PART- II : SERVICE TAX

I. AMENDMENTS BY THE FINANCE ACT, 2007

Secondary and Higher Education Cess

A secondary and higher education cess @ 1% is being imposed on services liable to service tax. It shall be levied on the service tax payable on such services. The provisions of the Chapter V of the Finance Act, 1994 and the rules including those relating to refunds and exemptions from tax and imposition of penalty shall apply in relation to the levy and collection of the secondary and higher education cess on taxable services as they apply in relation to the levy and collection of tax on such taxable services.

(Effective from 11.05.2007)

Amendments in Chapter V and VA of the Finance Act, 1994

1. 7 new services brought under the service tax net [section 65]

This year seven services have been brought under the tax net. However, all these services are not new, some of the old services have been merged together under one separate category. The seven services are:

(i) Telecommunication service (includes individual services in respect of telephone, pager, leased circuit, telegraph, telex and facsimile communication)

(ii) Mining services

(iii) Services provided in relation to renting of immovable property, other than residential properties and vacant land, for use in the course or furtherance of business or commerce

(iv) Services provided in relation to the execution of a works contract

(v) Development and supply of content for use in telecommunication services, advertising agency services and on-line information and database access or retrieval services

(vi) Asset management services including portfolio management and all forms of fund management service provided by any person, except a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern

(vii) Design services

(Effective from 01.06.2007)

Each of the abovementioned 7 services have been discussed below:

(i) Telecommunication service

Individual services in respect of telephone, pager, leased circuit, telegraph, telex and facsimile communication have been merged under this service. Consequently, subclauses (b), (c), (zd), (ze), (zf) and (zg) of section 65(105) and clause (60) and clause (104) of section 65 covering the provisions relating to these individual services have been omitted.

"Telecommunication service" means service of any description provided by means of any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence or information of any nature, by wire, radio, optical, visual or other electro-magnetic means or systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception by a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of the Indian Telegraph Act, 1885 and includes-

(i) voice mail, data services, audio tex services, video tex services, radio paging;

(ii) fixed telephone services including provision of access to and use of the public switched telephone network for the transmission and switching of voice, data and video, inbound and outbound telephone service to and from national and international destinations;

(iii) cellular mobile telephone services including provision of access to and use of switched or non-switched networks for the transmission of voice, data and video, inbound and outbound roaming service to and from national and international destinations;

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

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

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

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

(viii) communication through facsimile, pager, telegraph and telex,

but does not include service provided by-

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

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

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

Scope of taxable service shall include service provided or to be provided to any person by the telegraph authority in relation to telecommunication service [Section 65(105)(zzzx)].

It is important to note that the existing condition of the recipient of service being a subscriber in telecommunication related services has been changed to any person in the new service.

(ii) Mining service

Geological, geophysical or other prospecting, surface or sub-surface surveying or map-making services relating to location or exploration of deposits of mineral, oil or gas are leviable to service tax under survey and exploration of mineral service under section 65(105)(zzv). Other services in relation to mining such as site formation and clearance, and excavation and earth moving, drilling wells for production/exploitation of hydrocarbons (development drilling), well testing and analysis services etc. are also individually classified under the appropriate taxable services. The Finance Act, 2007 has introduced a separate mining service in order to cover services provided in relation to mining of mineral, oil and gas.

Scope of the taxable service shall include service provided or to be provided to any person, by any other person in relation to mining of mineral, oil or gas [Section 65(105)(zzzy)].

Thus, now services provided in relation to both exploration and exploitation of mineral, oil or gas would be covered under the service tax net.

(iii) Renting of immovable property service

"Renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include —

(i) renting of immovable property by a religious body or to a religious body; or

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

Explanation.—For the purposes of this clause, "for use in the course or furtherance of business or commerce" includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings [Section 65(90a)].

Scope of taxable service shall include service provided or to be provided by to any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce.

Explanation 1.—For the purposes of this sub-clause, "immovable property" includes—

(i) building and part of a building, and the land appurtenant thereto;

(ii) land incidental to the use of such building or part of a building;

(iii) the common or shared areas and facilities relating thereto; and

(iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,

but does not include-

(a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;

(b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;

(c) land used for educational, sports, circus, entertainment and parking purposes; and

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

Explanation 2.—For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce [Section 65(105)(zzzz)].

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

(iv) Service involved in the execution of a works contract

In a works contract, sales tax /VAT is levied on the transfer of property in goods involved in the execution of such works contract. Now the Finance Act, 2007 has levied service tax on the service element involved in the execution of a works contract.

Scope of taxable service shall include service provided or to be provided to to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

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

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) such contract is for the purposes of carrying out,—

   (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects [Section 65(105)(zzzza)].

Thus, the definition of works contract is an exhaustive one.

The Finance Minister P. Chidambaram in his budget speech has announced a composition scheme for the service providers involved in the execution of a works contract. The scheme would give an option to the assessee to pay 2% of the total value of the works contract as service tax. Assessees opting for the composition scheme would not be entitled to avail CENVAT credit of capital goods, inputs and input services required for use in the works contract. The assesses who do not opt for this scheme would pay service tax on the taxable value of the works contract which is relatable to services provided in the execution of a works contract. Such value would be determined on actual basis based on the records maintained by the assessee. Valuation of works contract and details of the composition scheme will be notified separately.

(v) Development and supply of content service

"Development and supply of content" includes development and supply of mobile value added services, music, movie clips, ring tones, wall paper, mobile games, data, whether or not aggregated, information, news and animation films [Section65(36c)].

Scope of taxable service shall include service provided or to be provided to any person, by any other person in relation to development and supply of content for use in telecommunication services, advertising agency services and on-line information and database access or retrieval services [Section 65(105)(zzzzb)].

(vi) Asset management including portfolio management and all forms of fund management service

Asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or any other person is leviable to service tax under banking and other financial service.

The Finance Act, 2007 has substituted the words "any other person" with "commercial concern" in the definition of banking and other financial service (discussed in pt. 3(v) later). Therefore, in order to cover asset management and similar services provided by persons, other than the ones covered under banking and other financial services, a separate category of service has been introduced by the Finance Act, 2007.

Scope of taxable service shall include service provided or to be provided to any person, by any other person, except a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern referred to in sub-clause (zm), in relation to asset management including portfolio management and all forms of fund management [Section 65(105)(zzzzc)].

(vii) Design services

Services in relation to conceptualizing, outlining, creating the designs and preparing patterns for costumes, apparels, garments, clothing accessories, jewellery or any other articles intended to be worn by human beings are leviable to service tax under the fashion designing service. Services in relation to planning, design or beautification of spaces is leviable to service tax under the interior decorator's service. The Finance Act, 2007 has included design services provided to any person by any person other than an interior decorator and a fashion designer under this new category of service. The definition of this service reads as under:

"Design services" includes services provided in relation to designing of furniture, consumer products, industrial products, packages, logos, graphics, websites and corporate identity designing and production of three dimensional models [Section 65(36b)].

Scope of taxable service shall include service provided or to be provided to any person, by any other person in relation to design services, but does not include service provided by-

(i) an interior decorator referred to in sub-clause (q); and

(ii) a fashion designer in relation to fashion designing referred to in sub-clause (zv) [Section 65(105)(zzzzd)].

2. Scope of certain existing services expanded [Section 65]

All the changes in respective services specified below have come into effect from 01.06.2007

(i) Sale of space or time for advertisement, other than in print media

Sale of space or time for advertisement, other than in print media is chargeable to service tax under sub-clause (zzzm) of clause (105) of section 65. The scope of this service has been expanded by substituting the explanation 2 to the clause (zzzm) which defines print media. The new explanation states that print media does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes. Consequently, sale of space for advertisement in such publications will also be leviable to service tax under this service.

(ii) Rent-a-cab service

Under this category, services provided by a rent-a-cab scheme operator in relation to the renting of cabs carrying up to 12 passengers, excluding the driver, for hire or reward are chargeable to service tax.

However, the Finance Act, 2007 has included services provided in relation to renting of motor vehicles capable of carrying more than 12 passengers (e.g. bus) within the scope of this service. This has been done by amending the definition of the "cab" provided under clause (20) of section 65. The new definition reads as under:

"Cab" means-

(i) a motorcab, or

(ii) maxicab, or

(iii) any motor vehicle constructed or adapted to carry more than 12 passengers excluding the driver, for hire or reward.

However, the maxicab referred to in sub-clause (ii) or motor vehicle referred to in sub-clause (iii) which is rented for use by an educational body imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre, shall not be included within the meaning of cab.

Thus, renting of motorcab to an educational body would be leviable to service tax.

(iii) Mandap keeper service, pandal or shamiana service and event management service

Mandap keeping services and pandal or shamiana services provided in organizing a social function are chargeable to service tax. The Finance Act, 2007 has clarified that social functions include marriage functions. This has been done by inserting explanations in the definitions of mandap [section 65(66)], mandap keeper [section 65(67)] and pandal or shamiana [section 65(77a)].

Further, definition of event management provided under section 65(40) has also been amended so as to specifically include event of marriage within the scope of this service. Thus, now mandap keeping service, pandal or shmiana service and event management service provided in organizing a marriage shall be chargeable to service tax.

(iv) Consulting engineer's service

Consultancy in the filed of computer hardware engineering has been included within the scope of taxable services provided by a consulting engineer by amending the definition of taxable consulting service provided under sub-clause (g) of clause (105) of section 65.

Prior to this amendment, consultancy services in relation to computer hardware and software were specifically excluded from the scope of the consulting engineer's services. However, the amended definition of taxable service provided by a consulting engineer still excludes consultancy provided in the filed of computer software engineering.

(v) Banking and financial service

(i) The Finance Act, 2007 has substituted the words "or any other person" with "or commercial concern" in the definition of banking and other financial services provided under clause (12) of section 65 and the meaning of taxable service provided under sub-clause (zm) of clause (105) of section 65.

(ii) Section 65(12)(v) provides that banking and other financial services means asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services, but does not include cash management. However, the Finance Act, 2007 has omitted the specific exclusion of cash management. Consequently, cash management shall be liable to service tax under this service.

(iii) Item (i) of clause (12) of section 65 provides that banking and other financial services means financial leasing services including equipment leasing and hire purchase. An explanation has been inserted at the end of item (i) to clarify the meaning of financial lease. The new explanation reads as under:

"Explanation.—For the purposes of this item, "financial leasing" means a lease transaction where—

(i) contract for lease is entered into between two parties for leasing of a specific asset;

(ii) such contract is for use and occupation of the asset by the lessee;

(iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and

(iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment."

(vi) Management consultancy service

Section 65(105)(r) defines taxable management consultancy service. The Finance Act, 2007 has amended the said sub-clause to rename the management consultancy as management or business consultancy. The amended sub-clause provides that the "taxable service means any service provided or to be provided to a client, by a management or business consultant in connection with the management of any organisation or business, in any manner."

Consequently, clause (65) of section 65 defining management consultant has also been amended so as to explicitly include business consultancy within the scope of management consultancy service.

(vii) Manpower recruitment or supply agency's services

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

(a) pre-recruitment screening,

(b) verification of the credentials and antecedents of the candidate, and

(c) authenticity of documents submitted by the candidate.

(viii) Management, maintenance or repair service

The Finance Act, 2007 has inserted an explanation at the end of clause (64) of section 65 which defines management, maintenance or repair.

The explanation clarifies that for the purpose of management, maintenance or repair service "goods" includes computer software.

Therefore, with effect from 01.06.2007, maintenance, repair or management of computer software would attract service tax. It may be noted that development of computer software, being information technology service, is distinct from maintenance or repair of computer software and does not attract service tax.

3. Delayed return may be filed with late fee [Section 70(1)]

Section 70(1) provides that every person liable to pay service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed. The Finance Act, 2007 has amended section 70(1) to provide filing of periodical return after the due date with the prescribed late fee of not more than Rs.2,000.

So far, filing of a return after the due date has been treated as a violation and was liable for penal action under 77.

(Effective from 11.05.2007)

II. SIGNIFICANT AMENDMENTS MADE THROUGH NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2006 AND 30.04.2007

Exemptions

1. Notification No. 7/2006 ST dated 01.03.2006 exempting taxable services, provided or to be provided to any person, by Reserve Bank of India, from the whole of service tax leviable thereon has been superseded by Notification No. 22/2006 ST dated 31.05.2006. This notification exempts the following taxable services from the whole of the service tax leviable thereon:

(i) taxable services provided or to be provided to any person, by the Reserve Bank of India;

(ii) taxable services provided or to be provided by any person, to the Reserve Bank of India when the service tax for such services is liable to be paid by the Reserve Bank of India under sub-section (2) of section 68 of the said Finance Act read with rule 2 of the Service Tax Rules, 1994;

(iii) taxable services received in India from outside India by the Reserve Bank of India under section 66A of the Finance Act, 1994.

2. Following amendments have been made in Notification No. 1/2006 ST dated 01.03.2006 which grants partial exemptions from service tax to certain specified services:

   (i) Abatement granted to erection, commissioning or installation service under a contract for supplying a plant, machinery or equipment and erection, commissioning or installation thereof has been extended to structures as well. This amendment is in view of the modification made in the definition of erection, commissioning or installation service by the Finance Act, 2006 [Notification No. 21/2006 ST dated 23.05.2006].

   (ii) Business auxiliary service, in relation to production or processing of parts and accessories used in the manufacture of cycles, cycle rickshaws and hand-operated sewing machines, for, or on behalf of, the client has been granted an abatement of 30% from the gross amount charged for such service. This abatement is available when the gross amount charged from the client is inclusive of the cost of inputs and input services, whether or not supplied by the client.

   However, the exemption is not available in cases where –

   (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service has been taken under the provisions of the CENVAT Credit Rules, 2004; or

   (ii) the service provider has availed the benefit under Notification No. 12/2003-ST, dated 20.06.2003 [Notification No. 23/2006 ST dated 02.06.2006].

3. Notification No. 25/2006 ST dated 13.07.2006 has exempted the taxable services provided or to be provided by a practising chartered accountant, a practising cost accountant and a practising company secretary, in their 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, from the whole of service tax leviable thereon.

4. Notification No. 31/2006 ST dated 11.12.2006 has exempted the taxable service provided by an insurer, carrying on general insurance business, to a policy holder for the insurance of sheep, from the whole of service tax leviable thereon. However, the exemption contained in this notification shall be valid only upto 31.12.2009.

5. Notification No. 4/2007 ST dated 01.03.2007 has amended Notification No.6/2005 ST dated 01.03.2005 in order to raise the exemption limit in case of small service providers from the current Rs.4,00,000 to Rs.8,00,000 with effect from 01.04.2007. Thus, taxable services of aggregate value not exceeding Rs.8,00,000 in any financial year would be exempt from service tax if the aggregate value of taxable services rendered by a provider of taxable service from one or more premises does not exceed Rs.8,00,000 in the preceding financial year.

6. Consequent upon the increase in the threshold exemption limit from Rs.4 lakh to Rs.8 lakh, the limit for obtaining service tax registration has also been increased from Rs.3 lakh to Rs.7 lakh by amending Notification Nos. 26/2005-ST and No.27/2005-ST, both dated 07.06.05 vide Notification Nos. 5, 6 & 7/2007 ST dated 01.03.07. This amendment is effective from 01.04.2007.

7. Notification No. 8/2007 ST dated 01.03.2007 has exempted the taxable services provided or to be provided by a resident welfare association under section 65(105)(zzze) to its members from whole of the service tax leviable thereon. However, the exemption is subject to the condition that the total consideration received from an individual member by the said association for providing the said services does not exceed Rs.3,000 per month. This service would otherwise be taxable under the category of membership of clubs or association.

   It has been clarified vide F.No.137/68/2007-CX.4 dated 08.05.2007 that a resident welfare association registered as a co-operative society with Registrar of Co-operative Societies is eligible to avail exemption from levy of service tax vide Notification No.8/2007 ST dated 01.03.2007 provided the following conditions are satisfied, namely:-

   (i) The exemption is available for the services specified under section 65(105)(zzze) of the Finance Act, 1994 and provided or to be provided by the association to its members.

   (ii) The sole criterion for membership of the resident welfare association is the residential status of a person in a residential complex or locality i.e., membership of the association is restricted only to the residents of the complex or locality.

   (iii) The value of total consideration received from an individual member by the association for providing the services should not exceed Rs.3,000/- per month.

8. With effect from 01.04.2007, Notification No. 9/2007 ST dated 01.03.2007 exempts all taxable services provided or to be provided by Technology Business Incubators (TBI)/Science and Technology Entrepreneurship Parks (STEP) recognized by National Science and Technology Entrepreneurship Board (NSTEBD) of the Department of Science & Technology from the whole of service tax leviable thereon. The exemption contained in this notification shall be subject to the following conditions:

   (i) the STEP or the TBI, who intends to avail the exemption, shall furnish the requisite information containing the details of the incubator along with the information received from each incubatee to the concerned Assistant/Deputy Commissioner of Central Excise before availing the exemption; and

   (ii) the STEP or the TBI shall thereafter furnish the information in the formats mentioned above in the same manner before the 30th day of June of each financial year.

9. With effect from 01.04.2007, Notification No. 10/2007 ST dated 01.03.2007 has exempted taxable services provided or to be provided by an (incubatee) entrepreneur located within the premises of a TBI/STEP recognized by the NSTEDB of the Department

of Science and Technology Government of India from the whole of the service tax leviable thereon subject to the following conditions:-

(i) the entrepreneur enters into an agreement with the TBI or the STEP as an incubatee, to enable himself to develop and produce hi-tech and innovative products; and

(ii) the total business turnover of such entrepreneur does not exceed Rs.50 lakh during the previous financial year.

Further, the exemption contained in this notification shall apply for a period of 3 years from the date on which such entrepreneur enters into an agreement with the TBI or the STEP.

The exemption for taxable services under this notification shall not be available for any taxable services provided or to be provided immediately after the total business turnover of the entrepreneur exceeds Rs.50 lakh during a given financial year.

10. Notification No. 11/2007 ST dated 01.03.2007 has exempted the technical testing and analysis services of new drugs, including vaccines and herbal remedies, on human participants so as to ascertain the safety and efficacy of such drugs by a Clinical Research Organization (CRO) (approved to conduct clinical trials by the Drugs Controller General of India) from the whole of service tax leviable thereon.

11. Notification No. 12/2007 ST dated 01.03.2007 has exempted the taxable services, provided or to be provided, under an agreement, by any person to other person who has the right to authorise any person to exhibit cinematograph film, from the whole of the service tax leviable thereon subject to the following conditions:

(i) that the service provided or to be provided is in relation to the delivery of the content of the cinematograph film; and

(ii) that the content of such film, being in digitized form, after its encryption, is transmitted directly to a cinema theatre for exhibition through the use of satellite, microwave or terrestrial communication line and not by any physical means including CD and DVD.

Explanation. – For the purposes of this notification,-

(a) "cinematograph film" means a film certified under section 5A of the Cinematograph Act, 1952;

(b) "cinema theatre" means a place which is licenced under Part III of the Cinematograph Act, 1952, or under any other law for the time being in force in a state for the exhibition of a cinematograph film.

12. During the period between 01.04.2000 and 04.02.2004 there was a practice of not levying service tax on services provided by a tour operator providing services in relation to transport of passengers (other than services provided in relation to package tour) operating under a contract carriage permit issued by the appropriate transport authority.

However, such services were liable to service tax under section 65(105)(n) of the Finance Act.

Therefore, in exercise of the powers conferred by section 11C of the Central Excise Act 1944 read with section 83 of the Finance Act, the Central Government has directed vide Notification No.15/2007 ST dated 04.04.2007 that service tax on 60% of the gross amount charged by such tour operators shall not be required to be paid in respect of such taxable service on which the service tax was not being levied during the aforesaid period in accordance with the said practice.

Other Amendments

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

(i) With effect from 01.04.2004, rule 2(1)(d)(vii) has been amended to the effect that service tax is required to be paid under reverse charge method, i.e., where service tax is to be paid by service receiver, in relation to sponsorship service only if the recipient of service is located in India. Therefore, if the recipient of sponsorship service is located outside India, service tax would be required to be paid by the service provider and not by the recipient [Notification No. 1/2007 ST dated 01.03.2007]

Accordingly, similar amendment has also been made in Notification No. 36/2004 ST dated 31.12.2004 vide Notification No. 3/2007 ST dated 01.03.2007.

(ii) With effect from 01.10.2006, Notification No. 27/2006-ST dated 21.09.2006 has made it compulsory for the assessee, who has paid service tax of Rs.50,00,000 or above in the preceding financial year or has already paid service tax of Rs.50,00,000 in the current financial year, to deposit the service tax liable to be paid by him electronically, through internet banking. This has been done by amending sub-rule (2) of rule 6.

Circular No. 88/06/2006 ST dated 06.11.2006 has clarified the following regarding the interpretation of qualifying amount of service tax of such Rs.50 lakh paid by the assessee:

(i) For a person providing taxable service from more than one premises, where each such premises is separately registered with the department for payment of service tax, the criterion of Rs.50 lakh would apply to each registered premises individually, as each registered premises is separately an assessee in terms of law. Similar is the situation in the case of a person paying service tax on taxable service received by him.

However, in case of a Large Taxpayer (LTU), the cumulative service tax paid by all registered premises of such Large Taxpayer will be taken into account for satisfaction of criterion of payment of service tax amount of Rs 50 lakh.

(ii) If a person pays service tax from a registered premises for both the taxable services provided by him and the taxable service received by him on which he is liable to pay service tax, the cumulative service tax paid, i.e., service tax paid on taxable service provided from and service tax paid on taxable service received in such registered premises would be taken into account for the purposes of satisfaction of criterion of payment of service tax amount of Rs.50 lakh.

(iii) Further, for the purposes of calculation of this amount of Rs.50 lakh the total service tax paid by cash plus CENVAT credit would be taken into account as service tax paid amount. Therefore, if an assessee has paid service tax of Rs.50 lakh (in preceding financial year or the current year) in cash plus CENVAT credit, such assessee, if he pays any further service tax in cash, would be required to make mandatory e-payment.

(iii) Sub-rule (4A) of rule 6 has been substituted and sub-rule 4B inserted to provide for self-adjustment of excess service tax paid, subject to specified conditions. So far, self-adjustment of excess service tax paid was available only to the assessees who opted for centralised registration. Further, the adjustment was allowed only on account of delayed receipt of details of payment from the branch offices.

With effect from 01.03.2007, self-adjustment of excess service tax paid has been extended to all the assessees. However, such an adjustment would be subject to the following conditions:

(i) Self-adjustment of excess credit would not be allowed in case of reasons involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.

(ii) Excess amount paid and proposed to be adjusted should not exceed Rs.50,000 for the relevant month or quarter. However, in case of assessees opting for centralized registration excess amount can be adjusted without any monetary limit provided the excess amount paid is on account of delayed receipt of details of payments from branch offices.

(iii) Adjustment can be made only in the succeeding month or quarter.

(iv) The details of self-adjustment should be intimated to the Superintendent of Central Excise within a period of 15 days from the date of such adjustment [Notification No. 1/2007 ST dated 01.03.2007].

(iv) Rule 7B has been inserted vide Notification No. 1/2007 ST dated 01.03.2007 to allow an assessee to submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of 60 days from the date of submission of the return under rule 7. It has been clarified that where an assessee submits a revised return, the 'relevant date' for the purpose of recovery of service tax, if any, under section 73 of the Act shall be the date of submission of such revised return.

14. Circular No. 83/1/2006 ST dated 04.07.2006 has clarified that services such as transfer of money through money orders, operation of savings accounts, issue of postal orders provided by the Department of Posts are not liable to service tax under banking and other financial services. Banking and other financial services are defined under section 65(12).

Such services provided to a customer by a banking company or a financial institution including a non-banking financial company or any other body corporate or any other person to a customer are liable to service tax under section 65(105)(zm). The expression 'any other person' appearing in section 65(105)(zm) is to be read ejusdem generis with the preceding words. The expression 'other financial services' appearing under section 65(12)(a)(ix) is a residuary entry and includes those services which are normally rendered by banks or financial institutions.

Hence, banking and other financial services provided by a banking company or a financial institution or a non-banking financial company or any other service provider similar to a bank or a financial institution are liable to service tax under section 65(105)(zm) of the Finance Act, 1994. Department of Posts is not similar to a bank or a financial institution and hence does not fall within the category of any other similar service provider.

Note: The Finance Act, 2007 has substituted the words "or any other person" in the definition of banking and other financial services provided under section 65(12) with the words "or commercial concern". This amendment has come into effect from 11.05.2007.

15. Circular No. 84/2/2006 ST dated 19.09.2006 has clarified that any club or association that enjoys exemption under the provisions of Income Tax Act on the ground of being a public charitable institution does not automatically get excluded from levy of service tax under section 65(105)(zzze) read with section 65(25a) of the Finance Act, 1994 as exemption under the Income Tax Act on the ground of being a public charitable institution is of no consequence to levy of service tax. Levy of service tax is entirely governed by the provisions contained in the Finance Act, 1994 and the rules made thereunder.

16. Circular No. 85/3/2006 ST dated 17.10.2006 has clarified following issues in respect of levy of service tax on international journey by aircraft:

Sl.No	Issue	Clarification
1	In the case of international journey commencing from an Indian airport involving stopover/transfer at intermediate airports outside India before reaching the destination (say Mumbai-Dubai-London-New York), whether service tax would be leviable on the value indicated in the ticket or on the value attributable to the first sector (Mumbai-Dubai)?	International journey is from Mumbai to New York. Stopover/transfer at intermediate airports is incidental or part of the main journey. Stop over/transfer at intermediate airports outside India is of no relevance or consequence for levy of service tax under section 65(105)(zzzo) read with section 66 of the Finance Act,1994. Service tax is leviable on the total value of the ticket representing the consideration of a single composite service.
2.	In case the international journey also includes travel in a domestic	Service tax is leviable on the total value of the ticket.

	sector as part of the international journey (say Delhi-Mumbai-London), whether service tax is leviable excluding the value attributable to the domestic sector or on the total value of the ticket treating the domestic sector as integral part of international journey?	of the ticket.
3.	In the case of round trip/return ticket, whether service tax is leviable on the total value of the ticket or only on half the value of the ticket?	Service tax is leviable on the total value of the ticket.
4.	In the case of journey commencing from an airport outside India and completed at an airport outside India but including a sector wherein the passenger disembarks and subsequently embarks at an Indian airport as part of international journey (say Sydney-Mumbai-Dubai-Singapore-Sydney), whether service tax is leviable for Mumbai-Dubai sector only or on the total value of the ticket?	Service tax is not leviable in such cases.
5.	Whether ticket issued outside India for an international journey commencing from India (say Delhi–London) is leviable to service tax?	Service tax is payable by the service provider for the taxable service provided. Place of purchase/issue of ticket is of no relevance or consequence to determine the levy of service tax under section 65(105)(zzzo) read with section 66 of the Finance Act, 1994.

17. Circular No. 86/4/2006 ST dated 01.11.2006 has clarified that institutes like IITs or IIMs are not liable to pay service tax prior to 1.5.2006 under the category of "manpower recruitment or supply service". As regards the period after 1.5.2006, decision should be taken after taking into account all material facts on case to case basis.

18. Circular No. 87/05/2006 ST dated 06.11.2006 has clarified following issues relating to authorized motor vehicle dealers and service stations:

Sl.No.	Issue	Clarification
1.(a)	Whether the mark-up (profit) on the spare parts sold by a service station during the servicing of vehicles is liable to payment of service tax?	As regards, the issue relating to sale of spare parts and consumables, Notification No. 12/2003 ST dated 20.06.2003, exempts service tax to the extent of value of the goods and materials sold by the service provider to the service recipient, if documentary proof of such sale exists and no credit of excise duty paid on such spares or consumables have been taken.
1.(b)	Whether exemption can be claimed on the cost of consumables that get consumed during the course of providing service?	It may, however be pertinent to note that for availing such exemption, the goods must be sold and consequently, they must be available (whether independently or as a part used for repair of a vehicle) for sale. In other words, the exemption would not be available to such consumables which have been consumed during the process of providing service and are not available for sale.
2.	Whether 'free services' given by the authorized dealers (for which they are reimbursed by the vehicle manufacturers) are subjected to service tax?	As regards 'free servicing' (where the customer does not pay any charges) of the motor vehicles, normally the service charges are reimbursed by the vehicle manufacturers, who promises such a facility to attract customer. As the law does not in any way restricts the levy of service tax only on the service charges received from the recipient of the service, therefore, such reimbursements are subject to service tax.
3.	Whether the commission received by the automobile dealers from Banks/Non Banking Financial Companies (NBFC), for introducing the customers seeking finances/loans to such banks/NBFCs is subjected to service tax?	In some cases, the automobile dealers help the buyers of the vehicles for arranging the finances. For this, they have a tie-up with Banks/Non-banking Finance Companies. The customers are advised by the dealers to approach such financial companies for taking loans. The automobile dealers get commission from such financial companies for directing the customers to the latter. By this activity, the automobile dealers 'promote or market the services provided by their customer (i.e., the financial institution) and are

		therefore covered under "taxable business auxiliary service". The tax is payable on the gross commission received by the automobile dealer.
	Further, in case part of these incentives are passed on by the dealers to the customers, whether tax would be leviable only on that part of incentive, which is retained by the dealers or whether it would be on full amount?	In some cases, the dealers share part of their commission with their customers to attract them. However, this is an independent transaction between the automobile dealer and the purchaser of the vehicle and does not involve the service rendered by the automobile dealer to the finance company. Therefore, the tax payable by the dealer would be on the gross amount received from the financial company and not on the balance amount, i.e., after excluding the amount that he passes on to the customer.
4.	Whether service tax is chargeable on the amounts received for servicing/repair of the commercial vehicles?	As regards 'authorized service stations', the taxable service means any service provided or to be provided to a customer by an authorized service station in relation to any service, repair, reconditioning or restoration of motor cars, light motor vehicles or two wheeled motor vehicles, in any manner. Further, a 'light motor vehicle' means any motor vehicle constructed or adapted to carry more than 6 messengers, but not more than 12 passengers, excluding driver. Similarly, as per the 'Motor Vehicle Act', a 'motor car means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage'. In other words, servicing, repair, reconditioning or restoration of specified types of vehicles (whether they are used for commercial purposes or not) fall under the category of taxable services. However, servicing of vehicles like trucks is not within the ambit of service tax.

19. Circular No. 89/7/2006 ST dated 18.12.2006 has clarified that service tax shall not be leviable on fee collected by Public Authorities while performing statutory functions/duties under the provisions of a law. However, if such authority performs a service, which is not

in the nature of statutory activity and the same is undertaken for a consideration not in the nature of statutory fee/levy, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service.

A number of sovereign/public authorities (i.e. an agency constituted/set up by government) perform certain functions/duties, which are statutory in nature. These functions are performed in terms of specific responsibility assigned to them under the law in force. For example, the Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments; the Regional Transport Officer (RTO) issues fitness certificate to the vehicles; the Directorate of Boilers inspects and issues certificate for boilers; or Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant laws. Fee as prescribed is charged and the same is ultimately deposited into the Government Treasury.

The Circular explains that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities.

20. Circular No. 91/2/2007 ST dated 12.03.2007 has been issued regarding levy of service tax on interconnect usage charges (IUC) on interconnection service provided by one telecom operator to another. The interconnection service is provided by one telegraph authority to another to enable the telephone subscribers of these telegraph authorities to connect with each other. Interconnection in technical terms means the commercial and technical arrangements under which service providers connect their equipment, networks, and services to enable their customers to have access to the customers, services, and networks of other service providers. For providing interconnection, the telegraph authority collects interconnect usage charges (IUC).

The Finance Act, 2007 has incorporated a new definition of ‘telecommunication service’ vide clause (104) of section 65 of the Finance Act, 1994 and IUC has been specifically incorporated in the definition of ‘telecommunication service’ to make it a taxable service. Further, any service provided or to be provided, to any person, by a telegraph authority in relation to ‘telecommunication service’ has been made taxable. This amendment has come into effect from 01.06.2007. Therefore, after this amendment comes into effect, service tax would be applicable to IUC charges. It has therefore been clarified that for the period prior to the date when the amended definition of “telecommunication service” comes into effect, service tax is not applicable to IUC.

21. Service tax is leviable on foreign exchange (forex) broking service under the category of ‘banking and other financial service’. In terms of the provisions of the Finance Act, 1994,

foreign exchange broker includes a money changer (authorized dealer of foreign exchange). Circular No. 92/3/2007 ST dated 12.03.2007 has been issued to answer the question as to whether the service provided by a money changer in relation to exchange of foreign currency is a forex broking service for applicability of service tax levy under 'banking and other financial services'.

It has been noted that 'money changing' and 'foreign exchange broking' are two distinct activities. Money changing is an activity of sale and purchase of foreign exchange at the prevalent market rates. On the other hand, foreign exchange broking is the activity performed as an intermediary, on a commission/brokerage basis, for facilitating the clients who wish to buy or sell foreign exchange. The foreign exchange broker providing foreign exchange broking service does not hold title to the foreign exchange. Accordingly, Board is of the view that service tax is not leviable on money changing per se, as such activity does not fall under the category of foreign exchange broking.