

CHAPTER 2

PRELIMINARY LEGAL PROVISIONS

Question 1

State briefly whether the following services under the Finance Act, 1994, relating to service tax, are taxable services.

- (i) *Services provided in the State of Rajasthan by a person having a place of business in the State of Jammu and Kashmir.*
- (ii) *Service provided to an Export oriented unit.*
- (iii) *An interior decorator provides service of beautification of spaces in Srinagar*

Answer

- (i) As per section **64(1)** of the Finance Act, 1994, service tax provisions do not extend to the State of Jammu and Kashmir. However, since service tax is a **destination based consumption tax**, hence service provided in Rajasthan from Jammu and Kashmir would be liable to service tax.
- (ii) Service provided to an export oriented undertaking is liable to service tax.
- (iii) As per section 64(1) of the Finance Act, 1994 the provisions of Finance Act, 1994 relating to service tax are not applicable in the state of Jammu and Kashmir. Therefore, no service tax is chargeable in this case.

Question 2

The service provider is abroad. He renders service to a subsidiary of an Indian Company located abroad. Payment to him is done by holding Indian Company. Does this attract service tax?

Answer

Section 64(1) of the Finance Act, 1994 provides that provisions of service tax law extend to whole of India except the State of Jammu & Kashmir. Service tax is paid by the person or firm or a company who provides the services. In this case, **service tax will not be attracted as service provider is abroad and renders service outside India.**

Question 3

Examine briefly whether any service tax liability would arise in the following case:

Services provided to or from installations, structures and vessels in the entire continental shelf and exclusive economic zone of India.

Indirect Tax Laws

Answer

Yes. Services provided to or from installations, structures and vessels in the entire continental shelf and exclusive economic zone of India have been brought within the ambit of the provisions relating to service tax vide **Notification No. 21/2009 ST dated 07.07.2009**.

Question 4

Explain in brief the manner of determination of value as per rule 3 of the Service Tax (Determination of Value) Rules, 2006.

Answer

As per **rule 3** of the Service Tax (Determination of Value) Rules, 2006, the value of taxable service, the consideration for which is **not wholly or partly consisting of money**, shall be determined by the service provider in the manner described below. However, the same is subject to the provisions of section 67.

- (i) The value of such taxable service shall be equivalent to the gross amount charged by the service provider **to provide similar service to any other person in the ordinary course of trade**. The gross amount charged is the sole consideration.
- (ii) Where the value cannot be determined in accordance with above clause, the service provider shall determine the **equivalent money value of such consideration**. However, such value shall in no case be less than the cost of provision of such taxable service.

Question 5

Hotel Marudhar Palace charges 10% of the bill amount as service charges and Department has asked them to pay service tax on it. The assessee has submitted that the amount @ 10% collected from customers is subsequently disbursed among the staff, therefore it is not part of their income and cannot be included in the gross amount charged by them. Examine the case and advise suitably.

Answer

The facts of the case are similar to the case of **Hotel Mela Plaza v. CCE Ghaziabad – 2005 (183) ELT 190 (Tri-Del.)**. The Hotel rendered mandap keeping services and charged 10% of the bill amount as service charges from its customers. It was contended by the assessee (the Hotel) that the amount @ 10% collected from its customers did not form part of its income as that amount was subsequently disbursed among the staff and hence, was not liable to service tax. In this case, the Tribunal observed that section 67 of the Finance Act, 1994 provides that the value of taxable service in relation to the services provided by a mandap keeper shall be the **gross amount** charged by such keeper from the client for the use of mandap, including facilities provided to the clients in relation to such use and also the charges of catering, if any. The Tribunal held that as the assessee was charging this amount from its customers for providing the service, which was taxable as above, therefore, the **10% service charges would be liable to service tax**.

Therefore, applying the ratio of the abovementioned judgement to the facts of the present case, it can be concluded that Hotel Marudhar Palace is liable to pay service tax on 10% service charges collected by it from its customers.

Question 6

Define the term 'gross amount charged' as per explanation (c) to section 67 of Finance Act, 1994, as amended, with reference to associated enterprises.

Answer

According to Explanation (c) to Section 67 "Gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and **any amount credited or debited, as the case may be, to any account, whether called "suspense account" or by any other name, in the books of account of a person liable to pay service tax**, where the transaction of taxable service is with any **associated enterprise**.

Here, associated enterprise has the meaning assigned to it in section 92A of the Income tax Act, 1961.

Question 7

Write a brief note explaining the circumstances under which expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable services under the Service Tax (Determination of Value) Rules, 2006.

Answer

Exclusion of Expenditure or costs incurred as a pure agent: Expenditure or costs incurred by the service provider as a **pure agent of the recipient of the service** shall be excluded from the value of the taxable service if **all** the following conditions are satisfied cumulatively as per rule 5(2) of Service Tax (Determination of Value) Rules 2006:-

- (a) The service provider acts as a pure agent of the recipient of the service while making payment to the third party.
- (b) The recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service.
- (c) The recipient of service is liable to make payment to the third party.
- (d) The recipient of service authorizes the service provider to make payment on his behalf.
- (e) The recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party.
- (f) The payment made by the service provider on behalf of the recipient of service is separately indicated in the invoice issued by the service provider to the recipient of service.
- (g) The service provider recovers from the recipient of service only such amount as has been paid by him to the third party.

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- (h) The goods or services procured by the service provider from the third party as a pure agent are in addition to the service he provides on his own account.

Question 8

Service Tax (Determination of Value) Rules, 2006 (Valuation Rules) and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 (Import Rules) came into force from 19.4.2006. Answer the following with reference to the said rules:

- (i) *Expenditure or costs incurred by the service provider as a “pure agent” of the recipient of service shall be excluded from the value of the taxable service. Who is a “pure agent” under the Valuation rules?*
- (ii) *What is the value of taxable service in the case of service provided from outside India under the Valuation Rules?*
- (iii) *What are the three categories of taxable services specified in rule 3 of the Import Rules?*

Answer

- (i) **Explanation 1 to rule 5** of the Valuation Rules provides that “pure agent” means a person who—
 - (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
 - (b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;
 - (c) does not use such goods or services so procured; and
 - (d) receives only the actual amount incurred to procure such goods or services.
- (ii) **Rule 7(1)** of the Valuation Rules provides that the value of taxable service received under section 66A (i.e., the services which are provided from outside India and received in India) of the Finance Act, 1994 shall be such amount as is equal to the **actual consideration charged** for the services provided or to be provided. However, **Rule 7(2)** provides that the value of the taxable services **partly performed in India** and specified in Rule 3(ii) of the Import Rules shall be the **total consideration paid** by the recipient for such services including the value of service partly performed outside India.
- (iii) The three broad categories of taxable services specified under Services (Provided from outside India & Received in India) Rules 2006 [popularly abbreviated as Import Rules 2006] are as under:

When the immovable property in respect of which the service is provided or to be provided is located in India [Rule 3(i) of Import Rules]

When the service is performed in India [Rule 3(ii) of Import Rules]

When the service is received by a **recipient located in India** for use in relation to business or commerce [**Rule 3(iii)** of Import Rules].

CHAPTER 3

BASIC CONCEPTS APPLICABLE TO ALL SERVICES

Question 1

State briefly whether the following services under the Finance Act, 1994, relating to service tax, are taxable services.

- (i) *Service provided from outside India and received in India by an individual, otherwise than from purpose of use in business or commerce.*
- (ii) *Services provided from India for use outside India.*

Answer

- (i) Service tax would not be leviable in this case as the **first proviso to section 66A(1)** of the Finance Act, 1994 states that services received by an individual, otherwise than for the purpose of use in any business or commerce are exempt from payment of service tax.
- (ii) Since, service tax is a destination based-consumption tax; it is not leviable on export of services. As per rule 3(2) of the Export of Services Rules, 2005, the provision of taxable service would be treated as export of service provided payment for such service is received by the service provider in convertible foreign exchange. Hence, assuming that the said condition is satisfied, service provided from India for use outside India would be liable to service tax.

Question 2

Whether service tax under the provisions of Finance Act, 1994 is chargeable on in case the payment of service is received in India in convertible foreign exchange?

Answer

No, as per rule 3(2)(b) of the Export of Services Rules 2005, if the payment of service is received in India in convertible foreign exchange, it shall be treated as "export of services " and hence, not chargeable to Service tax.

Question 3

Certain abatement/exemption of the gross amount charged has been notified for computing the value of some taxable services under Notification No. 1/2006 ST dated 01.03.2006. What are the conditions to be fulfilled to avail such partial exemption?

Indirect Tax Laws

Answer

Conditions to be satisfied for claiming the exemption under *Notification No. 1/2006 ST dated 01.03.2006*:-

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

Besides, bill/challan issued for this purpose must indicate that it is inclusive of all charges.

Question 4

What is the general exemption available to small service providers? Who are the persons excluded from this exemption?

Answer

A small service provider is eligible to avail exemption from service tax on aggregate value of taxable services not exceeding Rs. 10 lakh in any financial year subject to the condition that during the preceding financial year, the aggregate value of all taxable services provided by him did not exceed Rs. 10 lakh.

Such general exemption is not applicable in following cases-

- (i) The taxable services provided by a person under a brand name or trade name, whether registered or not, of another person.
- (ii) If the provider of taxable service is availing the CENVAT credit of service tax paid on any input services.
- (iii) Where the service receiver is liable to pay service tax as per provisions of section 68(2) read with rule 2(1)(d) of the Service Tax Rules, 1994.

Question 5

Export of Services Rules, 2005 were made effective from March 15, 2005. Answer the following questions with reference to the said rules:

- (i) *What are the three categories of taxable services dealt with under rule 3?*
- (ii) *What are the three options available to an exporter of taxable services under these rules for claiming exemption or rebate of service tax?*

Answer

- (i) Rule 3 of the Export of Services Rules, 2005 classifies the taxable services in three categories as under:

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

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

- (ii) The **three options** available to an exporter of taxable services for claiming exemption or rebate of service tax are:
 - (a) **Export taxable service without payment of service tax** under Rule 4 and **utilize CENVAT credit** of excise duty/service tax paid on inputs/input services used in providing exported taxable services **for payment of service tax on other services**.
 - (b) Export taxable service **without payment of service tax** and **claim rebate of service tax paid on input services and excise duty paid on inputs used** in providing such taxable service under Rule 5.
 - (c) Pay **service tax on exported service and claim rebate of service tax paid** on such taxable service under Rule 5.

Question 6

State, with reference to rule 5 of the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, the circumstance when such service could be treated as input service.

Answer

As per **Rule 5** of the Taxation of Service (Provided from Outside India and Received in India) Rules, 2006, the taxable services provided from outside India and received in India shall be treated as input service i.e., the credit of service tax paid on such service can be availed, **if such service is used as an input service** for providing any taxable output service or used in relation to the manufacture of final products.

It may be noted that the taxable services provided from outside India and received in India **shall not be treated as output services for the purpose of availing credit of duty of excise paid on any input or service tax paid on any input service** under CENVAT Credit Rules, 2004 i.e., CENVAT credit cannot be utilized for paying service tax leviable on such services. **The service tax leviable on such services will have to be paid in cash.**

Question 7

- (a) *State with reasons in brief, whether service tax is payable in the following cases:*
 - (i) *Services provided to Special Economic Zone (SEZ) unit and SEZ developer, except where services are wholly consumed within SEZ.*

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(ii) *Services provided by SEZ to DTA (Domestic Tariff Area).*

(b) *Briefly state the concept of export of taxable services under rule 3 of the Export of Services Rules, 2005.*

Answer

- (a) (i) With effect from 03.03.2009, **service tax is payable** on the services provided to SEZ unit or SEZ developer except where services are consumed wholly within SEZ. However, the SEZ unit or SEZ developer can **get the refund of service tax** paid by them by filing a refund claim as per the procedure prescribed in **Notification No. 9/2009-ST dated 03.03.2009**. Incidentally, where the services are wholly consumed within SEZ then there is **unconditional exemption** in accordance with **Notification No. 15/2009 dated 20-05-2009** which has amended aforementioned Notification No. 9/2009 dated 03-03-2009.
- (ii) Yes. CBE&C vide **Circular No. 105/08/2008 ST dated 16.09.2008** has clarified that a special economic zone unit will be liable to pay service tax on services provided by it to a DTA [Domestic Tariff Area] Unit.
- (b) As per rule 3(1) of the Export of Services Rules, 2005, the following are export of taxable services:-
- (i) When the service is provided in respect of immovable property which is situated outside India.[covered under **Rule 3(1)(i)**]
 - (ii) When the service is performed (at least partly) outside India. [covered under **Rule 3(1)(ii)**]
 - (iii) When the service is provided from India but the recipient of service is outside India.[covered under **Rule 3(1)(iii)**]

GAMUT & COVERAGE OF TAXABLE SERVICES

Question 1

Whether service tax under the provisions of Finance Act, 1994 is chargeable on the following services:

- (i) Use of the precincts of a religious place as a mandap.
- (iii) Services provided by a sub-broker to an investor.

Answer

- (i) No, as **Notification No. 14/2003 – ST, dated 20.6.2003** exempts services provided to any person by a mandap keeper for the use of the precincts of a religious place as a mandap from service tax.
- (ii) No, the definition of stock-broker has been amended w.e.f. 01-09-2009 so as to exclude services of sub-broker from the purview of stock-broker's services. Further, it has also been clarified vide **F. No. 334/13/2009-TRU dated 06-07-2009** that sub-brokers are also not liable to service tax as commission agent under business auxiliary services.

Question 2

What is the percentage of abatement/exemption granted in the following cases?

- (i) Services provided by a tour operator
- (ii) Services provided by an outdoor caterer supplying food also
- (iii) A commercial concern providing construction service where the gross amount charged includes the value of goods and material
- (iv) Goods transport agency providing taxable service and paying service tax itself.

Answer

Following abatement has been granted in the cases under consideration:

(i)

Nature of services provided by tour operator	Percentage of abatement
Package Tour	75
Booking of accommodation only	90
Tour other than package tour	60

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- (ii) 50% abatement of the gross amount charged inclusive of charges for supply of food
- (iii) 67% abatement of the gross amount charged
- (iv) 75% unconditional exemption of the gross amount charged from customer.

Question 3

Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:

- (i) *Entrance fee and life membership fee paid by members of the club providing various services and facilities and organizing get togethers and functions for its members.*
- (ii) *Construction of residential complex having ten bungalows.*
- (iii) *Selling of SIM (Subscribers Identification Module) card and the process of activation thereof by mobile/cellular telephone companies.*
- (iv) *Study material or written text provided by commercial training and coaching centre.*

Answer

- (i) Facilities or advantages are provided by clubs or associations to their respective members in return for a subscription or other consideration. Entrance fee and life membership fee shall also be treated in the same way as a subscription; hence these would also be taxable.
- (ii) Section 65(91a) inter alia provides that 'Residential Complex' means any complex comprising of a building or buildings, having more than twelve residential units. Thus, construction of residential complex having 10 bungalows would not be chargeable to service tax.
- (iii) The High Court, while examining the functioning of a SIM card, in case of **CCE v. Idea Mobile Communications Ltd. 2010 (19) STR 18 (Ker.)**, admitted that SIM card is a computer chip having its own SIM number on which telephone number can be activated. SIM card is a device through which customer gets connection from the mobile tower. Unless the SIM card is activated, service provider cannot give service connection to the customer because signals are transmitted and conveyed through towers and through SIM card communication signals reach the customer's mobile instrument. Hence, it can be inferred that it is an integral part required to provide mobile service to the customer.

Further, SIM card has no intrinsic value or purpose other than use in mobile phone for receiving mobile telephone service from the service provider. Thus, the Court accepted the view that SIM cards were not goods sold or intended to be sold to the customer, but supplied as part of service. Consequently, it held that the value of SIM card supplied by the assessee would form part of the value taxable service on which service tax was payable by the assessee.

- (iv) The **gross amount charged** for rendering the taxable services is liable to service tax. However, **Notification No.12/2003-ST, dated 20.06.2003** exempts so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service from the service tax leviable thereon subject to condition that there is documentary proof specifically indicating the value of the said goods and materials. Further, the said exemption is available only when CENVAT credit on such goods and materials sold has not been taken by the service provider.

Therefore, the study material and written text provided by the coaching centre will be charged to service tax if the conditions set out in the above notification are not complied with. However, if the abovementioned conditions are complied with, exemption will be granted.

Question 4

State whether in the following cases service tax is payable, with reasons:

- (i) *Temporary transfer of any intellectual property right.*
- (ii) *Canteens in office run by the canteen contractor providing service directly to employees/workmen.*
- (iii) *Business auxiliary service provided by commission agents in relation to sale of agricultural produce.*

Answer

- (i) **Section 65(55b)** of the Finance Act, 1994 defines intellectual property service as:

- (a) transferring, temporarily; or
- (b) permitting the use or enjoyment of,
any intellectual property right.

Thus, temporary transfer of any intellectual property right (IPR) shall be subject to service tax.

- (ii) **Section 65(76a)** of the Finance Act, 1994 defines outdoor caterer as a caterer 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.**

Thus, if service is directly provided to employees/workmen, then the canteen will not come within the purview of the definition of the outdoor caterer **as the place is not provided by the person receiving the service.** Hence, this service would not be chargeable to service tax.

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- (iii) Business auxiliary services provided by commission agents **in relation to sale or purchase of agricultural produce** is exempt from service tax vide **Notification No. 13/2003 ST dated 20.06.03** as amended.

Question 5

- (a) XYZ Co. was involved in the services of unloading of coal from wagon tipping system, stacking/reclaiming of coal to stacker reclaimer system and feeding of coal to boiler bunkers through conveyer system. The Department had taken a view that the charges received by XYZ Co. for such activity were taxable under the category of 'cargo handling services' in terms of section 65(105) (zr) read with section 65(23) of the Finance Act, 1994. M/s XYZ Co. claimed that the services rendered by it cannot be brought under 'cargo handling service' as it is engaged only in the handling of coal from railway wagons to the required destination of the thermal power station wherein machines are used with the aid of some manpower.

Briefly explain, with reference to relevant provisions and case law, if any, whether the stand taken is correct in law.

- (b) M/s Krishna Computer Colour Lab. is in the business of developing and printing of colour photographic films. It develops the negatives supplied by the customer and provides positive prints as per the order placed by the customer. The Department has demanded service tax on the entire amount charged from the customers without deduction of any amount towards cost of materials.

The assessee's contention is that no service tax could be charged on the material content since service tax is only a tax on services and not on goods. Therefore, the assessee has sought to bifurcate the gross receipts on account of processing of photographs into the portion attributable to goods and those attributable to services so that service tax could be paid with respect to the value of service alone in their case.

Briefly explain, with regard to decided case law, if any, whether the stand taken by M/s Krishna Computer Colour Lab. is correct in law.

Answer

- (a) The facts in the case are similar to the matter decided by the **Rajasthan High Court** in **S.B. Construction Company v. UOI (2006) 4 STR 545**. The High Court has held that the service tax has been levied on cargo handling, i.e. on such services which undertake the activities of packing, unpacking, loading, unloading of goods to be transported **by any means of transportation namely truck, rail, ship or aircraft**. In the instant case, the services provided by the company under the contract is distinct i.e., transporting coal from wagons to thermal power station by conveyor belt and not by any means of transportation. Thus, the services rendered by the company cannot fall under the ambit of cargo handling services and as such is not liable to service tax. **The above decision was also followed in Sainik Mining & Allied Services Ltd. Vs CCE (2008) 12 STT 433 (CESTAT-Kol.).**

- (b) Yes, the request of M/s. Krishna Computer Colour Lab is valid in law.

In a similar case in **Adlabs v. CCE 2006 (2) STR 121**, the Bangalore Tribunal held that the assessee was entitled to deduction of the cost of materials which were used during the course of providing the services of photography while computing the value of taxable services.

However, when the issue as to whether photography service included any sale of materials had come up for consideration before the Supreme Court in the case of C.K. Jidheesh 2006 (1) STR 3 (SC) and in case of Rainbow Color Lab & Anr. v. State of M.P. & Ors. 2001 (134) ELT 332(SC), it was decided that photography contracts were pure service contracts in which there was no element of sale of goods. Hence, the question of bifurcating the receipts into an element of goods and the element of service could not and did not arise. Relying upon these two judgments, in case of Laxmi Color Pvt. Ltd. v. CCE 2006 (3) STR 363 (New Dehi – CESTAT), the Tribunal held that the appellant was not entitled to any deduction in respect of cost of goods used during the course of providing service.

However, the decisions in case of Rainbow Color Lab case and C.K.Jidheesh case were **overruled by the Supreme Court in case of Bharat Sanchar Nigam Ltd. v. UOI 2006 (2) STR 161**. Therefore, when the issue again cropped up in case of **Shilpa Colour Lab. V. CCE (2007) 8 STT 102 (Tri.-Bangalore)**, the Tribunal held that in the services relating to photography, if certain goods and materials were consumed, the value of those goods and materials could not be included in the value of taxable service. The Tribunal also observed that its earlier decision in the Adlabs case was correct and legal in the light of the Supreme Court decision in the Bharat Sanchar Nigam case.

Hence, the stand taken by M/s Krishna Colour Lab. is correct in law.

Question 6

Calculate the value of taxable service of 'X' Transport Company engaged in the business of transport of goods by road. Give reasons for taxability or exemption of each item. No freight is received from any of the specified category of consignor/consignee. Suitable assumptions may be made wherever required. X does not avail CENVAT credit:

	Rs.
1. Total freight charges received by 'X' during the year	13,50,000
2. Freight charges received for transporting fruits	1,25,000
3. Freight collected for transporting small consignment for persons who paid less than Rs. 750 for each consignment	75,000
4. Freight collected for transporting goods in small vehicles for persons who paid less than Rs. 1,500 per trip	1,50,000

Indirect Tax Laws

Answer

Computation of value of taxable service:

	Rs.
Total freight collected	13,50,000
Less : Freight charges received for transporting fruits (Note-1)	1,25,000
Less : Freight collected less than Rs. 750/- for each consignment (Note-2)	75,000
Less: Freight collected for transporting goods in small vehicles for persons who paid less than Rs. 1,500/- per trip (Note-2)	<u>1,50,000</u>
Balance freight charges	10,00,000
Less : Unconditional Exemption of 75 % (Note-3)	<u>7,50,000</u>
Value of taxable service	<u>2,50,000</u>

Notes:

1. Taxable service provided by a goods transport agency in relation to transport of **vegetables, eggs, milk, food grains & pulses** by road is exempt from service tax **(Notification No. 33/2004-ST dated 03.12.2004 as amended)**.
2. Service tax is exempt where:
 - (i) the gross amount charged on all consignments transported in a goods carriage does not exceed Rs. 1,500/- or
 - (ii) the gross amount charged on an individual consignment transported in a goods carriage does not exceed Rs. 750/-**(Notification No. 34/ 2004-ST dated 3.12.2004).**
3. As per **Notification No. 13/2008-ST dated 1.3.2008**, service tax is required to be paid on 25% of the gross amount charged i.e. 75% of the gross amount charged is allowed as **unconditional exemption**.

Question 7

- (a) *The assessee owned a collection centre, which was engaged in drawing of human blood, urine and stool samples on behalf of the principal laboratory in a metro city for conducting pathological tests. The assessee sent the samples through courier and received commission for such service. Department demanded service tax on the ground that the activity amounted to promotion or marketing of the service provided by the principal and hence covered under business auxiliary service. With reference to legal provisions and case law, examine the stand taken by the Department.*
- (b) *The assessee used to finance the purchase of vehicles manufactured by a leading automobile company which used to sell the vehicles through its distributors. Assessee financed part of the vehicle cost to the purchaser of vehicle after getting, an agreement with the purchaser providing the right of repossession of the vehicle in case buyer of the vehicle defaulted in paying installment. Immediately on sale, purchaser of the vehicle became the owner and vehicle was registered in his name. The Department seeks to*

levy service tax in the category of "Banking and other Financial Services." Examine whether Department's stand is correct in terms of legal provisions' and case law.

Answer

- (a) Section 65(106) of the Finance Act, 1994 defines technical testing and analysis services. However, any testing or analysis done 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 has been excluded from the scope of this service. In this case, the **Department's contention** is that **assessee is providing business auxiliary service** to the laboratory and is not eligible for the exemption since assessee is not performing laboratory functions.

Similar issue came up before **Punjab & Haryana High Court in the case of CCE v. Dr. Lal Path Lab (P) Ltd. 2007 (8) STR 337 (P&H)**. High Court held that merely because the assessee renders any incidental service like putting across or dropping of the name of the principal laboratory, it **does not get covered** by the definition of business auxiliary service. The activity of drawing of test sample is covered by the **exception to technical testing and analysis service** under section 65(106) of the Finance Act, 1994. Consequently, no service tax is payable. The aforementioned decision was also pronounced in **CCE Vs Patient Service Centre [2007] 14 STT 92 (P & H HC)**

- (b) The issue was examined by the Customs Excise, Service Tax Appellate Tribunal (CESTAT), Mumbai in the case of **Bajaj Auto Finance Ltd. v. CCE, Pune 2007 (7) STR 423**. The Tribunal distinguished between "hire purchase agreement" and "hire purchase finance agreement." In the case of former, the **title to the goods** remains with the hire purchase company. Payments are considered as hire charges and when all periodical payments are made, title to the goods is transferred to the customer provided he exercises such an option. In the case of latter, title to the goods vests with the purchaser right from the beginning and Hire Purchase Company has only a right to take over possession for non payment of loan.

It was also quoted that since the appellants herein have the right and control over the goods, it cannot be concluded that they had entered into a hire purchase agreement with their customers for the reason that in all hire purchase finance agreements, terms and conditions giving the finance company control over the goods, exist. Since hire purchase finance is **not covered by the definition of banking and other financial services under section 65(12) of the Finance Act, 1994**, service tax is not attracted. This judgment has been affirmed later on by the **Apex Court in CCE v. Bajaj Auto Finance Ltd. 2008 (10) STR 433 (SC)**.

Question 8

The value of service provided by a consulting engineer is Rs.10,00,000. He has paid Rs.50,000 as cess under section 3 of the Research and Development Cess Act, 1986. What is the amount of service tax payable by him?

Indirect Tax Laws

Answer

Notification No. 18/2002 dated 16.12.2002 provides exemption to the taxable services provided by a consulting engineer to a client on transfer of technology from so much of the service tax leviable thereon as is equivalent to the amount of cess paid on the said transfer of technology under the provisions of section 3 of the Research and Development Cess Act, 1986.

Thus, service tax payable will be computed in the following manner:

Value of taxable services	= Rs.10,00,000
Service tax @ 10.30%	= Rs.1,03,000
Less : Cess paid	= <u>Rs.50,000</u>
Net service tax payable	= <u>Rs. 53,000</u>

Question 9

State whether the following are taxable under the provisions of the Finance Act, 1994 relating to service tax:-

- (i) *Services provided in connection with the management of an organization by a management consultant having no professional qualification.*
- (ii) *Advance payment received from the service recipient by a person rendering construction services under section 65(105) (zzzh) of the Act.*

Answer

- (i) Yes, as per **section 65(65)**, no academic or professional qualification is required in order to be taxable under the category of 'management or business consultant' service. In case, a person is not professionally qualified and is providing service of management consultancy, he is still liable to pay service tax on the taxable value of services provided by him.
- (ii) **Section 67(3)** of the Finance Act, 1994 stipulates that the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service. Thus, the advance payment received from the service recipient by a person rendering construction services under section 65(105) (zzzh) shall be liable to service tax.

Question 10

Examine briefly whether any service tax liability would arise in the following cases:

- (i) *Services provided by one scheduled bank to another scheduled bank in relation to inter-bank transactions of purchase and sale of foreign currency.*
- (ii) *Services provided to or from installations, structures and vessels in the entire continental shelf and exclusive economic zone of India.*

Answer

- (i) No. Services provided by one scheduled bank to another scheduled bank in relation to inter-bank transactions of purchase and sale of foreign currency have been exempted from whole of the service tax payable thereon vide **Notification No. 19/2009 ST dated 07.07.2009**.
- (ii) Levy of service tax extends to the specified areas in the continental shelf and exclusive economic zone of India for the specified purposes in the manner depicted in the table below:-

S.No.	The areas in the Continental Shelf and the Exclusive Economic Zone of India	Purpose
1.	Whole of continental shelf and exclusive economic zone of India	Any service provided for all activities pertaining to construction of installations, structures and vessels for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.
2.	The installations, structures and vessels within the continental shelf and the exclusive economic zone of India, constructed for the purposes of prospecting or extraction or production of mineral oil and natural gas	Any service provided or to be provided by or to such installations, structures and vessels and for supply of any goods connected with the said activity.

Question 11

Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:

- (i) Manpower recruitment agency services in respect of temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks.
- (ii) Business support services in the context of "outsourced services".
- (iii) Construction of roads, airports, railways, bridges, tunnels in the context of "site preparation and clearance, excavation, earth moving and demolition services".
- (iv) Clearing and forwarding agent's services.

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Answer

- (i) As per **Circular No. 96/7/2007 ST dated 23.08.2007**, in the case of supply of manpower, individuals are contractually employed by the manpower recruitment or supply agency. The agency agrees for use of the services of an individual, employed by him, to another person for a consideration. Employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual.

Such cases are covered within the scope of the definition of the taxable service [section 65(105)(k)] and, since they act as supply agency, they fall within the definition of "manpower recruitment or supply agency" [section 65(68)] and are liable to service tax.

- (ii) Business entities outsource a number of services for use in business or commerce. These services include transaction processing, routine administration or accountancy, customer relationship management and tele-marketing. There are also business entities which provide infrastructural support such as providing instant offices along with secretarial assistance known as "Business Centre Services". **All such outsourced services** are liable to service tax under business support services. Definition of support services of business or commerce gives indicative list of outsourced services [**MF (DR) Letter DOF No. 334/4/2006 TRU dated 28.02.2006**].
- (iii) Site formation and clearance, excavation and earthmoving and demolition and such other activities provided to any person by any other person in the course of construction of *inter alia* roads, airports, railways, bridges, tunnels are **exempt from the whole of the service tax** leviable thereon vide **Notification No. 17/2005 ST dated 07.06.2005**.
- (iv) As per **section 65(25)** of the Finance Act, 1994, 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.

Question 12

Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:

- (i) Sale of lottery tickets.
- (ii) Depository services and Electronic Access to Securities Information Services (EASI) provided by the Central Depository Services India Ltd.
- (iii) Services provided by educational institutions like IIMs by charging a fee from prospective employers like corporate houses regarding recruiting candidates through campus interviews.

Answer

- (i) Sale of Lottery Tickets is taxable under section 65(105)(zzzzn) under the category of 'Services of Promoting/Marketing/Organising of Games of Chance' w.e.f. 01-07-2010. Taxable Service in relation to aforementioned services means any service provided or to be provided **to any person by any other person**, for promotion, marketing, organising or in any other manner assisting in organising or in any other manner assisting in organising games of chance, including lottery, Bingo or Lotto in whatever form or by whatever name called, whether or not conducted through internet or other electronic networks.
- (ii) As per **Circular No. 96/7/2007 ST dated 23.08.2007** definition of banking and other financial services inter alia specifically includes depository services [Section 65(12)(a)(v)] and provision and transfer of information and data processing [Section 65(12)(a)(vii)]. EASI services provided by the Central Depository Services India Ltd. (CDSL) fall within the scope of "provision and transfer of information and data processing". Therefore, the depository services provided by CDSL, including EASI services, for a fee are **liable to service tax under banking and other financial services**. [Section 65(105)(zm)]
- (iii) 'Manpower recruitment or supply agency' is defined as "any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to a client" [section 65 (68)].

As per **Circular No. 96/7/2007 ST dated 23.08.2007**, educational institutes such as IITs and IIMs fall within the definition of 'manpower recruitment or supply agency', and service tax is liable on services provided by such institutions in relation to campus recruitment under section 65(105)(k).

Question 13

State with reason whether service tax liability arises in the following cases:

- (i) *Services provided by 'angadia' in undertaking delivery of documents or goods received from a customer to another person for a consideration.*
- (ii) *Commission received by distributors for distribution of mutual fund units.*
- (iii) *Consultancy services in the field of computer software engineering by consulting engineer.*

Answer

- (i) Yes, the services provided by '**Angadia**' will be covered under courier agency services. The **Circular No. 96/7/2007 ST dated 23.08.2007** clarifies that angadias are covered within the definition of 'courier agency' [section 65(33) of the Finance Act, 1994 as amended]. Therefore, such services provided by angadia are liable to service tax under courier agency service.

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- (ii) Yes, the services provided by distributors for distribution of mutual funds units are liable to service tax under **business auxiliary service**. The **Circular No. 96/7/2007 ST dated 23.08.2007** clarifies that distributors receive commission from mutual fund for providing services relating to purchase and sale of mutual fund units. Services provided by such distributors are in the nature of commission agent and are, thus, liable to service tax under business auxiliary service [section 65(19) of finance Act 1994].
- (iii) Yes, as per the Finance Act, 1994 as amended by Finance Act, 2008, "consulting services in the field of computer software engineering" have been included within the scope of taxable services provided by a 'consulting engineer'. Hence, the consultancy services provided in the field of computer software engineering by consulting engineer shall be liable to service tax.

Question 14

What is the exemption provided to practicing Chartered Accountants under Notification No.25/2006 ST dated 13.7.2006?

Answer

As per **Notification No.25/2006-ST dated 13.07.2006**, the taxable service provided or to be provided by a practicing Chartered Accountant in his professional capacity to a client, relating to representing the client 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, **is exempt** from the whole of service tax leviable thereon.

Question 15

State whether the following services are taxable under the provisions of the Finance Act, 1994 relating to service tax:

- (i) *A practising Chartered Accountant representing a client before Income Tax Officer in assessment proceeding.*
- (ii) *Royalty received from the publisher by an author of a text-book for printing and publishing his book.*
- (iii) *Give four illustrations to explain the scope of service rendered by a consulting engineer.*
- (iv) *List out any four services brought under the service tax net by the Finance Act, 2010.*
- (v) *Services in relation to production of alcoholic liquor on job work basis.*

Answer

- (i) Services provided or to be provided by a practicing chartered accountant in his professional capacity, to a client, relating to representing the client 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 exempted from the whole of service tax leviable thereon under section 66 of the Finance Act, 1994 as amended (**Notification No. 25/2006-ST dated 13.7.2006**).

- (ii) As per section 65(55a) of the Finance Act, 1994, “intellectual property right” means any right to intangible property, namely, trade marks, designs, patents or any other similar intangible property, under any law for the time being in force, **but does not include copyright**. Therefore, any royalty or other payment related to publishing involving copyright is **not liable to service tax**.
- (iii) Following are the illustrations of services which fall within the ambit and scope of Consulting engineer's services:-
 - (i) Design engineering
 - (ii) Pre design services/project report
 - (iii) Supervision or construction and project management
 - (iv) Feasibility study
 - (v) Supervision of commissioning and initial operation
 - (vi) Post operation and management
 - (vii) Trouble shooting and technical services including establishing system and procedures for an existing plant.
- (iv) Following new services have been brought under service tax net by the Finance Act, 2010 w.e.f. 01-07-2010:-
 1. Services of Promoting/Marketing/Organising of Games of Chance.
 2. Health Related Services.
 3. Maintenance of Medical Records of Employees Services.
 4. Promotion of Brand Services.
 5. Services of permitting Commercial Use of Any Event.
 6. Electricity Exchange Services.
 7. Copyright Services.
 8. Special Services provided by a Builder etc.

Note: Any four services may be given.

- (v) Yes, as per amendment made by the Finance (No. 2) Act, 2009, the definition of business auxiliary service under section 65(19) of the Finance Act, 1994 has been amended to exclude any activity that amounts to manufacture of excisable goods.

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Therefore, services provided in relation to manufacture of alcoholic liquor, which is not excisable, for or on behalf of the client shall attract service tax.

Question 16

Mr. Yes is the owner of a collection centre with facilities and trained employees for collection of human blood, urine and stool samples for biological testing. He sends the samples collected to its principal lab for actual test to be done. The assessee receives 25% of the price charged by the principal lab as commission for work of collection. The Revenue wants to charge service tax on such collection service as it amounts to promotion or marketing of services provided by its principal lab. Mr. Yes seeks your advise in this regard with reference to a decided case law, if any.

Answer

The facts of the given case are similar to the case decided by High Court i.e. **CCEx v. Dr Lal Pathological Lab (P) Ltd 2007 (8) STR 337 (P&H)**.

The High Court held that merely because the assessee renders incidental services like putting across or dropping of the name of the principal company, it would not amount to business auxiliary services. The High Court also observed that the activity conducted by the assessee was covered by the exception postulated by the provision of section 65(106) of the Finance Act, 1994 which excluded any testing or analysis service provided in relation to human beings or animals from the scope of the taxable technical testing and analysis service.

It affirmed the decision of the Tribunal that the service provided by the assessee is incidental to testing and analysis service. Drawing of samples and producing for testing and analysis are inter-connected services or incidental to testing and analysis. Hence, these services are exempted from service tax.

Hence, the contention of the Department is not correct.

Question 17

Whether the value of material supplied by the contractee to the contractor for use in the execution of the works contract shall be included in the value of works contract for payment of service tax under the composition scheme? What is the present rate of service tax under this scheme? Can the service provider avail CENVAT credit also?

Answer

Yes, according to amended explanation to rule 3 of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, the gross amount charged for the works contract shall include the value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise.

Present rate of service tax under the composition scheme is **4.12%** (inclusive of education cess and secondary and higher education cess) of gross amount charged for the works

contract. The assessee **cannot avail CENVAT credit of inputs**. However, he can avail CENVAT credit of input services and capital goods.

Question 18

Calculate the value of taxable service under 'cargo handling services' of Cargo Ltd., providing brief reasons where required with suitable assumptions based on the following information for the month of April, 2010:

Particulars	Rs. (in lakh)
(i) Total amount charged for all services	40
(ii) Receipts for services in relation to export cargo and handling of passenger baggage included in (i) above	13
(iii) Charges for storage and cleaning of empty containers of shipping lines included in (i) above	10
(iv) Charges for packing and transport of cargo included in (i) above	3
(v) Charges for handling of agricultural produce included in (i) above	2
(vi) Charges for transportation of cargo included in (i) above	5

Answer

Calculation of the value of taxable service under 'cargo handling services' of Cargo Ltd.

Particulars	Rs.
Total receipts from services rendered	40,00,000
Less : Exemptions:-	
1. Receipts in relation to export cargo & handling baggage of passenger (Note-1)	13,00,000
2. Charges received for storage, washing etc. of empty containers of shipping lines (Note-4)	10,00,000
3. Charges received in relation to handling of agricultural produce (Note-3)	2,00,000
4. Charges received only for transportation of cargo (Note-5)	<u>5,00,000</u>
Taxable services under cargo handling	<u>10,00,000</u>

Notes:

1. The definition of 'cargo handling service' under section 65(23) specifically excludes handling of export cargo or passenger baggage. Hence, they do not form part of taxable services.

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2. Charges received for packing together with transportation of cargo, Rs.3,00,000, is taxable in view of amendment made in section 65(23) by Finance Act, 2008.
3. *Notification No. 10/2002 dated 01.08.2002* exempts the taxable service provided to any person by a cargo handling agency in relation to agricultural produce or goods intended to be stored in a cold storage from payment of service tax.
4. *Circular No. B.11/1/2002-TRU dated 1/8/2002* clarifies that activity of storing/washing/repairing and handling empty containers for the shipping lines does not come within the purview of "cargo handling services".
5. It is assumed that these are the charges merely for the transportation. The definition of 'cargo handling service' under section 65(23) specifically excludes mere transportation of goods. Hence, they do not form part of taxable services.

Question 19

Good Luck Agencies is engaged in the purchase of lottery tickets in bulk from the State Government and sells them subsequently on behalf of the Government. However, no service tax is paid on the said activity. The Department has sought to levy service tax under the category of 'Services of Promoting, Marketing/Organising of Games of Chance' under section 65(105)(zzzzn). Discuss briefly, with a note whether the action of the Department is correct in law.

Answer

The action taken by the Department is valid in law. According to Section 65(105)(zzzzn), **w.e.f. 01-07-2010**, taxable service means any service provided or to be provided to any person, by any other person, for promotion, marketing, organising or in any other manner assisting in organising **games of chance, including lottery**, bingo or lotto in whatever form or by whatever name called, whether or not conducted through internet or other electronic networks. This makes it amply clear that services of selling the lottery tickets are liable to service tax under the specific category 'of ;Services of Promoting/Marketing/ Organising of Games of Chance.' which have been inserted with effect from 01-07-2010.. Consequently, Good Luck Agencies is liable to pay service tax.

Question 20

Briefly explain whether the following are chargeable to service tax under the provisions of the Finance Act, 1994 :

- (i) *Service provided by a person to another person in relation to information technology software for use in course or furtherance of business or commerce.*
- (ii) *Transaction allowing another person to use goods without giving legal right of possession and control to the user of the goods.*

Answer

- (i) **Provision of Service in relation to Information Technology Software:-** W.e.f. **01-07-2010**, scope of services provided or to be provided in relation to Information Technology

(IT) software has been widened by including even those services within service tax net which are provided for other than business or commerce purposes. As a consequence, service provided or to be provided in relation to IT software for both commercial and non-commercial purposes have been made liable to service tax under the category of "I.T. Software Services."

- (ii) Transaction of allowing another person to use the goods, **without giving legal right of possession and effective control** is liable to service tax under the category of "**Supply of tangible goods for use in India**" with effect from 16.05.2008. According to Section 65(105)(zzzz) of Finance Act 1994 **taxable service** means 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.

SERVICE TAX PROCEDURES

Question 1

Answer the following with reference to the Finance Act, 1994 and the rules made thereunder relating to service tax:

- (i) *Intimation regarding change in details furnished by an assessee in Form ST-1.*
- (ii) *Cancellation of registration certificate.*
- (iii) *Adjustment of excess amount paid towards service tax liability for the subsequent period.*

Answer

- (i) As per **rule 4(5A)** of the Service Tax Rules, 1994, change in any information or details furnished by an assessee in Form ST-1 at the time of obtaining registration or any additional information or detail intended to be furnished should be intimated in writing by the assessee to the jurisdictional Assistant/ Deputy Commissioner of Central Excise. Such intimation should be made within a period of 30 days of such change.

Further, the assessee would be required to submit a self-certified copy of the registration certificate while intimating any such change and the amended registration certificate shall be issued after canceling the original registration certificate issued earlier.

- (ii) As per **rule 4(7)** of the Service Tax Rules, 1994, every assessee who is registered and ceases to provide taxable service shall **surrender his registration** certificate to the Superintendent of Central Excise immediately. **Sub-rule (8) of rule 4** provides that on receipt of such certificate the Superintendent of Central Excise shall ensure that the assessee has paid all moneys due to the Central Government under the provisions of Act/Rules/Notifications and thereupon cancel the registration certificate.
- (iii) **Rule 6(3)** of the Service Tax Rules, 1994 allows an assessee to adjust the excess service tax paid by him in respect of the **services not wholly or partially rendered** by him for any reason against the service tax liability for the subsequent period if the value of the services and service tax thereon is refunded to the person from whom it was received.

Further, **rule 6(4A)** of the Service Tax Rules, 1994 provides that where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for

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the succeeding month or quarter, as the case may be. However, such adjustment of excess amount paid shall be subject to certain conditions specified in **sub-rule (4B)**.

Question 2

Briefly state the provisions under the Service Tax Rules, 1994 relating to filing of returns and also state any late fee payable for delay in filing of returns.

Answer

The service tax return is required to be filed under **section 70** of the Finance Act, 1994 read with **rule 7** of the Service Tax Rules, 1994, by any person liable to pay service tax in Form ST-3 as under:

for the period from April to September – by 25th October

for the period from October to March – by 25th April

A single return has to be filed in respect of all taxable services provided by an assessee.

As per **rule 7C** of the Service Tax Rules, 1994, delay in filing of return attracts late fee as under:

- (i) Delay upto 15 days - Rs.500
- (ii) Delay upto 30 days – Rs.1,000
- (iii) Delay beyond 30 days – Rs.1,000 + Rs.100 per day of delay beyond 30 days. However, total amount of late fee under this rule shall not exceed Rs. 2,000/-. In other words, if there is delay of more than 40 days in submission of Return, Penalty of Rs. 2,000/- will only be imposed.

Question 3

What do you understand by 'Centralised Registration'?

Answer

Sometimes an assessee provides taxable service from more than one premises. **Rule 4(2)** of the Service Tax Rules, 1994 provides that in such cases, the assessee can obtain centralized registration at his option if:

- (a) he has centralized billing or centralized accounting in respect of such service, and
- (b) such centralized billing or centralized accounting systems are located in one or more offices or premises.

The assessee can register such offices or premises where centralized accounting or centralized billing systems are located.

Question 4

State briefly, whether the following persons are liable to apply for registration under the Finance Act, 1994 and the Service Tax (Registration of Special Category of Persons) Rules, 2005 and if so, from which date:

- (i) *An input service distributor who starts his business with effect from 1st November, 2010.*
- (ii) *A provider of taxable service under an unregistered brand name of another person.*

Aggregate value of taxable services was Rs. 8,00,000 up to 31.03.10.

Answer

- (i) Yes, as per **Rule 3(1)** of the Service Tax (Registration of Special Category of Persons) Rules, 2005, an input service distributor is liable to apply for registration within a period of 30 days of the commencement of business. Thus, in the given case, the input service distributor should apply for registration by 30.11.2010.
- (ii) Yes, a provider of taxable service under a registered brand name of another person is liable to apply for registration within a period of 30 days of commencement of business of providing taxable service as basic exemption for small service provider is not available to a service provider who provides taxable service under a trade name or brand name, **whether registered or not**, of another person.

Question 5

With reference to the Finance Act, 1994 as amended and the rules made thereunder relating to service tax, state whether registration is required or not in the case of the following persons or class of persons:

- (i) *Input service distributor*
- (ii) *Small service provider whose aggregate value of taxable service is Rs.9,50,000 per annum.*
- (iii) *India based recipient of taxable services provided from abroad by a non-resident not having any place of business in India.*

Answer

- (i) Yes. As per section 69(2) of the Finance Act, 1994 and Notification No.26/2005-ST dated 07.06.2005, an input service distributor is required to make an application for registration.
- (ii) Yes. Any provider of taxable service whose aggregate value of taxable service in a financial year exceeds Rs.9,00,000 is required to get registration under section 69(2) of the Finance Act, 1994.
- (iii) Yes. As per **Circular No.B1/6/2005-TRU dated 27.7.2005**, an India based recipient of taxable services provided from abroad by a non-resident not having any place of

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business in India is deemed to be the service provider and hence has to obtain registration.

Question 6

- (i) *What is the time limit under rule 4A for raising/issuing an invoice for services?*
- (ii) *What is the due date for monthly/quarterly payment of service Tax?*

Answer

- (i) As per **rule 4A(1)** of Service Tax Rules, 1994, an invoice is to be issued within 14 days from the date of completion of the taxable service or receipt of payment towards the value of taxable service, whichever is earlier.
- (ii) According to **rule 6(1)** of Service Tax Rules 1994 the service tax shall be paid to the credit of Central Government:-
 - (a) **By the 6th day of the month, if the duty is deposited electronically through internet banking; and**
 - (b) **By the 5th day of the month, in any other case**

Immediately following the calendar month in which the payments are received towards the value of taxable services. However, **first proviso to rule 6(1)** provides that where the assessee is an **individual or proprietary firm or partnership firm**, the service tax shall be paid to the credit of the Central Government by the 6th day of the month if the duty is deposited electronically through internet banking or in any other case, the 5th day of the month as the case may be, **immediately following the quarter** in which **payments are received** towards the value of taxable services.

Further, according to **third proviso to aforementioned rule 6(1)** service tax on the **value of taxable services received** during the month of March or quarter ending in March, shall be paid to the credit of Central Government by 31st day of March of the calendar year.

Question 7

Mr. AJAR, a Chartered Accountant, raised an invoice for Rs.27,575 (25,000 + 2,575 service tax) to a client on 20.06.2010. The client, however, has paid a lump-sum of Rs.26,000 on 28.10.2010 for full and final settlement.

- (i) *How much service tax Mr. AJAR has to pay and when does this tax become due for payment?*
- (ii) *What will be his liability, if the client refuses to pay service tax and pays only Rs.25,000 in total?*

Answer

- (i) The Department has clarified vide the **Frequently Asked Questions** issued by it that service tax is required to be paid only on the value/amount of taxable service received

and not on the gross amount billed to the client. However, where the amount received is less than the gross amount charged/billed to the client, the assessee is required to amend the bills either by rectifying the existing bill or by issuing a revised bill and by properly endorsing such change in the billed amount.

Assuming that Mr. AJAR has amended the bill, amount of service tax payable shall be computed by back calculations. Effective rate of service tax is 10.30% (10% service tax + 2% Primary Education Cess & 1% Secondary & Higher Education Cess on service tax).

$$\begin{aligned}
 \text{Service tax and education cess payable} &= \frac{\text{Gross value} \times \text{Rate of tax}}{100 + \text{rate of tax}} \\
 &= \frac{26000 \times 10.30}{100 + 10.30} \\
 &= \text{RS. } 2,428/-
 \end{aligned}$$

Such service tax should be paid along with the tax of 3rd quarter of financial year 2010-11 by 5th of Jan. 2011.

- (ii) The Department has clarified vide the **Frequently Asked Questions** issued by it that where the assessee only receives the service charges and not the service tax payable thereon, the amount so realized from the client would be treated as gross amount inclusive of service tax. Accordingly, the value of taxable service and the service tax liability will be worked out by back calculations. As mentioned before, Effective rate of service tax is 10.30%.

$$\begin{aligned}
 \text{Service tax and education cess payable} &= \frac{\text{Gross value} \times \text{Rate of tax}}{100 + \text{rate of tax}} \\
 &= \text{Rs. } 25000 \times 10.30/110.30 \\
 &= \text{Rs. } 2,335/-
 \end{aligned}$$

Question 8

Briefly indicate the provisions under the Finance Act, 1994 relating to interest under section 75.

Answer

Section 75 of the Finance Act, 1994 provides for interest on delayed payment of service tax. Failure to pay service tax, including a part thereof, in time attracts simple interest at a rate not below 10% per annum but not exceeding 36% per annum as may be notified by the Central Government. Currently, the interest rate of **13%p.a.** has been notified vide *Notification No. 26/2004 S.T. 10.09.2004*.

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Question 9

What are the provisions relating to best judgment assessment under Service Tax Law?

Answer

Best judgment assessment:- According to provisions of section 72 of Finance Act 1994 if any person, liable to pay service tax,—

(a) **fails to furnish the return** under section 70;

OR

(b) having made a return, **fails to assess the tax** in accordance with the provisions of this Chapter or rules made thereunder, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, **make the assessment of the value of taxable service to the best of his judgment** and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

Question 10

Write a brief note whether the Commissioner of Central Excise is empowered to revise or review the orders pertaining to service tax passed by an adjudicating authority subordinate to him.

Answer

Section 84 of the Finance Act, 1994 has been amended w.e.f. 19-08-2009 by Finance (No.2) Act, 2009 so as to abolish the power of revision of the Commissioner of Central Excise prescribed therein. However, the Commissioner of Central Excise may review the order passed by the adjudicating authority subordinate to him and direct such authority or any other central excise officer subordinate to him to file an appeal before the Commissioner of Central Excise (Appeals). Therefore, though the Commissioner of Central Excise **can now review** the orders passed by an adjudicating authority subordinate to him, he **cannot revise such orders**.

Question 11

M, an assessee fails to pay service tax of Rs.15 lakhs payable by 5th January. He pays the amount on 16th January. What is the penalty payable by M?

Answer

Penalty payable under section 76 for failure to pay service tax in time is calculated as under:-

(a) 2% of the amount of default per month

In this case, delay is of 11 days. Therefore,

Amount = 2% of (15,00,000 × 11/31) = Rs. 10,645

or

- (b) Penalty @Rs. 200 per day of default
 = Rs. 200 per day × 11 = Rs 2,200
 whichever is higher

Thus, **penalty payable is Rs 10,645.**

Question 12

- (i) *Mention the issues on which an advance ruling can be sought in service tax matters.*
 (ii) *When does an advance ruling on service tax become void ab initio?*

Answer

- (i) As per **section 96C** of Finance Act, 1994 an advance ruling can be sought in the following matters:
- (a) classification of any service as a taxable service under Chapter V of Finance Act, 1994;
 - (b) the valuation of taxable services for charging service tax;
 - (c) the principles to be adopted for the purposes of determination of value of the taxable service under the provisions of Chapter V;
 - (d) applicability of notifications issued under Chapter V;
 - (e) admissibility of credit of service tax.
- (ii) **Section 96F** of Finance Act, 1994 provides that if the Authority of Advance Ruling finds, on a representation made to it by the Commissioner of Central Excise or otherwise, that an advance ruling has been obtained by the applicant **by fraud or misrepresentation of facts**, it may, by order, declare such ruling to **be void ab initio**.

Question 13

Briefly explain with a note the time period for filing a claim for refund of service tax by an exporter of goods and sanction of refund claim by the Department.

Answer

According to **Notification No.17/2009-ST dated 07-09-2009**, the time period for filing a refund claim is **one year from the date of export of goods**. The exporter can file a refund claim anytime after export of goods. Further, in the aforementioned Notification, it has been provided that sanction of refund claims shall be made by the Department officials within **one month** from the receipt of the claim without any pre audit.

Indirect Tax Laws

Question 14

Briefly explain the provisions relating to the e-payment of service tax with reference to the Service Tax Rules, 1994 and the Finance Act, 1994.

Answer

According to proviso to rule 6(2) of the Service Tax Rules, 1994, w.e.f 01-04-2010, the assessee who has paid service tax of Rs. 10,00,000 or more including the amount paid by utilization of CENVAT credit in the preceding financial year, he shall deposit the service tax liable to be paid electronically, through internet banking.

Question 15

Briefly explain the provisions in the Service Tax Rules, 1994 relating to furnishing of list of records at the time of filing of return for the first time.

Answer

According to **rule 5(2) of the Service Tax Rules, 1994, w.e.f. 28-12-2007**, every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time a list in duplicate, of

- (i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,
 - (a) providing of any service, whether taxable or exempted;
 - (b) receipt or procurement of input services and payment for such input services;
 - (c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;
 - (d) other activities, such as manufacture and sale of goods, if any.
- (ii) all other financial records maintained by him in the normal course of business.

Question 16

Calculate the net service tax payable under the provision of rule 2A of the Service tax (Determination of Value) Rules, 2006 relating to determination of value of services in the execution of a works contract from the following particulars:

(i) Gross amount for the works contract (excluding VAT)	Rs 1,00,000
(ii) Value of goods and materials sold in the execution of works contract	Rs. 70,000
(iii) CENVAT credit on (ii) above	Rs. 1,000
(iv) Service tax paid on input services	Rs. 1,000
(v) CENVAT credit on capital goods issued in the provision of works contract service	Rs. 1,000
(vi) Service tax rate	10.30%

Make suitable assumptions and provide explanations where required.

Answer**Computation of the Net service tax payable:**

	Rs.
Gross amount charged (excluding VAT)	1,00,000
Less: Value of goods and materials	<u>70,000</u>
	<u>30,000</u>
Service tax @ 10.30%	3,090
Less: CENVAT credit of service tax paid on input service + CENVAT credit of excise duty paid on capital goods (50%) [Rs 1,000 + (50% of Rs 1,000)] [Note 2]	<u>1,500</u>
Net service tax payable	<u>1,590</u>

Notes:

1. CENVAT credit of Rs.1,000 on value of goods and materials sold in the execution of works contract shall not be available to the assessee.
2. CENVAT credit in respect of capital goods shall be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year and balance 50% shall be available in the subsequent financial year [**Rule 4(2)** of the CENVAT Credit Rules, 2004].

TAXONOMY OF VAT

Question 1

Write a brief note on the deficiencies of the VAT system.

Answer

1. One of the key deficiencies in the current system is that there is lack of uniformity in rates of VAT across the states. Distortions also arise on account of differences in classification of the product and concessions or exemptions like composition schemes, exempted category of goods in certain States.
2. The other feature is that central sales tax (which is an origin based tax) has been allowed to coexist with VAT (which is essentially destination based tax) in a system where central sales tax payments are not eligible for set off in the receiving State.
3. There is a burden of record keeping for small traders even though they could switch over to a simplified composition scheme without the benefit of input credit. This could add to the supply chain cost because of the non availability of input credit when the goods pass through a small trader under the composition scheme.
4. The administration cost to the State owing to increase in the number of dealers could go up and at the same time, the States are also concerned about any possible avenues that may be adopted by the traders in the availment of input credit that could need to revenue leakages.
5. Another possible weak point in the introduction of VAT, which will have an adverse impact is that, since the tax is to be imposed or paid at various stages and not on last stage, it would increase the working capital requirements and the interest burden on the same. In this way, it is considered to be non-beneficial as compared to the single stage-last point taxation system.
6. It is claimed that the tax is regressive, i.e. its burden falls disproportionately on the poor since the poor are likely to spend more of their income than the relatively rich person. There is merit in this argument, particularly if it attempts to replace direct or indirect taxes with steep, progressive rates.

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Question 2

Briefly explain the 'addition method' of computation of VAT. What is the drawback of the addition method?

Answer

Addition 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.

CHAPTER 8

INPUT TAX CREDIT

Question 1

Calculate the VAT liability for the period Oct. 1, 2010 to Oct. 31, 2010 from the following particulars:

Inputs worth Rs. 1,00,000 were purchased within the State. Rs. 2,00,000 worth of finished goods were sold within the State and Rs. 1,00,000 worth of goods were sold in the course of inter-State trade. VAT paid on procurement of capital goods worth Rs. 1,00,000 during the month was at 12.5%. If the input and output tax rate in the State are 12.5% and 4% respectively and the central sales tax rate is 2%, show the total tax liability under the State VAT law and under the Central Sales Tax Act.

Answer

Computation of the tax liability for the period Oct . 1, 2010 to Oct. 31, 2010:-

	Rs.
Inputs purchased in the month	1,00,000
Output sold in the month (within the State)	2,00,000
Inter-State sales	1,00,000
Input credit (including capital goods) (Rs.12,500 + Rs.12,500)	25,000
Output tax	8,000
CST for Inter-State sale @ 2%	2,000
State VAT liability (Rs.8,000 – Rs.25,000)	Nil
Excess credit carried forward to subsequent month	17,000
Central sales tax to be paid (Rs.2,000 – Rs.17,000)	Nil
Excess credit carried forward to subsequent period	15,000

Question 2

The particulars regarding sale, purchase etc. of Shubham Udyog for the last quarter of the year 2009 -10 are as under:

	Particulars	Rs.
1.	Purchases of raw material within the State	
(i)	taxable @ 1%	40,00,000

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	(ii)	taxable @ 4%	60,00,000
	(iii)	taxable @ 12.5%	10,00,000
2.		Sale of goods manufactured from raw material purchased @ 4% tax rate	
	(i)	Taxable sale within the State (tax rate 4%)	20,00,000
	(ii)	Exempted sale within the State	10,00,000
	(iii)	Sale in the course of Inter-State trade or commerce (tax rate 4%)	10,00,000
3.		Sale of raw material purchased @ 1% tax rate	44,00,000
4.		Goods manufactured from the raw material purchased @ 12.5% tax rate were given on lease. The deemed sale price of such goods is Rs. 12,00,000, taxable @ 12.5%.	

You may assume that input tax credit of tax on raw material used in manufacture of leased goods is available immediately. Compute the amount of Value Added Tax (VAT) payable by M/s Shubham Udyog for the relevant quarter. There was no opening or closing inventory. How can he utilize the balance of input tax credit available, if any?

Answer

Computation of VAT payable for the quarter ending 31st March, 2010:-

	Particulars	Rs.
(A)	Output tax payable	
(i)	On sale of taxable finished goods within the state (Rs. 20,00,000 × 4%)	80,000
(ii)	On raw material (Rs. 44,00,000 × 1 %)	44,000
(iii)	On leased goods (Rs. 12,00,000 × 12.5%) (Deemed sale)	<u>1,50,000</u>
	Total (A)	<u>2,74,000</u>
(B)	Input tax credit available	
(i)	On raw material purchased @ 1% (Rs. 40,00,000 × 1%)	40,000
(ii)	On raw material purchased @ 4% (Rs. 60,00,000 × 4%) × 75% (Note-1)	1,80,000
(iii)	On raw material purchased @ 12.5% (Rs. 10,00,000 × 12.5%)	<u>1,25,000</u>
	Total (B)	<u>3,45,000</u>
	Net VAT payable = (A)-(B)	(71,000)
	CST payable on inter state sale adjusted (Rs.10,00,000 × 4%)	<u>40,000</u>
	Balance of input tax credit carried forward to next quarter (Rs. 40,000-Rs. 71,000)	<u>31,000</u>

Notes :

1. If the goods manufactured from raw material are exempt from tax, no input tax credit is available on such raw material. Out of total sales of Rs. 40,00,000 of goods manufactured

from raw material purchased @ 4%, credit will not be allowed in respect of the inputs used in the manufacture of exempted goods sold. It has been assumed that the amount of raw material used in the manufacture of exempted goods is proportionate to amount of the exempted sale in the total sales of goods manufactured from raw material purchased @ 4% assuming the input output ratio to be constant. Hence, input tax credit has been allowed to the extent of 75%.

2. If finished goods are sold in the course of inter-state trade and commerce, credit is allowed.

Question 3

Determine the taxable turnover, input tax credit and net VAT payable by a works contractor from the details given below on the assumption that the contractor maintains sufficient records to quantify the labour charges. Assume output VAT at 12.5%:

Particulars	Rs. (in lakh)
(i) Total contract price (excluding VAT)	100
(ii) Labour charges paid for execution of the contract	35
(iii) Cost of consumables used not involving transfer of property in goods	5
(iv) Material purchased and used for the contract taxable at 12.5% VAT (VAT included)	45

The contractor also purchased a plant for use in the contract for Rs. 10.4 lakhs. In the VAT invoice relating to the same, VAT was charged at 4% separately and the said amount of Rs. 10.4 lakhs is inclusive of VAT. Assume 100% input credit on capital goods.

Make suitable assumption wherever required and show the working notes.

Answer

Under the works contract, the turnover for imposition of VAT is the sale price of the goods in which there is a transfer of property. The amount representing the labour & other charges incurred for such execution is deductible.

Computation of the taxable turnover, input tax credit and net VAT payable by the works contractor:-

Particulars	Rs.
Total contract price	1,00,00,000
Less : Deductions admissible	
1. Labour charges paid for executing the contract	35,00,000
2. Cost of consumables in which no property is transferred	<u>5,00,000</u>
Total deductions	<u>40,00,000</u>
Taxable turnover	<u>60,00,000</u>

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Output VAT payable @ 12.5% (on Rs. 60,00,000)	7,50,000	(A)
Less : Input tax credit admissible		
1. On the material purchased (on Rs. 45,00,000 x 12.5/112.5)	5,00,000	
2. On the plant purchases (on Rs. 10,40,000 x 4/104)	<u>40,000</u>	
Input tax credit	<u>5,40,000</u>	(B)
Net VAT payable	<u>2,10,000</u>	(A-B)

SMALL DEALERS AND COMPOSITION SCHEME

Question 1

Who are not eligible for composition scheme under the VAT regime? Discuss briefly.

Answer

Small dealers having gross turnover exceeding Rs 5 lakhs but less than Rs 50 lakhs have option of composition scheme. They will have to pay a small percentage of gross turnover. They will not be entitled to any input tax credit. However, the following are **not eligible** for the composition scheme:

- (i) a manufacturer or a dealer who sells goods in the course of inter-State trade or commerce; or
- (ii) a dealer who sells goods in the course of import into or export out of territory of India; or
- (iii) a dealer transferring goods outside the State otherwise than by way of sale or for execution of works contract; or
- (iv) a manufacturer/dealer who makes inter-State purchases; or
- (v) a dealer/manufacturer who issues vatable invoices.

Question 2

Explain in brief the disadvantages of composition scheme available for small dealers under VAT system.

Answer

Small dealers with annual gross turnover not exceeding Rs. 50 lakh who are otherwise liable to pay VAT, **shall have the option for a composition scheme** with payment of tax at small percentage of his gross turnover. The dealers opting for this scheme will not be entitled to input tax credit.

As VAT chain is broken under the composition scheme, following are its **disadvantages** –

1. The purchaser shall not get any tax credit for the purchases made by him from the dealer operating under the composition scheme. Hence, the dealers who have desired to avail input tax credit on their purchases may not prefer to buy from composition dealers.
2. The dealer cannot avail input tax credit in respect of input tax paid by him. He will not be able to pass on the benefit of input tax credit, which will add to the cost of goods.

VAT PROCEDURES

Question 1

Briefly explain the importance of VAT invoice.

Answer

Importance of VAT Invoice: Invoices are crucial documents for administering VAT. In the absence of invoices, VAT paid by the dealer earlier cannot be claimed as set off. The importance of a VAT invoice can be gauged from the following:-

- (i) It helps in determining the input tax credit;
- (ii) It prevents cascading effect of taxes;
- (iii) It facilitates multi-point taxation on the value addition;
- (iv) It promotes assurance of invoices;
- (v) It assists in performing audit and investigation activities effectively;
- (vi) It helps in checking evasion of tax.

Question 2

What is VAT invoice? What are the mandatory provisions to be complied with while issuing a VAT invoice by a registered dealer?

Answer

VAT invoice is a document listing goods sold with price, tax charged and other details as may be prescribed and issued by a dealer authorized under the Act.

Mandatory provisions to be complied with:

- (i) Every registered dealer whose turnover of sales exceeds the specified amount shall issue to the purchaser a serially numbered tax invoice, cash memo or bill with the prescribed particulars.
- (ii) The VAT invoice shall be dated and signed by the dealer or his regular employee, showing the required particulars.
- (iii) The dealer shall keep a counterfoil or duplicate of such VAT invoice duly signed and dated.

Exception: Composition scheme dealer cannot issue a VAT invoice.

VAT IN SPECIAL TRANSACTIONS

Question 1

Write a brief note to explain the impact of VAT on lease transactions.

Answer

Impact of VAT on lease transactions:-

1. Lease is chargeable to tax by virtue of sub – clause (d) of clause 29A of Article 366 of the Constitution of India. This is a tax on the transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.
2. The **taxable event is the transfer of right to use** any goods and hence immovable property is not covered.
3. The **taxable turnover** means the valuable consideration paid or payable for any sale in a given period. Certain States have provided for deduction of interest or finance charges for the purpose of determination of taxable turnover.
4. Lease of an asset in the course of inter-State trade cannot be subject to VAT.
5. **Transfer of right to use does not presuppose ownership** of the goods. A sub-lease of an asset also is taxable unless specifically exempt under the State VAT Law.
6. **Sale of leased asset** after the end of the lease period is taxable as a **normal sale**.
7. The maintenance of leased asset involving supply of materials for maintenance/ repair by the lessor will not amount to a works contract as there would be no transfer of property in such materials to the lessee. Hence, there should be **no VAT on the value of materials supplied during maintenance/repair** of the leased asset.
8. The assets given on lease will be **generally capitalized** by the lessor in his books and will be treated as capital assets. Thus, provision relating to input tax credit on capital goods will apply.
9. The lessor would pay VAT at the time of procurement of goods. However, liability to pay VAT on lease rentals will be spread over the tenure of the lease. Therefore, some States have provided for utilization of input credit for paying output tax only over the entire period of lease.

CHAPTER 12

VAT AND CENTRAL SALES TAX

Question 1

Illustrate with an example, whether inter-State purchases liable to central sales tax are eligible for input credit and explain the effect of the same on inter-State transactions.

Answer

The inter-State purchases liable to central sales tax are **not eligible** for input tax credit. However, the liability to central sales tax can be set off against the input tax credit earned on other eligible purchases. By way of an example, a dealer in State K purchases goods from another dealer in State M. The dealer in State M charges CST at 2% on this sale against C Form produced by dealer in State K. The tax is deposited in State M. Though it is called CST, the Central Government does not get any share in this and it is a revenue receipt of the selling State. The dealer in State K sells these goods within the State K and collects VAT which is deposited in State K. The question is whether the dealer in State K can claim input tax credit of the central sales tax paid by him to be set off against the VAT liability in State K. This is not possible as State K will not permit the set off against the tax paid to another State M. This is because the same if permitted would result in loss of revenue to State K. This is the reason why CST is not vatable.

The effect on inter-State trade is that trade will be uncompetitive for the States that are net importers because in those States consumer prices will be high. **CST is origin based tax collected by the exporting State while VAT is a destination based consumption tax.** They both cannot go together and to that extent the objective behind the VAT regime in lowering of prices for consumers cannot be achieved.