CHAPTER 2

CHANGE OF SERVICE TAX, TAXABLE SERVICES AND VALUATION

UNIT 1: CHARGE OF SERVICE TAX

Question 1

Is service tax leviable on fee collected by public authorities while performing statutory functions under the provisions of law?

Answer

Circular No. 96/7/2007-ST dated 23.08.2007 has clarified that **service tax shall not be leviable** on fee collected by public authorities while performing statutory functions under the provisions of law.

However, if the service is not in the course of statutory function and such service is undertaken for a consideration, service tax may be leviable if it is a taxable service.

Question 2

Briefly explain about the charge of service tax.

Answer

Section 66 is the charging section of the Finance Act, 1994 ("the Act") which deals with the levy and collection of service tax. It provides the applicable rate of service tax which is to be levied on the value of various taxable services. The prescribed manner for collection and payment of tax is provided in the Service Tax Rules, 1994. With effect from 18.04.2006, the rate of service tax prescribed by section 66 is 12% of the value of taxable services referred to in section 65(105) of the Act.

However, it may be noted that ***Notification No. 8/2009 ST dated 24.02.2009*** exempted all the taxable services specified in sub-section (105) of section 65 of the Finance Act from so much of service tax leviable thereon under section 66 of the Finance Act, as is in excess of the rate of 10% of the value of taxable services. Therefore, the effective rate of service tax is 10%.

UNIT 2: TAXABLE SERVICES

Question 1

Explain the term "commercial training or coaching center".

Answer

"Commercial training or coaching centre" means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force **[Section 65(27)].**

Question 2

Virat Kohli & Co., a partnership firm, is providing taxable legal consultancy services in the financial year 2010-11. The firm furnishes the following information relating to the services rendered, bills raised, amounts received relating to this service, for the year ended 31.3.2011:

	Particulars	***Rs.***
(i)	*Free services rendered to poor people (Value of the services computed on comparative basis)*	*40,000*
(ii)	*Advances received from clients for which no service has been rendered so far*	*5,00,000*
(iii)	*Services billed to clients – Gross amount (Service tax has been charged separately in all the bills; the firm follows mercantile system of accounting)*	*12,00,000*
(iv)	*The firm has received the following amounts during the year:*	
	Relating to taxable services rendered in March, 2010 (excluding TDS under section 194-J of the IT Act, 1961 to the tune of Rs. 45,320)	*5,44,680*
	Relating to taxable services rendered in current year (excluding TDS under section 194-J of the IT Act, 1961 to the tune of Rs. 1,20,000) (*includes Rs. 50,000 as appearance fee before Labour Court received from another firm)	*9,80,000**

Service tax has been separately received for applicable items in (iv) above.

You are required to compute the value of taxable services for the year ended 31.3.2011 and the service tax payable, briefly explaining the treatment of each item above.

Note: The benefit under Notification No. 6/2005 ST dated 01.03.2005 available to small service providers is available to the assessee.

Answer

Computation of value of taxable services and service tax payable thereon:

Particulars	**Rs.**
Free services rendered to poor people (Note 1)	-
Taxable advances received from clients (Note 2) =Rs. $\left[5,00,000 \times \frac{100}{110.30}\right]$	4,53,309
Consideration received for taxable services rendered in March, 2010 (Note 2 & 3) =Rs. [5,44,680+45,320]	5,90,000
Consideration received for taxable services rendered in current year (Note 3 & 4) =Rs. [(9,80,000+1,20,000)-50,000]	10,50,000
Total	20,93,309
Less: Exemption under *Notification No. 6/2005 ST dated 01.03.2005*	10,00,000
Value of taxable services	10,93,309.00
Service tax @10% [Rs. 5,03,309 × 10%]	1,09,330.90
Add: Education cess @ 2% [Rs. 5,030.90 × 2%]	2,186.62
Add: Secondary and higher education cess @ 1% [Rs. 5,030.90 × 1%]	1,093.31
Service tax payable (rounded off to nearest rupee)	1,12,611

Notes:-

1. Service tax is chargeable on the value of service. Thus, service tax is not payable in case of free services as there is no consideration in such case.
2. Service tax is payable on advances as taxable service includes "service to be provided" and the payments received before, during or after provision of the taxable service form part of the gross amount charged for the taxable services.
3. Service tax is payable on the value of taxable services charged by the assessee. Any income tax deducted at source is included in the charged amount. Thus, service tax is to be paid on TDS also.

4. The definition of taxable legal consultancy service specifically excludes the services provided for appearance before any Court, Tribunal or authority.

Question 3

What is the scope of taxable service in respect of membership of clubs or associations? State the exception to the same.

Answer

The scope of taxable service shall include any service provided or to be provided to its members by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount.

Taxable service provided or to be provided by resident welfare associations to its members are exempt from service tax, provided the consideration received from an individual member does not exceed Rs. 3000 per month.

Question 4

Explain the term "Vocational Training Institute" under the provisions of service tax.

Answer

"Vocational training institute" means an Industrial Training Institute (ITI) / Industrial Training Centre (ITC) affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961.

Question 5

Rosy Tours Co. has arranged three package tours during financial year 2010 - 11. The particulars of the services and charges are as under:

(i) Tour 1: April, 2010 - Charges received Rs.3.5 Lacs.

The package includes transportation, accommodation, food, tourist guide and entry fees for monuments.

(ii) Tour 2: October, 2010 - Charges received Rs.6.5 Lacs.

The package includes transportation and accommodation for stay.

(iii) Tour 3: December, 2010 - Charges received Rs.4 Lacs.

The charges are solely for arranging accommodation for stay. However, the bills issued to the clients do not include the cost of accommodation for stay.

All the charges are excluding service tax. Compute the value of taxable service and service tax payable thereon.

Answer

Computation of total value of taxable services provided by Rosy Tours Co. for financial year 2010-11:-

Particulars	**Value of services**	**Abatement**	**Taxable value in % age**	**Value of taxable services**
	Rs.	%		Rs.
Tour 1 – April, 2010	3,50,000	75 (Note 1)	25	87,500
Tour 2 – October, 2010	6,50,000	60 (Note 2)	40	2,60,000
Tour 3 - December, 2010	4,00,000	Nil (Note 3)	100	4,00,000
Total	14,00,000			7,47,500

Service tax payable on Rs.7,47,500/- will be Rs. 74,750 + education cess (2%) and secondary and higher education cess (1%) i.e. Rs.2,242.50 = Rs.76,993 (rounded off to nearest rupee).

Note 1: As per *Notification No. 1/2006 ST dated 01.03.2006*, in case of package tours, an abatement of 75% of the gross amount charged is available. It has been assumed that the bill issued for this purpose indicates that it is inclusive of charges for such a tour.

Note 2: Since, this tour package includes only transportation and accommodation for stay, it is not a package tour as per *Notification No. ST 1/2006 ST dated 01.03.2006.* In case of services provided in relation to a tour other than in relation to a package tour, an abatement of 60% of the gross amount charged is available. It has been assumed that the bill issued for this purpose indicates that the amount charged in the bill is the gross amount charged for such a tour.

Both in case of Tour 1 and Tour 2, the exemption is available on the assumption that

(i) no 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 CENVAT Credit Rules, 2004; or

(ii) the service provider has not availed the benefit under the *Notification No. 12/2003 ST dated 20.06.2003.*

Note 3: The benefit of *Notification No. 1/2006 ST dated 01.03.2006* will not be available because the bills issued to clients do not include the cost of accommodation for stay.

UNIT 3: VALUATION OF TAXABLE SERVICES

Question 1

Will the payment to a hotelier of Rs.10,000 on behalf of an architect by a service receiver be included in the value of taxable services?

Answer

Service tax chargeable on any taxable service is on the basis of gross amount charged by service provider for such service provided or to be provided by him. It is not necessary that the service receiver should pay the consideration only to the service provider; any money paid to the third party is also includible. Hence, the hotel bill met by the client would be includible in the value of taxable services.

Question 2

Answer the following questions:

(a) *Can it be said that if the taxable service is not capable of ascertainment, the same cannot form part of value of taxable services?*

(b) *How is the value of taxable services determined when the consideration against taxable services is received in other than monetary terms?*

Answer

(a) No, it cannot be said so. With effect from 18.4.2006, the Finance Act, 2006 has introduced detailed provisions for valuation of taxable services. The provisions of section 67, as amended, state clearly that if the consideration for a taxable service is not ascertainable, the value of such service shall be the amount as may be determined in the manner prescribed under the Service Tax (Determination of Value) Rules, 2006.

(b) Section 67 of the Finance Act, 1994 as amended provides that if the consideration for a taxable service is not wholly or partly in terms of money, then the value of such service shall be such amount in money, with the addition of service tax charged, is equivalent to the consideration.

Question 3

Ms. Priya rendered a taxable service to a client. A bill for Rs. 40,000 was raised on 29.4.2010; Rs. 15,000 was received from the client on 1.5.2010 and the balance on 23.5.2010. No service tax was separately charged in the bill. The questions are:

(a) *Is Ms. Priya liable to pay service tax, even though the same has not been charged by her?*

(b) In case she is liable, what is the value of taxable service and the service tax payable?

Answer

Section 68 of the Finance Act, 1994 casts the liability to pay service tax upon the service provider or upon the person liable to pay service tax as per rule 2(1)(d). This liability is not contingent upon the service provider realizing or charging the service tax at the prevailing rate. The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver. Hence, Ms. Priya is liable to pay service tax.

However, sometimes it may happen that the assessee is not able to charge service tax because of the nature of service or he fails to recover the service tax from the client / customer as he is not aware that his services are taxable. Hence, in these cases, the amount recovered from the client in lieu of having rendered the service will be taken to be inclusive of service tax and accordingly tax payable will be calculated by making back calculations.

The rates of service tax payable are:

Basic rate		10%
Education cess (2% of 10%)	=	0.20%
Secondary and higher education cess (1% of 10%)	=	0.10%
Effective rate of service tax	=	10.30%

Service tax is payable on receipt basis

Value of taxable service $= \dfrac{\text{Gross amount charged}}{(100+\text{Effective rate})} \times 100$

Value of taxable service $= \dfrac{40{,}000 \times 100}{110.30}$ = Rs. 36,265

Service tax payable $= \dfrac{40{,}000 \times 10.30}{110.30}$ = Rs. 3,735

Question 4

J.C. Professionals, a partnership firm, gives the following particulars relating to the services provided to various clients by them for the half-year ended as on 30.09.10:

(i) Total bills raised for Rs. 8,75,000 out of which bill for Rs. 75,000 was raised on an approved International Organisation and payments of bills for Rs. 1,00,000 were not received till 30.09.10.

(ii) *Amount of Rs. 50,000 was received as an advance from XYZ Ltd. on 25.09.10 to whom the services were to be provided in October, 10.*

You are required to work out the:

(a) *taxable value of services*

(b) *amount of service tax payable.*

Note: The aforesaid amounts are exclusive of service tax.

Answer

Computation of taxable value of services provided by the J.C. Professionals for the half year ending on 30.09.2010:

Particulars	***Rs.***	***Rs.***
Total bills raised		8,75,000
Less: Bill raised on an approved International Organisation (Note 1)	75,000	
Less: Bills for which payments have not been realized (Note 2)	1,00,000	1,75,000
		7,00,000
Add: Advance received for the services to be provided in October '10 (Note 3)		50,000
Taxable value of services		7,50,000
Computation of service tax payable		
Taxable value of services		7,50,000
Service tax @ 10%		75,000
Add: Education cess @ 2%		1,500
Add: Secondary and higher education cess @ 1%		750
Total service tax payable		77,250

Notes:

1. Services provided to an International Organisation are exempt from the service tax *vide Notification No. 16/2002 ST dated 02.08.2002.*
2. Service tax is payable only when the value of taxable services is actually received [Rule 6 of the Service Tax Rules, 1994].
3. Any advance received for providing any taxable services forms part of the value of taxable service [Section 67 of the Finance Act, 1994].

Question 7

Ms. Priyanka, a proprietress of Royal Security Agency received Rs. 1,00,000 by an account payee cheque as advance while signing a contract for providing taxable service. She received Rs. 5,00,000 by credit card while providing the service and another Rs. 5,00,000 by a pay order after completion of service on January 31, 2011. All three transactions took place during financial year 2010-11. She seeks your advice about her liability towards value of taxable service and the service tax payable by her. The amount of service tax has been charged separately.

Answer

Computation of taxable service of Ms. Priyanka for financial year 2010-11

Particulars	Rs.
Advance received by an account payee cheque	1,00,000
Amount received while providing service through credit card	5,00,000
Amount received on completion of service by a pay order	5,00,000
Value of taxable service	11,00,000

Calculation of service tax liability

Particulars	Rs.
Service tax @10% on Rs.11,00,000	1,10,000
Add: (i) Education cess @ 2% on service tax	2,200
Add: (ii) Secondary and higher education cess @ 1% on service tax	1,100
Total service tax payable	1,13,300

Notes:

1. Money includes any cheque, pay order, currency, promissory note, letter of credit, draft, traveller's cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value.
2. Gross amount charged includes payment by credit card, cheque, deduction from account and any form of payment by issue of credit notes/debit notes and book adjustment.

Question 8

State with reason in brief whether the following statement is true or false with reference to the provisions of service tax:

Mr. Salim, an architect has received the fees of Rs.4,48,500 after the deduction of income-tax of Rs.51,500. Service tax will be payable on Rs.4,48,500.

Answer

False. As the charge of the service tax is on the services provided, the gross receipts are to be considered for tax calculation. Hence, service tax will be payable on the gross fee of Rs.5 lakh.