under which the authorization given to a Service Tax Return Preparer may be withdrawn, Any other matter which is required to be specified by the Scheme for the purposes of this section.

Assessments demands, refunds and recoveries, settlement Commission, AAR etc.

The provisions are similar to excise and excise provisions will be applicable: Check the comparison chart available at the end of customs notes

Rectification of Mistake apparent on record Sec 74

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'. Any rectification that reducing the refund or increasing the liability, opportunity should be given to assessee.

Revision orders by Commissioner Sec 84

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

Power of Central Excise Officer to Access to a registered premises Rule 5 A

(1) An officer authorized by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every assessee shall, on demand, make available to CEO or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, within a reasonable time not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by such officer or the audit party, as the case may be,-

Penalties under Service tax – Sec. 76, 77 & 78

S.N	Nature of Violation	Penalty
1.	Failure to pay Service tax [Sec.76	Not less than Rs.200 per day of default or 2% per month of tax whichever is higher. In no case penalty can exceed the amount of tax.
2.	Suppression of Value (fraud cases)	100% to 200% of duty sought to be charged. Penalty is reduced to 25% of if service tax paid within 30 days.
3.	Failure of registration	Rs.5,000 or Rs.200 per day whichever is higher from the first day after due date till the day of actual compliance.
4.	Failure to furnish information called by officer on Central Excise Officer	Rs.5,000 or Rs. per day whichever is higher from the first day after due date till the day of actual compliance.
5.	Failure to appear before the Central Excise Officer when issued with a summon for appearance to give evidence or to produce document.	Rs.5,000 or Rs.200 per day whichever is higher from the first day after due date till the day of actual compliance.
6.	Failure to maintain books of	Maximum Rs.5,000/-
7.	Fails to pay through e-payment	Maximum Rs.5,000/-
8.	Where no penalty is mentioned	Maximum Rs.5,000/-

No penalty will be levied if assessee proves; there is a reasonable and sufficient cause for Failure to Comply- Sec 80

Power to search premises: Section 82:-

If the Commissioner of Central Excise has reason to believe that any documents or books or things which in his opinion will be useful for or relevant to any proceeding under this Chapter are secreted in any place, he may authorize any AC/DC to search for and seize or may himself search for and seize, such documents or books or things.

The Criminal code Procedure will apply with regard to searches.

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Chapter4 VAT (VALUE ADDED TAX)

Vat is indirect tax levied on sale of goods
Vat was introduced primarily as a replacement of existing sales tax in many states in India with effect from 01.04.2005
.The Vat structure has been evolved on the basis of consensus among the states.

• The basic features of Vat will be therefore will be same through the country.

What is Value Added Tax ('VAT')

– Tax on Value addition

– Multi-point taxation

– A state subject

MEANING OF VAT

• Vat is a tax levied on the value added to any product AT EVERY STAGE"

• Provision for input tax credit tax Credit paid at the previous point of purchase.

• The tax paid by a registered dealer is netted. Tax is ultimately borne by the consumer

No VAT

VAT not levied on

• Inter-state sale / Inter-state branch transfer

• Imports/Exports

• Dealers below threshold level

Merits of Vat

• Eliminates multiple taxation of full sale price
• No tax evasion. Because of input tax credit on valid vat invoice
• Neutral on choice of production technique, the vat liability will not vary
• Simple method.
• Lowering tax burden.
• Transparency. – purchase price value addition, vat paid
• Better revenue collection and stability.
• Better accounting systems.- tax paid at earlier stage received back

Demerits of vat

• VAT does not cover services.

• Non integration of central VAT with state VAT. Discourage in purchasing outside state

• Accounting burden.

• Cost of administration for government as the number of dealers will increase

• Exemptions on good, Non applicability of vat, make more cascading effect

METHODS FOR VAT TAXATION (Computation of value added)

Addition method

• Invoice Method

• Subtraction Method

Addition Method

This method aggregates all the factor payments including profits to arrive at the total value addition on which the rate is applied to calculate the tax. This type of calculation is mainly used with income variant of VAT. Addition method does not easily accommodate exemptions of intermediate dealers.

A drawback of this method is that it does not facilitate matching of invoices for detecting evasion.

Invoice Method

This is the most common and popular method for computing the tax liability under 'VAT' system.

Under this method, tax is imposed at each stage of sales on the entire sale value and the tax paid at the earlier stage is allowed as set-off. In other words, out of tax so calculated, tax paid at the earlier stage i.e., at the stage of purchases is set-off, and at every stage the differential tax is being paid.

The most important aspect of this method is that at each stage, tax is to be charged separately in the invoice.

This method is also called the 'Tax Credit Method' or 'Voucher Method'. From the following illustration, the mode of calculation of tax under this method will become clear:

Subtraction Method

Under this method, the tax is charged only on the value added at each stage of the sale of goods. Since, the total value of goods sold is not taken into account, the question of grant of claim for set-off or tax credit does not arise. This method is normally applied where the tax is not charged separately. Under this method for imposing tax, 'value added' is simply taken as the difference between sales and purchases.

Variants of Vat

The gross product variant

The gross product variant allows deductions for taxes on all purchases of raw materials and components, but no deduction is allowed for taxes on capital inputs. That is, taxes on capital goods such as plant and machinery are not deductible from the tax base in the year of purchase and tax on the depreciated part of the plant and machinery is not deductible in the subsequent years. Capital goods carry a heavier tax burden as they are taxed twice. Modernization and upgrading of plant and machinery is delayed due to this double tax treatment.

The income variant

Income variant of VAT on the other hand allows for deductions on purchases of raw materials and components as well as depreciation on capital goods. This method provides incentives to classify purchases as current expenditure to claim set-off. In practice, however, there are many difficulties connected with the specification of any method of measuring depreciation, which basically depends on the life of an asset as well as on the rate of inflation.

Consumption variant

Consumption of VAT allows for deduction on all business purchases including capital assets. Thus, gross investment is deductible in calculating value added. It neither distinguishes between capital and current expenditures nor specifies the life of assets or depreciation allowances for different assets. This form is neutral between the methods of production; there will be no effect on tax liability due to the method of production (i.e. substituting capital for labour or vice versa). The tax is also neutral between the decision to save or consume.

Among the three variants of VAT, the consumption variant is widely used The reasons for preference of this variant are:

Advantages of Consumption variant

Firstly, it does not affect decisions regarding investment because the tax on capital goods is also set-off against the VAT liability. Hence, the system is tax neutral in respect of techniques of production (labour or capital-intensive).

Secondly, the consumption variant is convenient from the point of administrative expediency as it simplifies tax administration by obviating the need to distinguish between purchases of intermediate and capital goods on the one hand and consumption goods on the other hand.

In practice,, most countries use the consumption variant. Also, most VAT countries include many services in the tax base. Since the business gets set-off for the tax on services, it does not cause any cascading effect.

Input and Output Tax

Input Tax

VAT paid by a registered business dealer on taxable input purchases for business such as raw material, trading goods, capital goods and Consumables

Output Tax

VAT charged by a registered business dealer on sales made by the business to its customers

Input Tax Credit (ITC)

Input tax credit means, credit available on the Purchases made by dealer. Credit of VAT paid will be available only on purchases made within the State. ITC available only to VAT registered **dealer** on purchases made from another VAT registered dealer against a valid VAT invoice, Purchases include raw material, consumables, packing material, capital goods.

Input Tax Credit on Capital goods

- Available and to be adjusted over a period of 36 monthly instalments (3 years)
- States can reduce this period
- No input tax credit on Capital Goods specified in negative list

Use of inputs to avail credit

The purchased inputs can be used for

- For sale/resale with in state or outside state
- As raw material for manufacture of goods for sale inside state or outside state
- As a packing material/consumables in sale of goods
- As goods in execution of works contract.
- For export of goods out of India

The Purchased Capital goods can be used for

For manufacture of taxable goods

Carry forward of Input Tax Credit

- Unutilised Credit will be carried over till the end of the succeeding financial year and if it remains unutilised will be refunded.
- VAT Credit will be refunded within three months in case of exports

Units in SEZ and EOU have an option of either

- Not paying VAT on inputs; or
- Claim full refund within three months

No input tax credit in case of

- Inputs used in the manufacture of exempted goods
- Purchases for other than manufacture/re-sale (Captive Consumption)
- Purchases made inter State/in-transit
- if VAT registered dealer purchases from Unregistered dealer (Output tax payable on full sale price)
- Purchase from a registered dealer who opts of composition scheme.
- Purchased from registered dealer where invoice does not show tax amount separately.

Purchases of goods of negative list for example

- Delhi - Fuel in the form of Petrol, Diesel and Kerosene, LPG, CNG, Coal
- AP - Fuel, Coal and Natural Gas used for power generation
- Jharkhand - Consumables
- Tripura – Credit available in excess of 4% on petroleum products (other than petrol, ATF and diesel) and other fuels

Input tax credit on stock transfers

Inputs used in the manufacture of finished goods which are stock transferred; or purchases of goods which are stock transferred Input tax credit available to the extent of 4% of vat paid on such purchases. Ie excess of 4% if availed it should be reversed

Utilization of vat Credit

Credit can be utilized towards

- VAT payable on Finished Goods
- CST payable on Inter State Sales
- Any interest or penalty under VAT

Common inputs for exempted sale and taxable sale

- Option 1- maintain separate records for inputs used in exempted sale and taxable sale
- Option 2- Proportionate input tax credit on inputs used in taxable sale

Vat payable

- Vat payable = Output tax – Input Tax credit.

In other words, out of the tax charged on your sales, you will first deduct the tax charged on your purchases, and pay balance to the department.

For example, input worth Rs. 1,00,000/- is purchased and sales are worth Rs. 2,00,000/- in a month, input tax rate and output tax rate are 4% and 12.5% respectively, then input tax credit/set-off and calculation of VAT will be as shown below:

(a)	Input purchased within the month	Rs. 1,00,000/-
(b)	Output sold in the month	Rs. 2,00,000/-
(c)	Input tax paid	Rs. 4,000/-
(d)	Output tax payable	Rs. 25,000/-
(e)	VAT payable during the month	Rs. 21,000/-
	after set-off/input tax credit	
	[(d) – (c)]	

Composition scheme under vat

- Applicable to Every registered dealer who is liable to pay vat and whose turnover does not exceed Rs.50 lakhs in the last financial year
- The scheme is optional. Intimation to Commissioner to exercise option in any whole year or part of year
- Dealer need not maintain any statutory records as prescribed under the Act. The records for purchase, sales, inventory should be maintained
- Turnover will be taxed at low rate as 0.25%
- No input tax credit on purchases
- Cannot issue tax invoice, the buyer from composition scheme dealer cannot avail input tax credit

Non eligibility of composition scheme

For the following dealers composition scheme not applicable. They cannot avail

- Dealers of importers and exporters
- Dealers having interstate sales
- Dealers having interstate branch /depot/works contract transfers

Rates of VAT

- 0% -36 commodities –Agricultural Products., sea products
- 1%- 3 commodities (Gold, Silver, Precious metals & Stone, etc.)
- 4%-About 340 commodities Industrial, Packing and IT products
- 12.5% (RNR) All other goods

RATES OF VAT NOT APPLICABLE

- Non Applicability of VAT on Petrol, Diesel, Aviation Turbine Fuel, Liquor, Lottery Tickets,
- These goods may be taxed under VAT Act or any other Act at higher rates.

Zero rated sale/Exempted sale- Certain sales are 'zero rated' i.e. tax is not payable on final product in certain specified circumstances. In such cases, credit will be available on the inputs i.e. credit will not have to be reversed. Distinction between 'zero rated sale' and 'exempt sale' is that in case of 'zero rated sale', credit is available on tax paid on inputs, while in case of exempt goods, credit of tax paid on inputs is not available. As per para 2.5 of White Paper on State-Level VAT, export sales are zero rated, i.e. though sales tax is not payable on export sales, credit will be available of tax paid on inputs.

Procedures under Vat

Threshold limit on Vat

0-5 Lacs No Vat- Not liable for Registration
5-50 Lacs - can opt for composition at lower rate up to 0.25% (Only for retailers)
50 Lacs Above - Compulsory VAT
Some states the limit is Rs. 10 lakhs instead of 5 lacs

Registration under Vat

Automatic registration under the VAT Act of all the existing dealers

New dealers require to register after vat come in to existence

Dealers who 'Cross the basic threshold limit

Composition scheme dealers
Time limit- with in 30 days from the date of commencement of business
TIN will be allotted all dealers. It will be a 11 digit numerical code. First two digits will indicate State Code. TIN will have to be indicated on each invoice issued

Cancellation of registration

- discontinuance of business; or disposal of business
- transfer of business to a new location
- annual turnover of dealer falling below the specified amount.

Dealer obligation : Inform surrender original RC, pay tax up to date

Records under vat

- Purchase records
- sales records
- VAT account (Input tax credit, utilization, balance)
- Separate record of any exempt sale
- Other documents such as tax invoice, delivery note, bills, credit notes, debit notes

Declaration forms under vat

- No declaration forms
- Old declaration forms under sales tax law dispensed with.
- No concessional sale under vat, Hence no need of forms.

Vat Invoice

- Invoices are important documents for administering VAT.
- In the absence of invoices VAT paid by the dealer earlier cannot be claimed as set off
- Every registered dealer whose turnover of sales exceeds the specified amount shall issue to the purchaser a serially numbered tax invoice, .
- The tax invoice shall be dated and signed showing the required particulars.
- The dealer shall keep a counterfoil or duplicate of such tax invoice duly signed and dated.
- **Particulars of Vat Invoice**
- the words 'tax invoice' in a prominent place
- name and address of the selling dealer;
- registration number of the selling dealer;
- name and address of the purchasing dealer;
- registration number of the purchasing dealer (not under all VAT legislations);
- pre-printed or self-generated serial number;
- date of issue;
- description, quantity and value of goods sold;
- Rate and amount of tax charged in respect of taxable goods;
- signature of the selling dealer or his regular employee duly authorized by him for such purpose.
- The provisions relating to tax invoice do not apply to a selling dealer who has opted to avail the composition scheme '.

Example on Vat payment

Vat Return

Returns will be filed monthly/quarterly, as prescribed, along with challans. Returns will be scrutinized and if there is technical mistake, it will have to be rectified by dealer

Return normally contains the following particulars

- Name Address and Registration Number of dealer.
- Period of Return.
- Turnover of sales and purchase.
- Claim of Set-off.
- Amount of set-off carried forward.
- Amount of set-off claimed as refund.
- Calculation of Tax
- Declaration that particulars given in return are true and correct

Assessments under Vat

- Most are the self assessment, where dealer calculate vat liability and pay vat as per law and files monthly returns
- Cross checking by department at the end of year to ensure vat paid correctly.

Audit under vat

- Some states provide vat audit by CA
- Other cases, department do audit on specific selected criteria

Vat in case of special transactions

Vat on Works Contract

- The works contract is a deemed sale
- Vat is levied on goods involved in works contract (Steel. Cement, paints, fittings etc)
- Sale price of goods transferred in works contract is the turnover for the purpose of Vat
- The amount representing labour and other service charges incurred for such execution should be excluded from vat purview.
- Where such labour and other service charges are not quantifiable, the sale price shall be the cost of acquisition of the goods and the margin of profit + all other expenses in transferring the property

Tax rates on works Contract

- Option 1- Normal vat schedule rate on goods involved in works contract. Rate applicable for each items is considered Input tax credit is available on Purchases
- Option 2- Composition scheme rate on the total value of works contract including labour and overheads. No input tax credit is available on Purchases
- Input credit on Capital goods purchased in works Contract is not available, as the works contract execution is not manufacturing and processing of goods.

Vat on Lease transactions

- Constitution provides power to levy tax on the transfer of the right to use any goods (lease)
- Lease is a deemed sale and vat can be levied
- Taxable event is the transfer of the right to use any goods
- Lease rentals collected by lessor is consideration and treated as turnover. Some states provide deduction of interest and finance charge from lease rentals
- Tax rate applicable on the goods given on lease
- Sub lease is also taxable

•Lessor can get input tax credit on the tax paid on purchase of leased asset

Vat on hire Purchase transactions

•Delivery of goods under hire-purchase or installment sale will be taxable event for vat. And not the completion of sale on exercise of option by hirer or last installment paid by buyer

•VAT laws as applicable to normal sales are equally applicable to hire-purchase and installment sales.

•Hire charges/ Installment amount will be taxed

•When all the hire charges and installments are taxed no vat tax on when the sale was concluded on last installment/when hirer exercise option to buy.

Vat & CST

•CST levied on Interstate sales where vat levied on local state sales.

•CST paid on outside state purchases is not vatable hence CST have the cascading effect.

•CST is an origin-based tax collected by the exporting State whereas VAT is a destination based consumption tax, both cannot go together

•After vat was introduced it is decided to phased out CST slowly by 2010-2011. Now 2008-09 it is 2% and in 2009-10 it is proposed to 1% and in 2010-2011- 0%

AMENDMENTS IN CST ACT TO FACILITATE INTRODUCTION OF VAT

•CST act sec 15 amended to tax declared goods at more than one stage and Notification u/s 8 to reduce CST to 2% wef 01.06.2008

End of chapter

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Chapter 5 Central Sales tax

- CST will be levied on interstate sales as per Entry No 92 A List I of Indian Constitution.
- CST Act Provides for impose of the sales tax on interstate sales
-
- CST Act makes provisions for very few procedures and rules for administration
- In respect of provisions like return, assessment, appeals etc., provisions of General Sales Tax law of the State applies.

Objects of CST Act

- To determine the principles with regard to When a sale is said to interstate /export/import sale

Levy collect and distribution of taxes on interstate sale

To declare certain goods as goods of special importance and restrict the state to levy tax on these (Declare goods) goods

Types of sales

Intra state sales- Sales with in the state- only sales tax/Vat- No CST

- Inter state Sales- No Sales tax/ Vat - Only CST
- Export Sales- No Sales tax/No Vat/No CST

Important Definitions under CST Act

Sale Outside State:

- If the sale is inside state and it will sale outside state for all other state

Sale inside a State

If the goods are within the State

- In the case of specific or ascertained goods, at the time the contract of sale is made

and

- In the case of un-ascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

Chapter 1 Sale to ship which is within territorial waters is 'local sale'

Goods: Section 2(d)

All materials, articles, commodities and all kinds of movable property,

Excluding

Newspapers, actionable claims, stocks, shares and securities. News papers includes magazines

However News papers sold as scrap/old newspapers are goods

Examples for Goods

All movable property, all intangible goods, such as patents, trademarks, licenses lottery tickets, steam , Electrical energy - animals and bird in captivity Goods include uprooted trees, second hand goods, rejected goods, worn out goods, Waste Scrap etc. Branded software) is 'goods' and sales tax can be levied.

Examples for not as goods

'Immovable property' includes land, benefits arising out of land and things attached to the earth or permanently fastened to anything that is attached to the earth is not goods. However, as per section 2(7) of Sale of Goods Act, goods include standing crop, grass and things attached to and forming part of the land, which is agreed to be severed before sale or under contract of sale.

Sale

Transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration,

Sales include

(i) Transfer of property in goods
(ii) Goods involved in Works contract
(iii) Right to use goods (like leasing)
(iv) Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.
(v) Supply of food articles
(vi) Hire purchase

Sales does not include

- barter
- a mortgage
- hypothecation or a charge
- pledge
- Consignment sales (declaration in form F is require)
- Branch and head office transfers (declaration in form F is require)
- Job work/processing
- Gifts/Samples
- Transfer to C & F Agent (declaration in form F is require)

Business

- Trade, Commerce, manufacture, or any adventure motive to make gain or profit or may not have motive to gain profit
- any transaction in connection with or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern

Place of Business –

- Place where dealer carries business
- Place where dealer stores the goods -Factory, warehouse, store, depot
- Place where dealers books of account kept

Dealer

Every person carries on the business of buying, selling, supplying or distribution of goods, directly or indirectly, for cash, or for deferred payment, or for valuable consideration &

Include

- a local authority, a body corporate, a company, any cooperative society, club, firm, Hindu undivided family or other association of persons which carries on such business
- a factor, broker, commission agent, delcredere *agent*, or any other mercantile agent
- auctioneer
- Government/Club is also a dealers

Charging section of CST Sec 3

- Levy is on sale of goods (i.e. levy is not on purchases)
- No Levy on Electrical Energy (though electrical energy is goods)
- Levy is only on Inter state sales
- The liability is subject to other provision of Act (ie exemptions if any in other sections should be considered

Meaning of 'Inter State Sale' sec 3

A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase

- Occasions the movement of goods from one State to another *or*
- Is effected by a transfer of documents of title to the goods during their movement from one State to another.

Essential features of Inter-state Sale

Transaction must be completed sale
Location of buyer and seller immaterial
There should be agreement to sale stipulation that there should be movement of goods from one place to another
There should be physical movement of goods from one state to other
It is immaterial which state the ownership passes
Mode of transport is immaterial, transportation may be any mode
Ever Buyer takes deliver from seller, if there is movement one state to another it is interstate sale
Sale should conclude in different state. It conclude in same state, subsequent movement will be on behalf of Purchaser and it is not interstate sale
*T*emporary movement through another State is not Inter State sale –

Sale by transfer of documents of title

Documents of title:

Lorry Receipt - LR in case of transport by Road
Railway Receipt - RR - in case of transport by rail
Bill of Lading - BL - in case of transport by sea
Air Way Bill - AWB - in case of transport by air.
One who submits document of title, the same is entitled to get delivery of goods, if document is in his name or endorsed in his name.

Transfer of documents of title is also interstate sale:

The movement of goods from one State to another need not be occasioned by sale. For example, if the goods are being sent to a branch by transport, sale during movement by transfer of document will also be an 'inter state sale' u/s 3(b).

Goods involved in Works Contract

No CST on works contract
CST can be levied on goods involved in works contract if goods move from one State to another on account of such works.
CST on works contract only in case of movable property and not on immovable property
Sale price for the goods is similar to that of definition of goods.

Rates of Central Sales Tax sec 8

SNO	Section		Rate of Tax
1	8(1)(a)]. 8(2)	Sale to Government/ unregistered dealer all goods	Local general sales tax rate for sale within the State,
2	8(1)(b)].	Sale to registered dealer	@ 2% or general sales tax rate for sale within the State, whichever is lower provided that the goods are 'eligible' as per section 8(3) and these are specified in the Registration (Condition: Form to be issued by purchaser- C form

Note: When local sales tax rate is nil CST is also Nil

Taxable turnover & Inclusions and Exclusions in Turnover sec 2 (j)

Turnover

■Aggregate of the sale prices received and receivable by the dealer in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period

Determination of Turnover

Turnover is to be determined in accordance with provisions of Central Sales Tax Act and Rules

■In determining turnover, deduction of sales tax should be made from the aggregate of sale price. Section 8A(1)

Prescribed period under CST

■-Period in a dealer is liable to submit returns under the local Sales Tax law For example, monthly/quarterly.

The 'aggregate sale price

The aggregate sale price is assumed as inclusive of Central Sales Tax and backward calculation is made.

■Thus, if aggregate of sale price is 'S' and rate of tax is 'R'; 'turnover' and 'tax payable' will be calculated as follows:

■ Turnover= S x 100/100+R

■ Tax = S x R/100+R

■Round off of CST payable To nearest rupee.(Section 9B of CST)

Inclusions in Turnover for CST liability

■Central Excise

■All expenses before the delivery (loading, wieghment ,coolie)

■Packing material and packing charges

■Freight is not shown separately in invoice

■Freight in case of F O R Contracts

■Design and development charges in respect of goods

■Salesman commission

■Freight from factory to depot in case of sale from depot

Exclusions in Turnover – Where no CST Payable

■transit Insurance at the at the request of buyer

■Freight if shown separately in invoice

■Subsidy/charity

■Cost of installation shown separately in invoice

■Goods returned by buyer with in 6 months from the date of sale

■Goods rejected by buyer (No time limit)

Exemptions from CST

■Sales during movement of goods Section 6(2)
■Sale to diplomatic missions, UN, international organizations etc Section 6(3)
■When local sales tax rate is nil, CST is also nil. Sec 8
■Exemption when sale is penultimate to export as defined u/s 5(3) u/ S 6(1)
■ Exempting sale to SEZ unit. Section 8(6)
■Exemption by issue of notification by State Government
■ Sale during export/import is not taxable,

Export sale and sale in the course of export

■Export Sales means -Direct exports
Sale during the course of export – includes direct export and also (a) Sale by transfer of documents after goods cross customs frontier (b) Penultimate sale for export (c) Export with help of agent./Sale to export house/sale to exporter, who exports

Penultimate sale

Penultimate sale (last but one sale) is exempted from CST when all the following conditions are satisfied

■Exporter should have export order in his hand before taking delivery.
■Sale is made as per as per agreement considering the export order
■The goods shall be exported in the same condition (without any process)
■Exporter should issue declaration in form no H/I to seller

Import sale and sale during the course of Import

■Direct imports – directly importing by person
■Sale in course of imports means imports through agent
■A Sale is said to imported sale , when sale take place before reaching the customs barriers
■No CST in case of Imports, After importing If goods sold in local state local sale tax is payable
■ When the sale is after reaching territorial waters it is sale with in the state and local sales tax can be levied. Because territorial waters will belong to respective state government

Goods of special importance (Declared Goods) Section 14

▪Cereals (rice paddy wheat)
▪Pulses(gram, tur, moong, masur, urad)
▪ Coal, coke, all form excluding charcoal
▪Hides and skins
▪Crude oil
▪Cotton in un manufactured form excluding cotton waste
▪Iron and Steel
▪Jute
▪Oil seeds
▪Manmade fabrics
▪Sugar and Khandasari Sugar
▪Woven Fabric of wool
▪Aviation fuel sold to turbo prop aircraft

State Government cannot charge more than 3% tax on declared goods

Procedures under CST

Registration under CST Act

■Dealers who 'effect' inter state sales are required to register with in 30 days from the date of first inter state sale.

■Other dealers voluntarily can also register (example inter state purchases no inter state sale, branch transfers etc)

Procedure for registration

■Application in form No A affixed with Rs. 25 court fee stamp.

■Application should be signed by dealer

Enclosures to Application

Particulars of Directors/ partners

Copies of articles of association, memorandum in case of company and partnership deed if applicant is a firm Copies of rent agreements

Nominations as Manager

List of places of business, go down

Details of machinery

Details of bankers

Photographs of directors / partners

List of goods deal for purchase, sale, resale, manufacture, export etc

Place of business location sketch

Security deposit

Introduction by two dealers in from the place of dealer

Self addressed stamped envelop Rs. 30

■Different places in same state One registration, different places in different states, registration required under each state separately

Grant of Registration Certification

Registering authority will ensure that application is in conformity with provisions of CST Act.

He can make necessary enquiries about the particulars given are correct

Materials requested for registration are eligible for inclusion and the goods are in fact needed for the business.

After he is satisfied and after obtaining required security,

The dealer will be issued a Certificate of Registration in prescribed form 'B'.

A copy of the same will be issued for every additional place of business in the State.

This certificate should be kept at principal place of business

A copy of the certificate should be kept at each additional place of business in the State.

Amendment of Certificate

The certificate can be amended e.g. change of name, change of business, change of class of goods in which he carries business, change/addition of place of business, warehouses etc. This amendment can be made on application from dealer

Sales tax authorities themselves after giving notice to dealer.

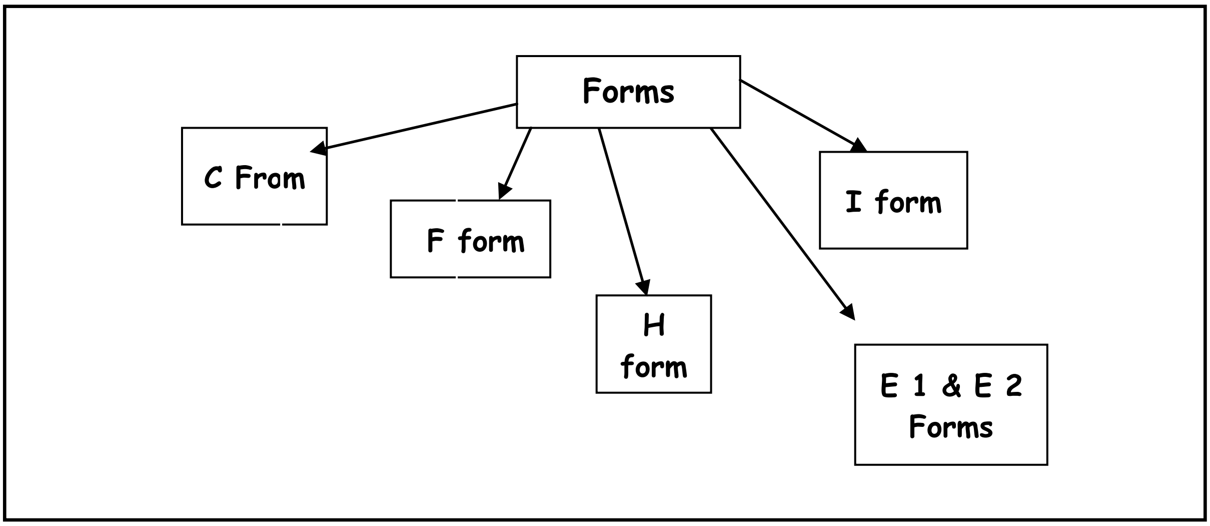
The amendment will be effective from date of application

Cancellation of CST Registration

■Registration can be cancelled either on request of dealer or

■Suo motu by sales tax authorities.

Forms under CST



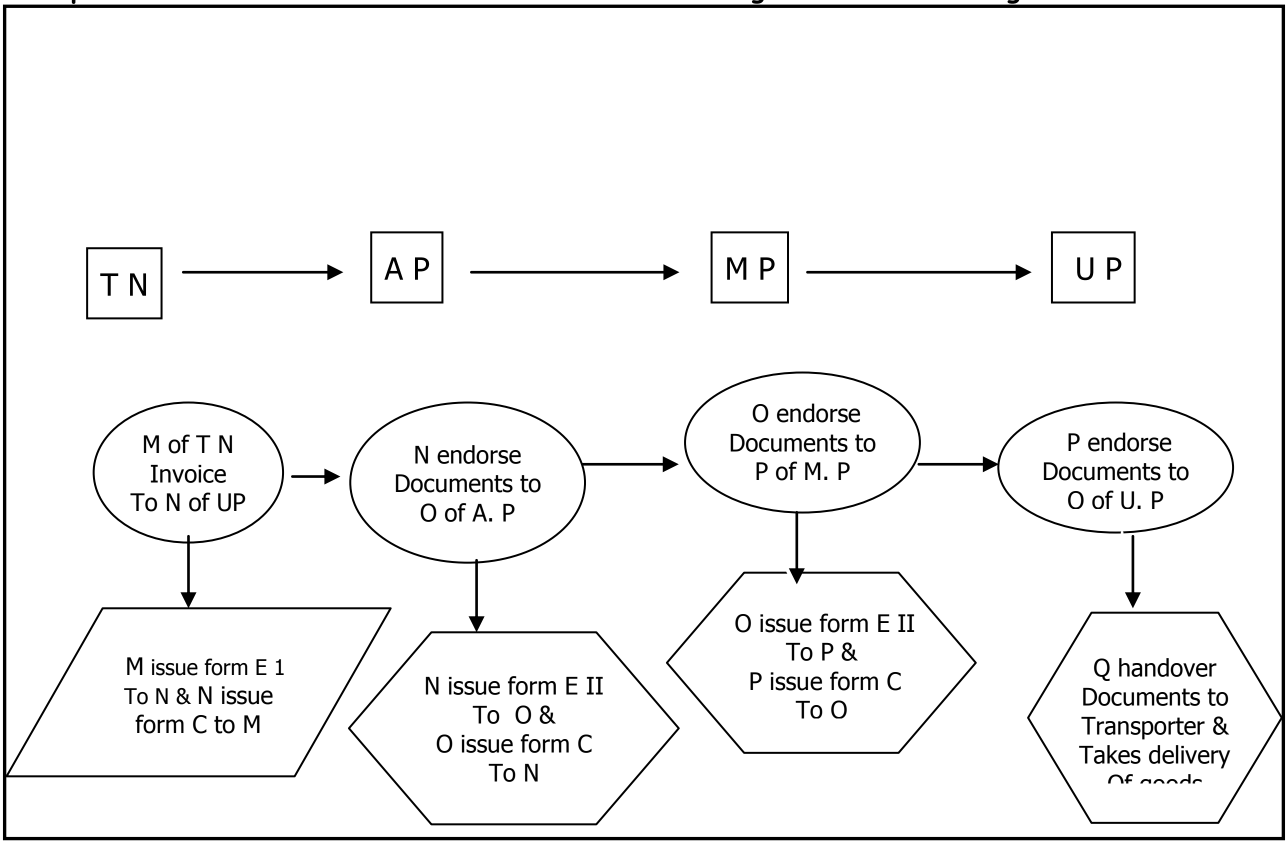
Nature of form	Issued by	Issued to	Purpose
Form C	Registered Dealer who is a buyer	To Registered Seller	To Avail Concession Rate of Duty
Form F	Receiver of goods in case of Branch/HO/Depot transfers	To Sender of goods	To exempt CST and treat transfer is not as sale
Form H	Registered Dealer who is a Exporter (buyer)	To Registered Seller	To exempt CST
Form I	Registered Dealer who is a Exporter in SEZ (buyer)	To Registered Seller	To exempt CST
For E1 & E2	Registered Seller in sale through documents of title on movement of goods	To Registered Dealer who is a buyer	To exempt CST

- A dealer has to issue certain declarations in prescribed forms to buyers/sellers.
- These forms are prescribed in Central Sales Tax (Registration and Turnover) Rules, 1957.
- Forms C, E-I, E-II, F, H and I are printed and supplied by Sales Tax authorities
- Dealer has make a written request to obtain the forms
- Dealer has to issue declarations in the forms printed and supplied by the Sales Tax authorities only.
- These forms are in triplicate.
- One C form can be issued to each dealer for covering all the transactions in whole financial year.
- State government has no power to waive the declarations in form C

Benefits of using forms

- C form is issued to avail Concession rate
- F form is issued in case of Brach/Ho/Depot transfer to avail CST Exemption
- H form/I form is issued to avail exemption from CST when Purchasing for export
- E1 & E2 was issued to avail exemption from CST in case of sale by transfer of documents of title on the movement of goods

Exemption of sale in case of transfer of documents during the movement of goods



No CST in case of sale through transfer of documents between Mr. N to Mr. O and Mr. O to Mr. P.

Appeals to Appellate Authority

In case of dispute, concerning the sale of goods effected in inter-state sale he appeal will lie with 'Central Sales Tax Appellate Authority Sec'6A *read with* 9 of CST Act. In respect of other matters appeal lies with State sales tax authorities (like Appellate Commissioner or Tribunal etc).

Formation of Appellate Authority –

A separate 'Central Sales Tax Appellate Authority' will be constituted by Central Government. The Authority will consist of Chairman, Officers of Legal Service of Central government Central Government will provide administrative staff to the Authority. [Section 19 of CST Act]. The authority will regulate its own procedures. [Section 23 of CST Act].

Matters appealable to the authority –If the dispute relates to sale of goods effected in inter-state sale. Appeal should be filed within 45 days from date on which order is served on him. Appellate Authority can grant further extension of 15 days. [Section 20(2)]. Appeal must be filed in quadruplicate and accompanied by a fee of Rs 5,000/-.

Procedure for hearing

- On receipt of appeal, a copy of appeal will be forwarded to assessing authority as well as State Governments concerned.
- Appellate Authority will call upon assessing authority and State Government/s to furnish relevant records.
- The records will be returned to assessing authority/State Government as soon as possible. [Section 21(1)].
- Authority will hear the matter, examine the matter and either accept or reject the appeal.
- Before rejecting appeal, opportunity of hearing will be given to appellant or his authorised representative and also to State Government concerned. [Section 21(3)].
- Appeal should be normally decided within 6 months.
- Copy of order will be sent to appellant and assessing authority. [Section 21(5)].
- It may happen that sales tax was paid to one State Government while in fact, it was payable to another State Government
- Section 26 provides that order of CST Appellate Authority will be binding on assessing authorities and other authorities under State sales tax laws
- There is no provision for appeal against the order of CST Appellate Authority.

Offences under the Act

Central Sales Tax Act provides for penalties and punishments in respect of certain offences. In respect of offences not provided in the CST Act, provisions of General Sales Tax Law of the State where the dealer is carrying on business are applicable.

CST Act envisages three types of punishments (*a*) Imprisonment and fine which can only be imposed by Court of Law (*b*) Compounding of offences by Sales Tax authorities (*c*) Penalty in certain cases which can be imposed by Sales Tax authorities.

Section 10 of CST Act provides that punishment up to six months of simple imprisonment or with fine or both can be imposed for following offences under CST Act.

- *Knowingly* giving declaration in form C, E-I, E-II, F or H which he knows, or has reason to believe, to be false
- Not registering under CST Act when required to be registered
- False representation by a registered dealer that the goods being purchased are covered under his Certificate of Registration for concessional rate
- Falsely representing that he is a registered dealer, though he is not.
- Misusing or using for different purpose the goods obtained under C form or H form prescribed for SEZ unit, at concessional rate

- Having in possession C forms or H form prescribed for SEZ unit, which are not obtained as per provisions of Act.
- Collecting any amount representing as Central Sales Tax by an unregistered dealer or by a registered dealer in contravention of provisions of Act.
- Provisions regarding offences in 'General Sales Tax Law' (excepting those enumerated above) are applicable in respect of offences committed by dealers in that State.
- Punishment of imprisonment and/or fine can be imposed only by Court of law.

Penalty in lieu of Prosecution –

- Section 10A of CST Act authorises imposition of penalty in lieu of punishment in respect of offences regarding
- obtaining goods not included in registration certificate
- purchasing goods representing that he is registered dealer, though he is not
- using goods for purposes different than the purposes for which purchased
- The penalty can be up to one and half time the tax which would have been payable.
- Sales Tax Authority having jurisdiction over the dealer's place of business can impose the penalty.

Other provisions

Liability of company in liquidation Sec 17

- If a liquidator or receiver is appointed for a Company, he should inform sales tax authorities within 30 days of the appointment.
- The appropriate authority [assessing officer i.e. sales tax officer will inform him within three months the amount of tax due from company, which is in liquidation. .
- Liquidator cannot sell assets of company before setting aside amount of due as informed by sales tax authorities - unless such transfer or sale is by order of Court. . Otherwise, liquidator is personally liable. .

Priority of State dues

Government dues most of the times have priority over other dues in case of liquidation. The priority is subject to provisions of Companies Act.

Liability of directors of Private Limited Company in case of liquidation sec 18

- if a private limited company is being wound up, liability of directors of such private limited company is personal if amount cannot be recovered in liquidation i.e. the tax due can be recovered from his personal property.
- Director save the liability only if he proves that non-payment of tax cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to affairs of the company.

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