INDIRECT TAX LAWS

AMENDMENTS AT A GLANCE – FINANCE ACT, 2011

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AMENDMENTS BY THE FINANCE ACT, 2011

A. EXCISE

AMENDMENTS IN THE CENTRAL EXCISE ACT, 1944

1. Provisions of section 11A relating to recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded substituted with the new section 11A

The provisions of section 11A have been redrafted with a view to improve the sequence in which provisions occur and simplify their language. Each sub-section consists of one sentence and conveys a single point.

The provisions of the erstwhile sub-section (1A) of section 11 have been omitted. Few other provisional changes have also been carried out.

The new section stipulates as under:-

(1) Cases other than fraud, collusion etc.

In case any excise duty:-

(a) has not been levied

(b) has not been paid

(c) has been short-levied

(d) has been short-paid

(e) has been erroneously refunded

for any reason, other than the reason of:-

- fraud
- collusion
- any wilful mis-statement
- suppression of facts
- contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,

following provisions will apply:-

(a) Issuance of show cause notice within ONE year* [Clause (a) of sub-section (1)]

Central Excise Officer shall, within one year* from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

*Period of stay to be excluded For this purpose, where the service of the notice is stayed by an order of a court or tribunal in respect of payment of such duty, the period of such stay shall be excluded in computing the aforesaid period of one year [Sub-section (8)].

(b) Voluntary payment of excise duty and interest before issue of show cause notice (SCN)

(i) Payment before SCN [Clause (b) of sub-section (1)]

The person chargeable with duty may, before service of the show cause notice, pay on the basis of—

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the Central Excise Officer,

the amount of duty along with interest payable thereon under section 11AA.

(ii) Written intimation to the Central Excise Officer of such voluntary payment

The person, who has so paid the duty voluntarily, shall inform the Central Excise Officer of such payment in writing.

(a) No SCN would be issued if amount paid in full

Central Excise Officer, on receipt of such information, shall not serve any show cause notice in respect of the duty so paid/any penalty leviable under the provisions of this Act or the rules made thereunder [Sub-section (2)].

(b) SCN may be issued for recovery if amount is short paid

Where the Central Excise Officer is of the opinion that the amount so paid falls short of the amount actually payable, then, he shall proceed to issue the show cause notice in respect of such amount which falls short of the amount actually payable in the manner specified under sub-section (1) and the period of one year shall be computed from the date of receipt of information of payment (i.e. written intimation sent by the person making voluntary payment) [Sub-section (3)].

(2) Cases of fraud, collusion etc.

In case any excise duty:-

(a) has not been levied

(b) has not been paid

(c) has been short-levied

(d) has been short-paid

(e) has been erroneously refunded

by the reason of:-

- fraud
- collusion
- any wilful mis-statement
- suppression of facts
- contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,

by any person chargeable with the duty, following provisions will apply:-

(a) Issuance of show cause notice within FIVE years*

Central Excise Officer shall, within five years* from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice [Sub-section (4)].

*Period of stay to be excluded
For this purpose, where the service of the notice is stayed by an order of a court or tribunal in respect of payment of such duty, the period of such stay shall be excluded in computing the aforesaid period of five years [Sub-section (8)].

(b) Imposition of reduced penalty

1. Penalty to be halved and extended period of limitation of 5 years* may be invoked [Sub-section (5)]

In case where all the following conditions are satisfied, the Central Excise Officer shall within a period of 5 years* from the relevant date, serve a notice on the person chargeable with the duty requiring him to show cause why he should not pay the amount specified in the notice along with interest under section 11AA and penalty equivalent to 50% of such duty-

- duty has not been levied or paid or short-levied or short-paid or erroneously refunded by the reason of fraud, collusion, any wilful mis-statement, suppression of facts, contravention of any of the provisions of this Act of the rules made thereunder with intent to evade payment of duty
- the said default has been found during the course of any audit, investigation or verification
- details relating to the transactions are available in the specified record.

*Period of stay to be excluded
For this purpose, where the service of the notice is stayed by an order of a court or tribunal in respect of payment of such duty, the period of such stay shall be excluded in computing the aforesaid period of five years [Sub-section (8)].

2. Payment of excise duty, interest and reduced penalty** before issuance of show cause notice

2.1 Penalty upto maximum of 25% of duty

Any person chargeable with duty under sub-section (5) above may, before service of show cause notice on him, pay the duty in full or in part, as may be accepted by him along with the interest payable thereon under section 11AA and reduced penalty**[Sub-section (6)].

**Note: Amount of penalty shall be lower of the following:-
(i) 1% of such duty per month to be calculated from the month following the month in which such duty was payable
or
(ii) 25% of the amount of excise duty

2.2 Receipt of information by the Central Excise Officer

Such person shall inform the Central Excise Officer of such payment in writing.

(a) No SCN would be issued and proceedings deemed to be concluded if amount paid in full

Central Excise Officer, on receipt of such information, shall not serve any notice in respect of the amount so paid and all proceedings in respect of the said duty shall be deemed to be concluded where it is found by the Central Excise Officer that the amount of duty, interest and reduced penalty** (as mentioned above) has been fully paid.

(b) SCN may be issued for recovery if amount is short paid

Central Excise Officer may proceed for recovery of such amount, if found to be short-paid in the manner specified under sub-section (1) and the period of one year shall be computed from the date of receipt of such information.

[Sub-section (7)]

(3) In case the charges of fraud, collusion etc. are not established against the person to whom the notice was issued, duty to be determined for one year

Where any appellate authority or tribunal or court concludes that the notice issued under sub-section (4) is not sustainable for the reason that the charges of fraud, collusion, any wilful mis-statement, suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty has not been established against the person to whom the notice was issued, the Central Excise Officer shall determine the duty of excise payable by such person for the period of one year, deeming as if the notice were issued under clause (a) of sub-section (1) [Sub-section (9)].

(4) Determination of amount of excise duty after giving an opportunity of being heard to the concerned person

The Central Excise Officer (CEO) shall, after allowing the concerned person an opportunity of being heard, and after considering the representation, if any, made by such person, determine the amount of duty of excise due from such person not being in excess of the amount specified in the notice [Sub-section (10)].

(5) Time-limit for determination of amount of excise duty [Sub-section (11)]

In respect of the cases falling under	Central Excise Officer (CEO), shall, where it is possible to do so, determine the amount of duty under sub-section (10), within a period of________ from the date of notice
Sub-section (4) or sub-section (5)	one year
Sub-section (1)	Six months

The aforementioned time-limits of one year/six months are not mandatory.

(6) In case of modification of duty (determined by CEO) by the appellate authority/tribunal/court, penalties and interest to be modified accordingly

Where the appellate authority or tribunal or court modifies the amount of duty of excise determined by the Central Excise Officer under sub-section (10), then the amount of penalties and interest under this section shall stand modified accordingly, taking into account the amount of duty of excise so modified [Sub-section (12)].

In case the modified amount is more than the duty determined by the CEO: Where the amount as modified by the appellate authority or tribunal or court is more than the amount determined under sub-section (10) by the Central Excise Officer, the time within which the interest or penalty is payable under this Act shall be counted from the date of the order of the appellate authority or tribunal or court in respect of such increased amount [Sub-section (13)].

(7) Payment of interest mandatory even if not specified in the order determining duty (passed under this section)

Where an order determining the duty of excise is passed by the Central Excise Officer under this section, the person liable to pay the said duty of excise shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately [Sub-section (14)].

(8) Aforesaid provisions applicable to the recovery of interest also

The provisions of sub-sections (1) to (14) shall apply, *mutatis mutandis*, to the recovery of interest where interest payable has not been paid or part paid or erroneously refunded [Sub-section (15)].

IMPORTANT DEFINITIONS

For the purposes of this section and section 11AC,—

(a) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India.

(b) Meaning of relevant date

In case where		Relevant date
(i) excise duty has not been levied or paid or has been short-levied or short-paid on excisable goods	(a) no periodical return as required by the provisions of this Act has been filed	the last date on which such return is required to be filed under this Act and the rules made thereunder
	(b) where return has been filed on due date	the date on which such return has been filed.
(ii) excise duty is provisionally assessed under this Act or the rules made thereunder		the date of adjustment of the excise duty after the final assessment thereof
(iii) any excise duty has erroneously been refunded on excisable goods		the date of such refund
(iv) in any other case		the date on which duty of excise is required to be paid under this Act or the rules made thereunder

(c) "specified records" means records including computerised records maintained by the person chargeable with the duty in accordance with any law for the time being in force.

Note: For the removal of doubts, it is hereby declared that any non-levy, short-levy, non-payment, short-payment or erroneous refund before 08.04.2011, shall continue to be governed by the provisions of erstwhile section 11A.

(Effective from April 08, 2011)

2. Section 11AA and 11AB relating to interest on delayed payment of merged into new section 11AA

   The provisions of sections 11AA and 11AB have been merged into a revised section 11AA which stipulates as follows:-

   (a) Interest payable on delayed payment of duty

   Notwithstanding anything contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty, shall, in addition to the duty, be liable to pay interest at the specified rate, whether such payment is made voluntarily or after determination of the amount of duty under section 11A [Sub-section (1)].

(b) Rate and time period for computation of interest [Sub-section (2)]

Interest is payable in terms of section 11A after the due date, by the person liable to pay duty.

Rate of interest

Central Government may, by notification in the Official Gazette, fix the interest ranging between 10% and 36% per annum. With effect from 01.04.2011, the interest at the rate 18% per annum has been notified.

Time period

Interest shall be calculated from the date on which such duty becomes due up to the date of actual payment of the amount due.

(c) No interest payable subject to certain conditions

No interest shall be payable subject to the following conditions:-

(a) the duty becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B.

(b) Full amount of duty is paid voluntarily within 45 days from the date of issue of such order, instruction or direction; and

(c) No right to appeal against such payment at any subsequent stage is reserved.

(Effective from April 08, 2011)

3. Provisions of section 11AC relating to penalty for short-levy or non-levy of duty in certain cases substituted with the new section 11AC

The provisions relating to penalty for non-levy or short-levy or non-payment or short payment or erroneous refund are as follows:—

(a) When payable

Where any excise duty:-

(a) has not been levied

(b) has not been paid

(c) has been short-levied

(d) has been short-paid

(e) has been erroneously refunded

by the reason of:-

- fraud

- collusion
- any wilful mis-statement
- suppression of facts
- contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,

the person who is liable to pay duty as determined under section 11A(10) shall also be liable to pay a penalty.

(b) Quantum of penalty

Amount of duty so determined

(c) Reduced penalty in case details of transactions available in the specified records reveal short levy/non-levy of duty

(i) Penalty to be halved

Where details of any transaction available in the specified records, reveal that any duty of excise has not been levied or paid or short-levied or short-paid or erroneously refunded as referred to in section 11A(5), the person who is liable to pay duty as determined under section 11A(10) shall also be liable to pay a penalty equal to 50% of the duty so determined.

(ii) Penalty further reduced to 25% of the duty if excise duty and interest payable thereon paid within 30 days

Where any duty as determined under section 11A(10) and the interest payable thereon under section 11AA in respect of transactions referred to in point (i) above is paid within 30 days of the date of communication of order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be 25% of the duty so determined.

(d) Penalty and interest also to be modified on modification of the amount of duty of excise (determined by CEO) by the appellate authority or tribunal or court

Where the appellate authority or tribunal or court modifies the amount of duty of excise determined by the Central Excise Officer under section 11A(10), then, the amount of penalties and interest payable shall stand modified accordingly and after taking into account the amount of duty of excise so modified, the person who is liable to pay duty as determined under section 11A(10) shall also be liable to pay such amount of penalty or interest so modified.

In case the modified amount of duty is more than the duty determined by CEO: Where the amount as modified by the appellate authority or tribunal or court is more than the amount determined section 11A(10) by the Central Excise Officer, the time within which the interest or penalty is payable under this Act shall be counted from the date of the order of the appellate authority or tribunal or court in respect of such increased amount.

Explanation — For the removal of doubts, it is hereby declared that in a case where a notice has been served under section 11A(4) and subsequent to issue of such notice, the Central Excise Officer is of the opinion that the transactions in respect of which notice was issued have been recorded in specified records and the case falls under sub-section (5), penalty equal to 50% of the duty shall be leviable.

(Effective from April 08, 2011)

4. Liability under Central Excise Act to be first charge - Section 11E inserted

   Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Act or the rules made thereunder shall, save as otherwise provided in section 529A of the Companies Act, 1956, the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, be the first charge on the property of the assessee or the person, as the case may be.

   Implication of the amendment

   This section creates a first charge on the property of a defaulter for recovery of the Central Excise dues subject to the provisions of the Companies Act, Recovery of Debt due to Bank and Financial Institution Act and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act. This implies that after the dues, if any, owing under the provisions of these Acts, dues under the Central Excise Act shall have a first charge.

   (Effective from April 08, 2011)

5. Substitution of Standards of Weights and Measures Act, 1976 with Legal Metrology Act, 2009 in section 4A

   With effect from 01.08.2011, in section 4A of the Central Excise Act, 1944, in sub-section (1), for the words and figures "Standards of Weights and Measures Act, 1976", the words and figures "Legal Metrology Act, 2009" shall be substituted.

6. Central Government empowered to apply the provisions of the Customs Act to the excise duties imposed under section 3A also [Section 12]

   Prior to amendment

   Section 12 empowers the Central Government to apply provisions of the Customs Act, 1962 relating to the levy of and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals in regard to like matters in respect of the duties imposed by section 3 of the Central Excise Act, 1944.

   Amendment made by the Finance Act, 2011

   Section 12 has been amended so as to provide that Central Government has been empowered to the apply the provisions of the Customs Act, 1962 to the duties charged on the basis of capacity of production under section 3A in the following manner:-

S.No.	Provisions of the Customs Act, 1962 relating to	shall apply to like matters covered by section 3A
1.	Offences and penalties	with effect from 08.04.2011
2.	Levy of and exemption from customs duties, drawback of duty, warehousing, confiscation, and procedure relating to offences and appeals	with effect from 10.05.2008

7. Power of search and seizure [Section 12F inserted]

Where the Joint Commissioner/Additional Commissioner of Central Excise or such other Central Excise Officer as may be notified by the Board has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any Central Excise Officer to search and seize or may himself search and seize such documents or books or things [Sub-section (1)].

The provisions of the Code of Criminal Procedure, 1973 relating to search and seizure, shall, so far as may be, apply to search and seizure under this section as they apply to search and seizure under that Code [Sub-section (2)].

(Effective from April 08, 2011)

8. CBEC empowered to issue instructions regarding non-filing of appeal in certain cases [Section 35R inserted]

With effect from 20.10.2010, section 35R has been inserted after section 35Q so as to provide as follows:-

(i) CBEC to issue instructions fixing monetary limits for filing appeal, application etc. by the Central Excise Officer [Sub-section (1)]

The Central Board of Excise and Customs may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal, application, revision or reference by the Central Excise Officer under the provisions of this Chapter.

(ii) Central Excise Officer not to be precluded from filing any appeal, application etc. in any other case involving the issues/questions of law on which he has earlier not filed the appeal, application etc. [Sub-section (2)]

Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the Central Excise Officer has not filed an appeal, application, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Central Excise Officer from filing appeal, application, revision or reference in any other case involving the same or similar issues or questions of law.

(iii) Non-filing of appeal, application etc. by Central Excise Officer cannot be considered to be his acquiescence in the decision on disputed issue [Sub-section (3)]

Notwithstanding the fact that no appeal, application, revision or reference has been filed by the Central Excise Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Central Excise Officer has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.

(iv) Appellate Tribunal or court must have regard to the circumstances for non-filing of appeal, application etc. [Sub-section (4)]

The Appellate Tribunal or court hearing such appeal, application, revision or reference shall have regard to the circumstances under which appeal, application, revision or reference was not filed by the Central Excise Officer in pursuance of the orders or instructions or directions issued under sub-section (1).

(v) Orders/instructions issued between 20.10.2010 and 08.04.2011 [Sub-section (5)]

Every order or instruction or direction issued by the Central Board of Excise and Customs between 20.10.2010 & 08.04.2011, fixing monetary limits for filing of appeal, application, revision or reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.

Note: It may be noted that insertion of section 35R overrides the decision of the Supreme Court in case of CCE v. Bal Pharma Ltd. 2010 (259) E.L.T. 10 (S.C.) wherein the Apex Court held that since an earlier decision of the Tribunal on a similar issue was not challenged by the Revenue, it can be permitted to take a different position in any other case involving similar issues only if it is able to demonstrate the distinguishing features of the case.

9. Notifications issued under section 5B also to be laid before Parliament [Section 38(2)]

Prior to Amendment

Every rule made under this Act, every notification issued under section 3A, section 4A, section 5A(1) and section 11C and every order made under section 5A(2), other than an order relating to goods of strategic, secret, individual or personal nature, must be laid before Parliament for 30 days when Parliament is in session.

Amendment made by the Finance Act, 2011

Now, section 5B has also been brought under the purview of section 38. Thus, the notifications issued under section 5B must also be laid before Parliament for 30 days when Parliament is in session.

(Effective from April 08, 2011)

AMENDMENT IN THE CENVAT CREDIT RULES, 2004

Rule 3 relating to the utilisation of the CENVAT credit amended

With effect from 18.04.2006, rule 3 has been amended to provide that a manufacturer or producer of final products/a provider of taxable service shall be allowed to take credit of the service tax leviable under section 66A of the Finance Act, 1994.

B. CUSTOMS

AMENDMENTS IN THE CUSTOMS ACT, 1962

1. Section 3 relating to classes of officers of customs amended

As per section 3, there shall be the following classes of officers of customs, namely:-

(a) Chief Commissioners of Customs;

(b) Commissioners of Customs;

(c) Commissioners of Customs (Appeals);

(cc) Joint Commissioners of Customs;

(d) Deputy Commissioners of Customs;

(e) Assistant Commissioners of Customs or Deputy Commissioner of Customs

(f) such other class of officers of customs as may be appointed for the purposes of this Act.

Finance Act, 2011 has omitted the word "Deputy Commissioner of Customs" in clause (e) mentioned above.

(Effective from April 08, 2011)

2. Refund of import duty or interest in certain cases [Section 27]

Sub-section (1) of section 27 has been substituted with the following sub-sections to provide for a uniform limitation period of one year, as opposed to earlier limitation periods of six months or one year for different classes of imports/exports:-

(i) Application for refund to be filed within one year of date of payment of duty/interest to Assistant Commissioner/Deputy Commissioner of Customs [Sub-section (1)]

Any person claiming refund of any duty or interest-

(a) paid by him; or

(b) borne by him,

may make an application* in such form and manner as may be prescribed for such refund to the Assistant Commissioner/Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest.

No limitation in case of duty paid under protest

However, the limitation of one year shall not apply where any duty or interest has been paid under protest. Hence, in case of duty/interest paid under protest, refund claim may be filed without any time-limit.

For the purposes of this sub-section, "the date of payment of duty or interest" in relation to a person, other than the importer, shall be construed as "the date of purchase of goods" by such person.

**Application for refund made before 08.04.2011 shall be deemed to have been made under erstwhile sub-section (1) and shall be dealt with in accordance with the provisions of sub-section (2).*

(ii) Documentary evidence to be furnished to prove that incidence of the duty/interest for which refund claim has been filed is not passed on to any other person [Sub-section (1A)]

Refund application shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C) as the applicant may furnish to establish that the amount of duty or interest, in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty or interest, has not been passed on by him to any other person.

(iii) Manner of computation of limitation period of one year [Sub-section (1B)]

Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely:-

S.No.	In case	the limitation of one year shall be computed from the
1.	goods are exempt from payment of duty by a special order issued under section 25(2)	date of issue of such order
2.	where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court	date of such judgment, decree, order or direction
3.	where any duty is paid provisionally under section 18	date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.

(Effective from April 08, 2011)

3. Provisions of section 28 relating to recovery of duties not levied or short-levied or erroneously refunded substituted with new section 28

Section 28 relating to the recovery of duties not levied or short-levied or erroneously refunded has been redrafted so as to make the provisions more coherent and clear. New section provides as under:-

(1) Cases other than collusion, willful-misstatement etc.

Where any duty/interest payable:-

(a) has not been levied

(b) has been short-levied

(c) has been erroneously refunded

for any reason other than the reasons of-

- collusion
- any wilful mis-statement
- suppression of facts

following provisions shall apply:-

(a) Issuance of show cause notice within ONE year* [Clause (a) of sub-section (1)]

The proper officer shall, within one year* from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

*Period of stay to be excluded In computing the period of one year, the period during which there was any stay by an order of a court or tribunal in respect of payment of such duty or interest shall be excluded [Sub-section (7)].

(b) Voluntary payment of duty or interest before issue of show cause notice (SCN)

(i) Payment before SCN [Clause (b) of sub-section (1)]

The person chargeable with the duty or interest, may pay before service of show cause notice under clause (a) on the basis of,—

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

(ii) Written intimation to the proper officer of such voluntary payment

The person who has paid the duty along with interest or amount of interest voluntarily, shall inform the proper officer of such payment in writing.

(a) No SCN would be issued if amount paid in full

The proper officer, on receipt of such information, shall not serve any show cause notice in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest [Sub-section (2)].

(b) SCN may be issued for recovery if amount is short paid

Where the proper officer is of the opinion that the amount so paid falls short of the amount actually payable, then, he shall proceed to issue the notice in respect of such amount which falls short of the amount actually payable in the manner specified under sub-section (1) and the period of one year shall be computed from the date of receipt of information (i.e. written intimation sent by the person making voluntary payment) [Sub-section (3)].

(2) Cases of collusion, willful-misstatement etc.

Where any duty/interest payable:-

(a) has not been levied

(b) has been short-levied

(c) has been erroneously refunded

by reason of-

- collusion
- any wilful mis-statement
- suppression of facts

by the importer or the exporter or the agent or employee of the importer or exporter, following provisions will apply:-

(a) Issuance of show cause notice within FIVE years*

The proper officer shall, within five years* from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice [Sub-section (4)].

*Period of stay to be excluded In computing the period of five years, the period during which there was any stay by an order of a court or tribunal in respect of payment of such duty or interest shall be excluded [Sub-section (7)].

(b) Penalty reduced to 25% of duty if duty, interest and penalty paid within 30 days of the notice

Where any duty has not been levied or has been short-levied or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to 25% of the duty specified in the notice or the duty so accepted by that person, within 30 days of the receipt of the notice and inform the proper officer of such payment in writing [Sub-section (5)].

(c) Determination of duty or interest by the proper officer [Sub-section (6)]

Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest.

(i) Conclusion of proceedings if amount paid in full

If the proper officer is of the opinion that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein.

(ii) SCN may be issued for recovery if amount is short paid

If the proper officer is of the opinion that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the show cause notice in respect of such amount which falls short of the amount actually payable in the manner specified under sub-section (1) and the period of one year shall be computed from the date of receipt of information under sub-section (5).

(3) Determination of amount of duty or interest after giving an opportunity of being heard to the concerned person

The proper officer shall, after allowing the concerned person, an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice [Sub-section (8)].

(4) Time-limit for determination of amount of excise duty [Sub-section (9)]

In respect of the cases falling under	Proper officer, shall, where it is possible to do so, determine the amount of duty/interest under sub-section (8), within a period of_______ from the date of notice
Sub-section (4)	One year
Clause (a) of sub-section (1)	Six months

(5) Payment of interest mandatory even if not specified in the order determining duty (passed under this section)

Where an order determining the duty of excise is passed by the proper officer under this section, the person liable to pay the said duty shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately [Sub-section (10)].

Meaning of relevant date [Explanation 1 to section 28]

In case where	Relevant date means
duty is not levied, or interest is not charged	the date on which the proper officer makes an order for the clearance of goods
duty is provisionally assessed under section 18	the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be
duty or interest has been erroneously refunded	the date of refund
any other case	the date of payment of duty or interest

Note: For the removal of doubts, it is hereby declared that any non-levy, short-levy or erroneous refund before 08.04.2011, shall continue to be governed by the provisions of erstwhile section 28.

Consequential amendment

In section 114A of the Customs Act, for the words, brackets and figures "sub-section (2) of section 28", wherever they occur, the words, brackets and figures "sub-section (8) of section 28" shall be substituted.

(Effective from April 08, 2011)

4. Section 28AA and 28AB relating to interest on delayed payment of duty merged into new section 28AA

Section 28AA and section 28AB relating to interest on delayed payment of duty has been substituted with the following section:-

(a) Interest payable on delayed payment of duty

Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest at the specified rate, whether such payment is made voluntarily or after determination of the duty under section 28 [Sub-section (1)].

(b) Rate and time period for computation of interest [Sub-section (2)]

Interest shall be paid by the person liable to pay duty in terms of section 28.

Rate of interest

Central Government may, by notification in the Official Gazette, fix the interest ranging between 10% and 36% per annum. With effect from 01.04.2011, the interest at the rate 18% per annum has been notified.

Time period

Interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(c) No interest payable subject to certain conditions

No interest shall be payable subject to the following conditions:-

(a) the duty becomes payable consequent to issue of an order, instruction or direction by the Board under section 151A.

(b) Full amount of duty is paid voluntarily within 45 days from the date of issue of such order, instruction or direction; and

(c) No right to appeal against such payment at any subsequent stage is reserved.

Consequential amendment

In section 114A of the Customs Act, for the figures and letters “28AB”, at both the places where they occur, the figures and letters “28AA” shall be substituted.

(Effective from April 08, 2011)

5. Electronic filing of bill of entry for importation [Section 46]

Section 46(1) has been amended so as to make the electronic filing of bill of entry mandatory. Hence, the importer of any goods other than goods intended for transit/transhipment shall make entry thereof by presenting electronically to the proper officer a bill of entry for home consumption or warehousing in the prescribed form. Although it is not a new requirement, it provides a legal basis for the electronic filing.

Commissioner may relax the condition of electronic filing

Commissioner of Customs may, where it is not feasible to make an entry by presenting electronically, allow an entry to be presented in any other manner.

Further, in sub-section (4), the words "at the foot thereof" shall be omitted.

(Effective from April 08, 2011)

6. Electronic filing of shipping bill/bill of export for exportation [Section 50]

Section 50(1) has been amended so as to make the electronic filing of shipping bill/bill of export mandatory. Hence, the exporter of any goods shall make entry thereof by presenting electronically to the proper officer a shipping bill/bill of export as the case may be in the prescribed form.

Commissioner may relax the condition of electronic filing

Commissioner of Customs may, in cases where it is not feasible to make an entry by presenting electronically, allow an entry to be presented in any other manner.

Further, in sub-section (2), the words "at the foot thereof" shall be omitted.

(Effective from April 08, 2011)

7. Introduction of SELF-ASSESSMENT IN CUSTOMS

The Finance Act, 2011 has introduced the 'Self-Assessment' of customs duty in respect of imported and export goods by the importer or exporter, as the case may be. It implies that while the responsibility for assessment would be shifted to the importer/exporter, the Customs officers would have the power to verify such assessments and make re-assessment, where warranted. The new scheme of self-assessment is effective from April 08, 2011.

A. Definition of assessment amended to include self-assessment [Section 2(2)]

Assessment has been re-defined as under:-

Assessment includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil.

B. Provisions relating to assessment of duty recast [Section 17]

Section 17 which deals with assessment of duty has been recast to provide legal backing for self-assessment of duty on imported and export goods by the importer or exporter. The provisions of the new section read as under:-

(a) Duty to be self-assessed by the importer/exporter

An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85 (i.e. stores allowed to be warehoused without assessment of duty), self-assess the duty, if any, leviable on such goods.

(b) Verification by proper officer

The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

For verification of self-assessment, the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(c) Reassessment of duty by the proper officer if self-assessment not done correctly

Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(d) Speaking order for re-assessment to be passed unless the importer agrees with the reassessment

Where any re-assessment done is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within 15 days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

(e) Audit at custom office / premises of importer or exporter

Where re-assessment has not been done or a speaking order has not been passed on re-assessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed.

Explanation—In cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before 08.04.2011, such imported goods/export goods shall continue to be governed by the provisions of erstwhile section 17.

C. Provisional assessment of duty [Section 18]

Section 18(1) has been redrafted to provide that the importer may make a request for assessment of goods by the officer when he is not in a position to self-assess. New sub-section (1) stipulates as follows:-

Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46, —

(a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or

(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or

(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,

the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.

Consequential amendments

Few consequential amendments have also been carried out in sub-section (2), (3) and (4) of section 18. Thereafter, the said sub-sections read as follows:-

When the duty leviable on such goods is assessed finally *or re-assessed by the proper officer* in accordance with the provisions of this Act, then-

(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty *finally assessed or re-assessed, as the case may be,* and if the amount so paid falls short of, or is in excess of the duty *finally assessed or re-assessed, as the case may be*, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(b) in the case of warehoused goods, the proper officer may, where the duty *finally assessed or re-assessed, as the case may be,* is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty [Sub-section (2)].

The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order *or re-assessment order* under sub-section (2), at the rate fixed by the Central Government under section 28AB from the first day of the month in which the duty is provisionally assessed till the date of payment thereof [Sub-section (3)].

Subject to sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally *or re-assessment of duty, as the case may be*, there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount [Sub-section (4)].

D. **Determination of duty where goods consist of articles liable to different rates of duty [Section 19]**

Clause (b) in proviso to section 19 has been amended to read as follows:-

If the importer produces evidence to the satisfaction of the proper officer *or the evidence is available* regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

The aforesaid section is amended to align the provisions relating to determination of duty where goods consists of articles liable to different rates of duty with the scheme of 'self-assessment' provided by section 17.

E. **CBEC empowered to prescribe regulations for specifying the manner of conducting audit at the office of the proper officer of customs/at the premises of the importer [Clause (d) to section 157(2) inserted]**

Section 157 empowers the Central Board of Excise and Customs to make regulations generally to carry into effect the purposes of the Customs Act, 1962. Sub-section (2) specifies the matters in respect of which such regulations may provide for. Finance Act, 2011 has inserted clause (d) in sub-section (2) which reads as under:-

In particular and without prejudice to the generality of the foregoing power, such regulations may provide for the manner of conducting audit of the assessment of duty of the imported or export goods at the office of the proper officer or the premises of the importer or exporter, as the case may be.

8. **Central Government empowered to allow drawback in certain circumstances even if the export remittances not received within the stipulated time period [Second proviso to section 75]**

Prior to amendment

Where any drawback has been allowed on any goods and the sale proceeds in respect of such goods are not received in India within the time allowed under the Foreign Exchange Management Act (FEMA), the drawback shall be deemed never to have been allowed and the Central Government, may, by rules specify the procedure for the recovery/adjustment of the amount of such drawback.

Amendment made by the Finance Act, 2011

In this regard, Central Government has been empowered to prescribe the circumstances under which duty drawback would not be disallowed even though the export remittances are not received within the period allowed under FEMA.

(Effective from April 08, 2011)

9. Adjudicating authority empowered to allow provisional release of goods pending adjudication [Section 110A]

Prior to amendment

Earlier, section 110A provided that any goods, documents or things seized under section 110, may, pending the order of the adjudicating officer, be released to the owner.

Such release shall be made when the owner executes a bond in the proper form with such security and conditions as the *Commissioner of Customs* may require.

Amendment made by the Finance Act, 2011

Now, the *adjudicating authority* has been empowered to allow the provisional release of any goods, documents or things seized under section 110, pending adjudication.

(Effective from April 08, 2011)

10. Issuance of show cause notice with prior approval of an officer not below the rank of an Assistant Commissioner of Customs [Section 124]

Prior to amendment

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person is given a notice in writing with the prior approval of the officer of customs *not below the rank of a Deputy Commissioner of Customs* informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty.

Hence, earlier Assistant Commissioner could not issue SCN without the prior approval of Deputy Commissioner.

Amendment made by the Finance Act, 2011

Section 124 has been amended so as to provide that the said show cause notice can now be issued with the prior approval of an officer of the rank of an Assistant Commissioner of Customs or above.

(Effective from April 08, 2011)

11. CBEC empowered to issue instructions regarding non-filing of appeal in certain cases [Section 131BA inserted]

With effect from 20.10.2010, section 131BA has been inserted after section 131B so as to provide as follows:-

(i) CBEC to issue instructions fixing monetary limits for filing appeal, application etc. by the Commissioner of Customs [Sub-section (1)]

The Board may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal, application, revision or reference by the Commissioner of Customs under the provisions of this Chapter.

(ii) Commissioner of Customs not to be precluded from filing any appeal, application etc. in any case involving the issues/questions of law on which he has not earlier filed the appeal, application etc. [Sub-section (2)]

Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the Commissioner of Customs has not filed an appeal, application, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Commissioner of Customs from filing any appeal, application, revision or reference in any other case involving the same or similar issues or questions of law.

(iii) Non-filing of appeal, application etc. by Commissioner of Customs cannot be considered to be his acquiescence in the decision on disputed issue [Sub-section (3)]

Notwithstanding the fact that no appeal, application, revision or reference has been filed by the Commissioner of Customs pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Commissioner of Customs has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.

(iv) Appellate Tribunal or court must have regard to the circumstances for non-filing of appeal etc. [Sub-section (4)]

The Appellate Tribunal or court hearing an appeal, application, revision or reference shall have regard to the circumstances under which the appeal, application, revision or reference was not filed by the Commissioner of Customs in pursuance of orders or instructions or directions issued under sub-section (1).

(v) Orders/instructions issued between 20.10.2010 and 08.04.2011 [Sub-section (5)]

Every order or instruction or direction issued by the Board between 20.10.2010 and 08.04.2011, fixing monetary limits for filing appeal, application, revision or reference shall be deemed to have been issued under sub-section (1), and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.

12. Liability under the Customs Act, 1962 to be first charge [Section 142A inserted]

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest or any other sum payable by an assessee or any other person under this Act, shall, save as otherwise provided in section 529A of the Companies Act, 1956, the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, be the first charge on the property of the assessee or the person, as the case may be.

(Effective from April 08, 2011)

13. Balance of sale proceeds of unclaimed cargo in auction to be paid to the Central Government when it cannot be paid to the owner within six months [Section 150(2)]

Prior to amendment

Where any goods not being confiscated are sold under the provisions of the Customs Act, the sale proceeds shall be paid to the owner of the goods after making payment in the following order:-

(i) selling expenses

(ii) freight and other charges payable in respect of the goods sold

(iii) duty on the goods sold

(iv) charges in respect of the goods sold due to the person having the custody of the goods

(v) any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs [Sub-section (2)].

Amendment made by the Finance Act, 2011

Finance Act, 2011 has inserted proviso to sub-section (2) which stipulates as follows:-

Where it is not possible to pay the balance of sale proceeds, if any, to the owner of the goods within a period of 6 months from the date of sale of such goods (or such further period as the Commissioner of Customs may allow), such balance of sale proceeds shall be paid to the Central Government.

(Effective from April 08, 2011)

14. CBEC empowered to issue orders/instructions/directions to the officers of customs for implementation of any Customs provisions relating to any prohibition/restriction/procedure for import/export of goods [Section 151A]

Prior to amendment

Earlier, CBEC was empowered to issue the orders, instructions and directions to officers of customs for any of the following purposes:-

(i) For the purpose of uniformity in the classification of goods

or

(ii) With respect to the levy of duty thereon.

Amendment made by the Finance Act, 2011

The said section has been amended thereby empowering CBEC to issue orders, instructions and directions for the implementation of any other provisions of the Customs Act or of any other law for the time being in force, in so far as they relate to any prohibition, restriction or procedure for import or export of goods.

(Effective from April 08, 2011)

AMENDMENTS IN THE CUSTOMS TARIFF ACT, 1975

1. Substitution of Standards of Weights and Measures Act, 1976 with Legal Metrology Act, 2009 in section 3

   With effect from 01.08.2011, in clause (a) of proviso to section 3(2) of the Customs Tariff Act, 1975, for the words and figures "Standards of Weights and Measures Act, 1976, the words and figures "Legal Metrology Act, 2009" shall be substituted.

   (Effective from April 08, 2011)

2. In case of circumvention of anti-dumping duty imposed on an article, Central Government may extend the anti-dumping duty to such article or an article originating in/exported from such country [Section 9A(1A)]

   Sub-section (1A) inserted after sub-section (1) to section 9A provides as follows:-

   Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, by either of the following ways:-

   (i) by altering the description or name or composition of the article subject to such anti-dumping duty

   (ii) by import of such article in an unassembled or disassembled form

   (iii) by changing the country of its origin or export or

   (iv) in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective

   it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be.

   (Effective from April 08, 2011)

3. New section 9AA(1)

   Prior to amendment

   Where an importer proves to the satisfaction of the Central Government that he has paid any anti-dumping duty imposed under sub-section (1) of section 9A on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty [Section 9AA (1)].

   Amendment made by the Finance Act, 2011

   Section 9AA(1) has been substituted by a new sub-section which provides as follows:-

   Where upon determination by an officer authorised in this behalf by the Central Government under clause (ii) of sub-section (2), an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty imposed under section 9A(1) on any article, in excess of the actual margin of dumping in relation to such article, the Central Government shall, as soon as may be, reduce such anti-dumping duty as is in excess of actual margin of dumping so determined, in relation to such article or such importer, and such importer shall be entitled to refund of such excess duty.

(Effective from April 08, 2011)

C. SERVICE TAX

AMENDMENTS IN CHAPTER V AND VA OF THE FINANCE ACT, 1994

1. 2 new services brought under the service tax net - Section 65

(a) Restaurant service [Section 65(105)(zzzzv)]

1. Service provider: A restaurant having:-
   - the facility of air-conditioning in any part of the establishment, at any time during the financial year, and
   - licence to serve alcoholic beverages
2. Service receiver: Any person
3. Date from which such service is taxable: 1st May, 2011
4. Scope of taxable service: Any service provided or to be provided to any person, by a restaurant, by whatever name called, having the facility of air-conditioning in any part of the establishment, at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises.
5. Departmental Clarification: *DOF No. 334/3/2011-TRU dated 28.02.2011* clarifies as follows:-
   - The new levy is directed at services provided by high-end restaurants that are air-conditioned and have license to serve liquor. If the air-conditioning facility is available at any time during the financial year, the conditions for the levy shall be met.
   - Such restaurants provide conditions and ambience in a manner that service provided may assume predominance over the food in many situations.
   - It should not be confused with mere sale of food at any eating house, where such services are materially absent or so minimal that it will be difficult to establish that any service in any meaningful way is being provided.
   - The levy is intended to be confined to the value of services contained in the composite contract and shall not cover either the meal portion in the composite contract or mere sale of food by way of pick-up or home delivery, as also goods sold at MRP.

6. **Abatement of 70% of the gross amount charged:** With effect from 01.05.2011, *Notification No. 1/2006 ST dated 01.03.2006* has been amended to grant abatement of 70% of the gross amount charged in respect of restaurant services.

   [Notification No. 34/2011 ST dated 25.04.2011]

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*.

(b) **Short-term accommodation services [Section 65(105)(zzzzw)]**

1. **Service provider:** A hotel, inn, guest house, club or camps, by whatever name called.

2. **Service receiver:** Any person

3. **Date from which such service is taxable:** 1st May, 2011

4. **Scope of taxable service:** Any service provided or to be provided to any person by a hotel, inn, guest house, club or camps, by whatever name called, for providing of accommodation for a continuous period of less than three months.

5. **Abatement of 50% of the gross amount charged:** With effect from 01.05.2011, *Notification No. 1/2006 ST dated 01.03.2006* has been amended to grant abatement of 50% of the gross amount charged in respect of short-term accommodation services.

   [Notification No. 34/2011 ST dated 25.04.2011]

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.*

2. Amendment in the scope of existing taxable services - Section 65

(a) Service station service [Section 65(105)(zo)]

S.No.	Prior to amendment	Situation after the Finance Act, 2011
1.	Service must be provided by an authorised service station	Service may be provided by any person
2.	Service is to be provided in relation to:- · any service, repair, reconditioning or restoration of · motor cars, light motor vehicles or two wheeled motor vehicles.	Service is to be provided in relation to:- · any service for repair, reconditioning or restoration or decoration or any other similar services of · any motor vehicle other than three wheeler scooter auto-rickshaw and motor vehicle meant for goods carriage.

Hence, the new definition of taxable service of "service station" reads as follows:-

Any service provided or to be provided to any person, by any other person, in relation to any service for repair, reconditioning, restoration or decoration or any other similar services, of any motor vehicle other than three wheeler scooter auto-rickshaw and motor vehicle meant for goods carriage.

Consequential amendment-definition of authorized service station omitted

Since service provided by any person i.e. whether authorized service station or otherwise is henceforth taxable, definition of authorized service station provided under section 65(9) of the Finance Act, 1994 has been omitted.

(b) Life insurance services [Section 65(105)(zx)]

Prior to amendment

Earlier 'life insurance service' was defined as follows:-

Any service provided or to be provided to a policy holder or any person, by an insurer, including re-insurer carrying on life insurance business in relation to risk cover in life insurance.

Hence, earlier only service in relation to risk cover in life insurance was subjected to service tax.

Amendment made by the Finance Act, 2011

Finance Act, 2011 has substituted the aforesaid definition as follows:-

Any service provided or to be provided to a policy holder or any person, by an insurer, including re-insurer carrying on life insurance business.

Now the scope of the life insurance services has been widened. Hence, any service provided by the Life Insurance Companies is liable to service tax.

Clarification

In this regard, *DOF No. 334/3/2011-TRU dated 28.02.2011* clarifies as follows:-

Life insurance companies provide services relating to risk cover and managing investment for the policy holders. The former was already subjected to service tax. The latter has now been brought into the tax net. Similar services rendered by way of ULIP are already subject to service tax since 2008.

(c) Services in respect of membership of clubs or associations [Section 65(105)(zzze) and section 65(25a)]

Prior to amendment

(a) Earlier, services in respect of membership of clubs or associations provided only to the members of such club or association were subjected to tax [Section 65(105)(zzze)].

(b) Club or association was defined under section 65(25a). It inter alia provided that "club or association" means any person or body of persons providing services, facilities or advantages to its members. Hence, services provided only to members were taxable [Section 65(25a)].

Amendment made by the Finance Act, 2011

(a) Section 65(105)(zzze) has been amended. Now, the scope of the said services has been widened to include such services provided to any other person (a non-member) also.

(b) Since, definition of clinical establishment has been provided under section 65(25a), club/association has been defined under section 65(25aa). Further, the new definition provides that "club or association" means any person or body of persons providing services, facilities or advantages, primarily to its members. Hence, as per the new definition, person or body of persons should primarily provide services to members, however, they may also provide such services to non-members.

Now the definition of club or association reads as under:-

"club or association" means any person or body of persons providing services, facilities or advantages, primarily to its members, for a subscription or any other amount, but does not include-

(i) any body established or constituted by or under any law for the time being in force or

(ii) any person or body of persons engaged in the activities of trade unions, promotion of agriculture, horticulture or animal husbandry or

(iii) any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature or

(iv) any person or body of persons associated with press or media.

Clarification

In this regard, *DOF No. 334/3/2011-TRU dated 28.02.2011* clarifies as follows:-

In case a member of club/association avails the facilities for his guest, he is already covered by the existing definition as payment for such services is made by the member only and not by the guest.

The revised definition brings the following services into service tax net:-

- Clubs or associations allowing non-members to use their facilities in their own capacity for a separate charge.
- Clubs entertaining members of other affiliated clubs.

(d) Legal consultancy services [Section 65(105)(zzzzm)]

Prior to amendment

Earlier 'legal consultancy service' was defined as follows:-

Any service provided or to be provided to a business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner. However, any service provided by way of appearance before any court, tribunal or authority shall not amount to taxable service.

Amendment made by the Finance Act, 2011

Finance Act, 2011 has substituted the aforesaid definition as follows:-

Any service provided/to be provided:-

(i) to any person, by a business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner,

(ii) to any business entity, by any person, in relation to representational services before any court, tribunal or authority;

(iii) to any business entity, by an arbitral tribunal, in respect of arbitration.

Meaning of arbitration and arbitral tribunal
(a) **Arbitration** means any arbitration whether or not administered by permanent arbitral institution [Section 2(a) of the Arbitration and Conciliation Act, 1996].
(b) **Arbitral tribunal** means a sole arbitrator or a panel of arbitrators [Section 2(d) of the Arbitration and Conciliation Act, 1996].

Analysis

A comparison between the position prior to amendment and position after the amendment made by the Finance Act, 2011 can be better understood with the help of the following table:-

Type of service	Service provider	Service receiver	Subjected to service tax	
			Prior to amendment	After amendment
Advice, consultancy or assistance in any branch of law, in any manner	Individual	Business entity	No	No
	Business entity	Business entity	Yes	Yes
	Business entity	Individual	No	Yes
Representational services before any Court, Tribunal or Authority	Individual	Business entity	No	Yes
	Business entity	Business entity	No	Yes
	Business entity	Individual	No	No
Arbitration	Arbitral authority	Business entity	No	Yes
Any legal consultancy service	Individual	Individual	No	No

(e) Health care services [Section 65(105)(zzzzo)]

Prior to amendment

Earlier 'health care service' was defined as follows:-

Any service provided by any hospital, nursing home or multi-specialty clinic—

(i) to an employee of any business entity, in relation to health check-up or preventive care, where the payment for such check-up or preventive care is made by such business entity directly to such hospital, nursing home or multi-specialty clinic; or

(ii) to a person covered by health insurance scheme, for any health check-up or treatment, where the payment for such health check-up or treatment is made by the insurance company directly to such hospital, nursing home or multi-specialty clinic.

Amendment made by the Finance Act, 2011

Finance Act, 2011 has substituted the aforesaid definition as follows:-

Any service provided/to be provided to any person,

(i) by a clinical establishment; or

(ii) by a doctor, not being an employee of a clinical establishment, who provides service from such premises for diagnosis, treatment or care for illness, disease, injury, deformity abnormality or pregnancy in any system of medicine [Section 65(105)(zzzzo)].

Definition of clinical establishment

Clinical establishment means

(i) a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution, by whatever name called, owned, established, administered or managed by any person or body of persons, whether incorporated or not, having in its establishment the facility of central air-conditioning either in whole or in part of its premises and having more than twenty-five beds for in-patient treatment at any time during the financial year, offering services for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine; or

(ii) an entity owned, established, administered or managed by any person or body of persons, whether incorporated or not, either as an independent entity or as a part of any clinical establishment referred to in sub-clause (i), which carries out diagnosis of diseases through pathological, bacteriological, genetic, radiological, chemical, biological investigations or other diagnostic or investigative services with the aid of laboratory or other medical equipment,

but does not include an establishment, owned or controlled by-

(a) the Government; or

(b) a local authority [Section 65(25a)].

Important Note: Students may hereby note that with effect from 01.05.2011, health care services [Section 65(105)(zzzzo)] have been exempted from whole of the service tax vide *Notification No. 30/2011 dated 25.04.2011.*

(f) Definition of commercial training or coaching centre amended [Section 65(27)]

Prior to amendment

Earlier the definition of commercial training or coaching centre specifically excluded the following:-

(a) the preschool coaching and training centre

or

(b) 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.

Amendment made by the Finance Act, 2011

The aforesaid exclusion has been removed.

Departmental clarification

In this regard, *DOF No. 334/3/2011-TRU dated 28.02.2011* clarifies as follows:-

The scope of the service has been expanded to include all coaching and training that is not recognized by law irrespective of whether the institute is providing any other course(s) recognized by law.

Earlier, the unrecognized education which is imparted by an institute that issues any certificate or diploma or degree or any educational qualification recognized by law was outside the service tax purview. Thus, two identical courses may be treated differently merely because one of the institutes also conducts another course that is recognized by law. This anomaly is corrected by subjecting all such unrecognized education to tax.

Important note: Students may note that exemption has been granted vide *Notification No. 33/2011 ST dated 25.04.2011* to:-

(a) Preschool coaching and training and

(b) Coaching or training relating to educational qualifications that are recognized by law.

(g) Definition of support services of business or commerce amended [Section 65(104c)]

Prior to amendment

The definition of support services of business or commerce under section 65(104c) provides a list of services to be included in the said services. One such service was "operational assistance for marketing".

Amendment made by the Finance Act, 2011

The scope of the said service has been expanded to include "operational or administrative assistance in any manner".

Departmental clarification

In this regard, *DOF No. 334/3/2011-TRU dated 28.02.2011* clarifies as follows:-

The words "operational and administrative assistance" have wide connotation and can include certain services already taxed under any other head of more specific description. The correct classification will continue to be governed by section 65A.

The scope will cover all support activities for others on a contract or fee, that are ongoing business support functions that businesses and organizations commonly do for themselves, but sometimes find it economical or otherwise worthwhile to outsource.

3. Maximum penalty for delay in furnishing of return increased to Rs. 20,000 [Section 70]

Prior to amendment

Section 70(1) inter alia provides for filing of periodical return after the due date with the prescribed late fee of not more than Rs.2,000.

Amendment made by the Finance Act, 2011

Finance Act, 2011 has increased the maximum penalty under section 70 for delay in filing the service tax return from Rs. 2,000 to Rs. 20,000. However, there is no change in the amount of penalty under rule 7C of the Service Tax Rules, 1994.

(Effective from April 08, 2011)

4. Provisions of section 73 relating to recovery of service tax not levied/paid/short-levied/short paid/erroneously refunded amended

Sub-section (1A) and provisos to sub-section (2) of section 73 have been omitted. Consequently, the benefit of reduced penalty equal to 25% of the service tax shall not be available in cases of fraud, mis-statement, suppression, collusion etc. in the ordinary course. However, revised benefit will be available under the new sub-section (4A) of section 73 inserted by the Finance Act, 2011. It provides as follows:-

A. Penalty upto 25% of the tax payable subject to certain conditions [New sub-section (4A) inserted]

In case where all the following conditions are satisfied, the person chargeable to service tax or to whom erroneous refund has been made, may pay the service tax in full or in part, as he may accept to be the amount of tax chargeable or erroneously refunded along with interest payable thereon under section 75 and reduced penalty** before service of notice on him-

- Service tax has not been levied or paid or short-levied or short-paid or erroneously refunded
- the said default has been found during the course of any audit, investigation or verification
- true and complete details of the transactions are available in the specified records.

**Note: Amount of penalty shall be lower of the following:-
(i) 1% of such tax per month for the period during which the default continues
or
(ii) 25% of the tax amount

Note: DOF No. 334/3/2011-TRU dated 28.02.2011 clarifies that the assessee can also avail this benefit on his own also.

B. Receipt of information by the Central Excise Officer

Such person shall inform the Central Excise Officer of such payment in writing.

(a) No SCN would be issued if amount paid in full

Central Excise Officer, on receipt of such information, shall not serve any notice in respect of the amount so paid and all proceedings in respect of the said amount of service tax shall be deemed to be concluded.

(b) SCN may be issued for recovery if amount is short paid

Central Excise Officer may determine the amount of service tax, if any, due from such person, which in his opinion remains to be paid by such person and shall proceed to recover such amount in the manner specified in sub-section (1).

Meaning of specified records [Explanation to section 73(4A)]
"Specified records" means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of account shall be considered as the specified records.

(Effective from April 08, 2011)

5. Concession of 3%, for specified assessees, in the rate of interest for amount of service tax collected in excess [Section 73B]

Section 73B provides that where an amount has been collected in excess of the tax assessed/determined and paid for any taxable service, the person who is liable to pay such amount as determined under section 73A(4) shall, in addition to the amount, be liable to pay the interest ranging between 10% to 24% p.a as may be notified by the Central Government. At present, the rate of interest @ 18% p.a has been notified.

Concessional rate provided by the Finance Act, 2011

Finance Act, 2011 has inserted second proviso to section 73B of the Finance Act, 1994 which provides as follows:-

In the case of a service provider, whose value of taxable service provided in a financial year does not exceed Rs. 60 lakh during any of the financial years of the notice issued under section 73A(3) or during the preceding financial year, as the case may be, such rate of interest shall be reduced by 3% per annum.

Hence, a concessional rate of interest of 15% per annum is available to the tax payers whose turnover during any of the years covered in the notice issued under section 73A(3) or the preceding financial year is below Rs 60 lakh.

(Effective from April 08, 2011)

6. Concession of 3%, for specified assessees, in the rate of interest for delayed payment of service tax [Section 75]

Section 75 provides that the failure to pay service tax, including a part thereof within the period prescribed, attracts simple interest at a rate not below 10% p.a. but not exceeding 36% p.a. as may be notified by the Central Government. At present, the rate of interest @ 18% p.a has been notified.

Concessional rate provided by the Finance Act, 2011

Finance Act, 2011 has inserted proviso to section 75 of the Finance Act, 1994 which provides as follows:-

In case of a service provider, whose value of taxable service provided in a financial year does not exceed Rs. 60 lakh during any of the financial years covered by the notice or during the preceding financial year, as the case may be, such rate of interest shall be reduced by 3% per annum.

Hence, a concessional rate of interest of 15% per annum is available to the tax payers whose turnover during any of the years covered in the notice or the preceding financial year is below Rs 60 lakh.

(Effective from April 08, 2011)

7. Penalty for failure to pay service tax halved [Section 76]

Prior to amendment	Amendment made by the Finance Act, 2011
Quantum of penalty ₹ 200 for every day during which such failure continues or 2% of amount of service tax per month whichever is higher.	Quantum of penalty ₹ 100 for every day during which such failure continues or 1% of amount of service tax per month whichever is higher.
Maximum penalty The total amount of the penalty payable under section 76 shall not exceed the service tax payable.	Maximum penalty The total amount of the penalty payable under section 76 shall not exceed 50% of the service tax payable.

Illustration explaining the amended penalty provision:-

X, an assessee, fails to pay service tax of Rs. 10 lakh payable by 5th March. X pays the amount on 15th March.

The default has continued for ten days. The penalty payable by X is computed as follows:-

1% of the amount of default for 10 days,

$$\frac{1}{100} \times 10,00,000 \times \frac{10}{31} = ₹\ 3,225.80$$

Penalty calculated @ ₹100 per day for 10 days = ₹1,000

Penalty liable to be paid is ₹ 3226.00

(Effective from April 08, 2011)

8. Higher penalty prescribed under section 77

<table>
<tr><th rowspan="2">Nature of offence</th><th colspan="2">Maximum penalty leviable</th></tr>
<tr><th>Prior to amendment</th><th>Amendment made by Finance Act, 2011</th></tr>
<tr><td>Failure to take registration in accordance with the provisions of section 69</td><td rowspan="2">₹ 200 for every day during which such failure continues, starting with the first day after the due date, till the date of actual compliance
or
₹ 5,000
whichever is higher</td><td rowspan="2">₹ 200 for every day during which such failure continues, starting with the first day after the due date, till the date of actual compliance
or
₹ 10,000
whichever is higher</td></tr>
<tr><td>Failure to:-
(a) furnish information called by an officer
(b) produce documents called for by a Central Excise Officer
(c) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry</td></tr>
<tr><td>Failure to make e-payment of service tax</td><td rowspan="4">₹ 5,000</td><td rowspan="4">₹ 10,000</td></tr>
<tr><td>Issue of invoice with incorrect or incomplete details or fails to account for an invoice in his books of account</td></tr>
<tr><td>Any contravention of any provisions/rules for which no penalty is separately provided in this Chapter</td></tr>
<tr><td>Failure to keep, maintain or retain books of account and other documents as required as per the provisions</td></tr>
</table>

Hence, it may be inferred that the maximum penalty under section 77 for contravention of various provisions has been increased from ₹5000/- to ₹10000/-. However, the daily rate of penalty (₹ 200), wherever applicable, has been retained.

(Effective from April 08, 2011)

9. **Provisions relating to section 78 relating to penalty for suppressing, etc. of the value of taxable services substituted with new section 78**

Section 78 has been substituted with the following new section:-

(a) **Penalty for service tax not levied or paid or short-levied or short-paid or erroneously refunded [Sub-section (1)]**

Where any service tax has not been levied or paid or has been short-levied or short paid or erroneously refunded, **by reason of-**

(i) fraud; or

(ii) collusion; or

(iii) wilful mis-statement; or

(iv) suppression of facts; or

(v) contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax,

person, liable to pay such service tax or erroneous refund, as determined under section 73(2), shall also be liable to pay a penalty, in addition to such service tax and interest thereon, if any, payable by him, which shall be **equal to the amount of service tax** so not levied or paid or short-levied or short-paid or erroneously refunded **[Sub-section (1)]**

(b) **Reduced penalty in case true and complete details of the transactions are available in the specified records**

Penalty to be halved

Where true and complete details of the transactions are available in the specified records, penalty shall be reduced to 50% of the service tax so not levied or paid or short levied or short-paid or erroneously refunded **[First proviso to sub-section (1)]**

Meaning of specified records [Explanation to section 73(4A)]
"Specified records" means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of account shall be considered as the specified records.

Penalty further reduced to 25% of the service tax if service tax and interest payable thereon paid within 30 days

Where such service tax and the interest payable thereon is paid within 30 days from the date of communication of order of the Central Excise Officer determining such service tax, the amount of penalty liable to be paid by such person under the first proviso shall be 25% of such service tax **[Second proviso to sub-section (1)]**.

However, it may be noted that the aforementioned benefit of reduced penalty is available only if the amount of penalty so determined has also been paid within the said period of 30 days **[Third proviso to sub-section (1)]**

Period of 30 days extended to 90 days for service providers with turnover upto Rs. 60 lakh

In case of a service provider whose value of taxable services does not exceed Rs. 60 lakh during any of the years covered by the notice or during the last preceding financial year, the period of 30 days shall be extended to 90 days.

(c) **Amount of penalty to be modified accordingly in case of increase/decrease in the amount of service tax payable [Sub-section (2)]**

Where the service tax determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court then, for the purposes of this section, the service tax as reduced or increased, as the case maybe, shall be taken into account **[Sub-section (2)]**.

Benefit of reduced penalty of 25% of service tax available if increased service tax and interest thereon and 25% of consequential increase of penalty paid within 30/90 days

In case where the service tax to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the second proviso to sub-section (1), shall be available, if the amount of service tax so increased, the interest payable thereon and 25% of the consequential increase of penalty have also been paid within 30 days or 90 days, as the case may be, of communication of the order by which such increase in service tax takes effect **[First proviso to sub-section (2)]**.

Section 76 not to apply

If the penalty is payable under section 78 (penalty for suppressing value of taxable services), the provisions of section 76 (penalty for failure to pay service tax) shall not apply **[Second proviso to sub-section (2)]**.

Note: Any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the second proviso to sub-section (1) or the first proviso to sub-section (2) shall be adjusted against the total amount due from such person.

(Effective from April 08, 2011)

10. Waiver of penalty only in cases where the information is captured properly in the specified records [Section 80]

Prior to amendment

Earlier, section 80 provided that no penalty under section 76, 77 or 78 shall be imposed if the assessee proves that there is "reasonable cause" for the failure referred to in the said sections.

Amendment made by the Finance Act, 2011

In section 80, words "section 78" have been substituted with the words "first proviso to sub-section (1) of section 78".

It implies that the penalty shall be waived only in cases where true and complete details of the transactions are available in the specified records, i.e., the information is captured properly in the specified records.

(Effective from April 08, 2011)

11. Power to search premises amended [Section 82]

Power	Prior to amendment	Amendment made by the Finance Act, 2011
Power to issue search warrant	Commissioner of Central Excise has the power to issue search warrant if he has a reason to believe that any documents or books or things which in his opinion will be useful for or relevant to any proceeding under the Act, are secreted in any place.	Joint Commissioner of Central Excise has the power to issue search warrant if he has a reason to believe that any documents or books or things which in his opinion will be useful for or relevant to any proceeding under the Act, are secreted in any place.
Power to execute search warrant	Commissioner of Central Excise may authorize Assistant Commissioner/ Deputy Commissioner of Central Excise as the case may be, to execute, or may himself execute the search warrant.	Joint Commissioner of Central Excise may authorize Superintendent of Central Excise, to execute, or may himself execute the search warrant.

(Effective from April 08, 2011)

12. Some more provisions of the Central Excise Act, 1944 made applicable to service tax [Section 83]

By virtue of section 83 of the Finance Act, 1994, many provisions of the Central Excise Act, 1944 have also been made applicable to service tax. In this regard, following sections of the Central Excise Act have also been made applicable to service tax:-

Section No.	Title
9A	Offences and penalties
9AA	Certain offences to be non-cognizable
9B	Power of Court to publish name, place of business, etc., of persons convicted under the Act
9E	Application of section 562 of the Code of Criminal Procedure, 1898, and of the Probation of Offenders Act, 1958
34A	Confiscation/penalties not to interfere with other punishments

Further, the provisions of section 35R [Appeal not to be filed in certain cases] inserted by the Finance Act, 2011 retrospectively from 20.10.2010 have been made applicable to service tax also with effect from 20.10.2010.

(Effective from April 08, 2011)

13. Liability under Act to be first charge [Section 88]

Finance Act, 2011 has inserted section 88 after section 87. The said section reads as follows:-

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Chapter, shall, save as otherwise provided in section 529A of the Companies Act, 1956 and the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitization and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, be the first charge on the property of the assessee or the person as the case may be.

(Effective from April 08, 2011)

14. Prosecution provisions [Section 89]

I. Offences punishable with imprisonment

(a) Provision of service without issuance of invoice [Clause (a) of sub-section (1)]

Any person provides any taxable service chargeable to service tax under of section 68(1) or receives any taxable service chargeable to tax under section 68(2), without an invoice issued in accordance with the provisions of this Chapter or the rules made thereunder.

(b) Availment and utilization of CENVAT credit without actual receipt of inputs/input services [Clause (b) of sub-section (1)]

Any person avails and utilises credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter.

(c) Maintaining false books of accounts/failure to supply any information/submitting false information [Clause (c) of sub-section (1)]

Any person maintains false books of account or fails to supply any information which he is required to supply under this Chapter or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information.

(d) Non-payment of amount collected as service tax for a period of more than six months from the due date of payment [Clause (d) of sub-section (1)]

Any person collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due.

II. Term of imprisonment

If any person is convicted of an offence under this section for the		
First time	in the case of an offence where the amount is	Term of imprisonment
	(i) upto ₹ 50 lakh	Upto 1 year
	(ii) more than ₹ 50 lakh	*6 months** - 3years
Second & every subsequent time	The term of imprisonment shall be *6 months** - 3years.	
Such imprisonment shall be for a term of less than six months if there are* ***special and adequate reasons* *to be recorded in the judgment of the Court.*		

III. Cases not to be regarded as special and adequate reasons for awarding lesser imprisonment [Sub-section (3)]

Following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:—

(i) the fact that the accused has been convicted for the first time for an offence under this Chapter;

(ii) the fact that in any proceeding under this Act, other than prosecution, the accused has been ordered to pay a penalty or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a secondary party in the commission of offence;

(iv) the age of the accused.

IV. Prior sanction of Chief Commissioner of Central Excise mandatory [Sub-section (4)]

A person shall not be prosecuted for any offence under this section except with the previous sanction of the Chief Commissioner of Central Excise.

Clarification regarding the prosecution provisions introduced by the Finance Act, 2011 explained by CBEC

The following aspects relating to newly inserted provisions of prosecution (Section 89 of the Finance Act, 1994) have been explained in a clarification issued by the Board:

1. The emphasis under clause (a) of section 89(1) in the prosecution provision is on the non-issuance of invoice within the prescribed period rather than non-mention of the technical details in the invoice that have no bearing on the determination of tax liability.
2. The service receiver, liable to pay tax on reverse charge basis is required to ensure that the invoice is available at the time the payment is made or at least received within 14 days thereafter and in the case of associated enterprises, invoice should be available with the service receiver at the time of credit in the books of accounts or the date of payment towards the service received.
3. Further, invoice mentioned in section 89(1) will include a bill or as the case may be a challan, in accordance with the Service Tax Rules, 1994. Invoice, bill, or as the case may be, challan, shall also include "any document" specified in respect of certain taxable services, in the provisos to Rule 4A and Rule 4B of Service Tax Rules, 1994.
4. In order to constitute an offence under clause (b) of section 89(1) of Finance Act, 1994, the taxpayer must both avail as well as utilize the credit without having actually received the goods or the service. The clause is not meant to apply to situations where an invoice has been issued for a service yet to be provided on which due tax has been paid. It is only meant for such invoices that are typically known as "fake" where the tax has not been paid at the so called service provider's end or where the provider stated in the invoice is non-existent. It will also cover situations where the value of the service stated in the invoice and/or tax thereon have been altered with a view to avail Cenvat credit in excess of the amount originally stated. While calculating the monetary limit for the purpose of launching prosecution, the value shall be the amount availed as credit in excess of the amount originally stated in the invoice.
5. Clause (c) of section 89(1) of Finance Act, 1994, is based on similar provision in the central excise law. It should be noted that the offence in relation to maintenance of false books of accounts or failure to supply the required information or supplying of false information, should be in material particulars have a bearing on the tax liability. Mere expression of opinions shall not be covered by the said clause. Supplying false information, in response to summons, will also be covered under this provision.
6. Clause (d) of section 89(1) of Finance Act, 1994, will apply only when the amount has been collected as service tax. It is not meant to apply to mere non-payment of service tax when due. This provision would be attracted when the amount was reflected in the invoices as service tax, service receiver has already made the payment and the period of six months has

elapsed from the date on which the service provider was required to pay the tax to the Central Government. Where the service receiver has made part payment, the service provider will be punishable to the extent he has failed to deposit the tax due to the Government.

7. Certain sections of the Central Excise Act, 1944, have been made applicable to service tax by section 83 of Finance Act, 1994. Section 9AA of the Central Excise Act provides that where an offence has been committed by a company, in addition to the company, every person who was in charge of the company and responsible for conduct of the business, at the time when offence was committed, can be deemed guilty of an offence and can be proceeded against. A person so charged, however has an option to establish that offence was committed without his knowledge or he had exercised all due diligence to prevent the commission of offence.

8. Section 9C of Central Excise Act, 1944, which is made applicable to Finance Act, 1994, provides that in any prosecution for an offence, existence of culpable mental state shall be presumed by the court. Therefore each offence described in section 89(1) of the Finance Act, 1994, has an inherent mens rea. Delinquency by the defaulter of service tax itself establishes his 'guilt'. If the accused claims that he did not have guilty mind, it is for him to prove the same beyond reasonable doubt. Thus "burden of proof regarding non existence of 'mens rea' is on the accused".

9. It may be noted that in terms of section 89(3) of Finance Act, 1994, the following grounds are not considered special and adequate reasons for awarding reduced imprisonment:

   (i) the fact that the accused has been convicted for the first time for an offence under Finance Act, 1994;

   (ii) the fact that in any proceeding under the said Act, other than prosecution, the accused has been ordered to pay a penalty or any other action has been taken against him for the same act which constitutes the offence;

   (iii) the fact that the accused was not the principal offender and was acting merely as a secondary party in the commission of offence;

   (iv) the age of the accused.

   On the above grounds, sanctioning authority cannot refrain from launching prosecution against an offender.

10. Sanction for prosecution has to be accorded by the Chief Commissioner of Central Excise, in terms of the section 89(4) of the Finance Act, 1994. In accordance with Notification 3/2004-ST dated 11th March 2004, Director General of Central Excise Intelligence (DGCEI), can exercise the power of Chief Commissioner of Central Excise, throughout India.

11. Board has decided that monetary limit for prosecution will be Rs.10,00,000 in the case of offences specified in section 89(1) of Finance Act, 1994, to ensure better utilization of manpower, time and resources of the field formations. Therefore, where an offence specified in section 89(1), involves an amount of less than Rs.10,00,000, such case need not be

considered for launching prosecution. However the monetary limit will not apply in the case of repeat offence.

12. Provisions relating to prosecution are to be exercised with due diligence, caution and responsibility after carefully weighing all the facts on record. Prosecution should not be launched merely on matters of technicalities. Evidence regarding the specified offence should be beyond reasonable doubt, to obtain conviction. The sanctioning authority should record detailed reasons for its decision to sanction or not to sanction prosecution, on file.

13. Prosecution proceedings in a court of law are to be generally initiated after departmental adjudication of an offence has been completed, although there is no legal bar against launch of prosecution before adjudication. Generally, the adjudicator should indicate whether a case is fit for prosecution, though this is not a necessary pre-condition. To launch prosecution against top management of the company, sufficient and clear evidence to show their direct involvement in the offence is required. Once prosecution is sanctioned, complaint should be filed in the appropriate court immediately. If the complaint could not be filed for any reason, the matter should be immediately reported to the authority that sanctioned the prosecution.

14. Instructions and guidelines issued by the Central Board of Excise and Customs (CBEC) from time to time, regarding prosecution under Central Excise law, will also be applicable to service tax, to the extent they are harmonious with the provisions of Finance Act, 1994 and instructions contained in this Circular for carrying out prosecution under service tax law.

[Circular No. 140/09/2011 – ST dated 12.05.2011]

15. **Central Government empowered to allow rebate in certain circumstances even if the sale proceeds/consideration are not received within the stipulated period [Proviso to section 93A]**

Prior to amendment

Any rebate allowed on any goods or services under section 93A shall be deemed never to have been allowed if the sale proceeds in respect of such goods or consideration in respect of such services are not received by or on behalf of the exporter in India within the time allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999 [Proviso to section 93A].

Amendment made by Finance Act, 2011

Finance Act, 2011 has amended the aforesaid proviso so as to empower the Central Government to prescribe the circumstances or conditions under which the said amount of rebate granted shall not be recovered, even if the sale proceeds are not realized by the exporter within the stipulated time.

SIGNIFICANT AMENDMENTS MADE THROUGH NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2010 TO 30.06.2011

I. EXCISE

A. AMENDMENTS IN THE CENTRAL EXCISE RULES, 2002

1. In case of ready-made garments and made-up articles of textiles manufactured on job-work basis, liability to pay duty and comply with the provisions of the Central Excise Rules, 2002 is on the merchant manufacturer

(a) Liability of the merchant manufacturer to pay duty [Rule 4(1A)]

Sub-rule (1A) inserted after the sub-section (1) to section 4, provides as follows:-

Notwithstanding anything contained in sub-rule (1), every person who gets the following goods produced/manufactured on his account on job work, shall pay the duty leviable on such goods, at such time and in such manner as is provided under these rules, as if such goods have been manufactured by such person:-

(a) Articles of apparel and clothing accessories, knitted or crocheted [Chapter 61 of the First Schedule to the Tariff Act]

(b) Articles of apparel and clothing accessories, not knitted or crocheted [Chapter 62 of the First Schedule to the Tariff Act]

(c) Other made up textile articles; sets; worn clothing and worn textile articles; rags [Chapter 63 of the First Schedule to the Tariff Act].

Implication of the amendment

It is the practice in the garment and made up industry for brand owners to have goods manufactured from several job-workers. The brand owners may or may not, themselves, possess any manufacturing facility.

By virtue of the aforesaid amendment, in case of ready-made garments and made-up articles of textiles manufactured on job-work basis, liability to pay duty is on the merchant manufacturer (person on whose behalf the goods are manufactured by job-workers) and not on the job-workers. Hence, the job-worker is exempt from payment of duty if the merchant manufacturer pays the duty.

Further, merchant manufacturer would be required to register his private store-room or warehouse in which inputs are received for distribution to job-workers and finished goods are received from the job-workers. He would also be required to comply with all the other provisions of Central Excise law.

Job worker may also be authorized to pay the duty and comply with the provisions of these rules

However, merchant manufacturer may authorize the job worker to pay the duty leviable on such goods on his behalf and the job worker so authorized may undertake to discharge all liabilities and comply with all the provisions of these rules.

Meaning of job worker and job work
For the purposes of this sub-rule, the expression "job worker" means a person engaged in manufacture, or undertaking any process on behalf and under the instructions of such person for manufacturing, from any inputs or goods supplied by such person or by any other person authorized by such person so as to complete a part or whole of the process resulting ultimately in the manufacture of goods falling under chapters 61 or 62 or 63 of the First schedule to the Tariff Act.
The term "job work" shall be construed accordingly.

(b) Liability of the merchant manufacturer to comply with the Central Excise procedures [Rule 12D]

Rule 12D has been inserted after rule 12CC. It provides as follows:-

The provisions of the Central Excise Rules, 2002 shall apply to a merchant manufacturer (person on whose behalf the goods are manufactured by the job-workers) of the following goods as if such goods have been manufactured by him:-

(a) Articles of apparel and clothing accessories, knitted or crocheted [Chapter 61 of the First Schedule to the Tariff Act]

(b) Articles of apparel and clothing accessories, not knitted or crocheted [Chapter 62 of the First Schedule to the Tariff Act]

(c) Other made up textile articles; sets; worn clothing and worn textile articles; rags [Chapter 63 of the First Schedule to the Tariff Act].

[Notification No. 4/2011-C.E. (N.T.) dated 01.03.2011]

2. Quarterly return required to be filed by an assessee availing exemption under *Notification No. 1/2011-CE* [Sixth proviso to rule 12(1)]

Where an assessee is availing the exemption under *Notification No. 1/2011-CE dated 01.03.2011* and does not manufacture any other excisable goods other than those specified in the said notification, he shall file a quarterly return in the form specified by notification by the Board*, of production and removal of goods and other relevant particulars, within 10 days after the close of the quarter to which the return relates.

[Notification No. 08/2011-C.E. (N.T.) dated 24.03.2011]

**Note:* t may be noted that Form ER-8 has been notified vide Notification No. 15/2011-C.E. (N.T.) dated 30.06.2011 for this purpose.*

3. Special provisions relating to job work in case of articles of jewellery extended to articles of goldsmiths' or silversmiths' wares [Rule 12AA(1)]

Rule 12AA(1) provides that in case of job work for the article of jewellery of precious metals falling under heading 7113, principal manufacturer (not being an EOU or a unit located in SEZ) shall obtain registration, maintain accounts, pay duty leviable on such goods and comply with all the relevant provisions of these rules, as if he is an assessee.

Amendment made by *Notification No. 08/2011-C.E. (N.T.) dated 24.03.2011*

The aforesaid provisions relating to job work in case of articles of jewellery of precious metals (falling under heading 7113 of the Central Excise Tariff) have now been extended to articles of goldsmiths' or silversmiths' wares of precious metals (falling under heading 7114 of the Central Excise Tariff).

4. ER-2 and ER-4 to be filed electronically if excise duty of Rs. 10,00,000 or more is paid in the preceding financial year

With effect from 01.06.2010, the Central Excise Rules, 2002 have been amended to provide that the following statements/returns shall be filed electronically if the manufacturer of final products has paid total excise duty of Rs.10,00,000 or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year:

(i) Annual Financial Information Statement - ER-4 [Rule 12(2) of the Central Excise Rules, 2002]

(ii) Monthly return by EOU - ER-2 [Rule 17(3) of the Central Excise Rules, 2002]

[Notification No. 20/2010 CE (NT) dated 18.05.2010]

B. AMENDMENTS AND CLARIFICATIONS IN THE CENVAT CREDIT RULES, 2004

AMENDMENTS

Following amendments have been made in the CENVAT Credit Rules, 2004:

(i) Definition of capital goods [Rule 2(a)]

Following amendments have been made in the definition of capital goods:-

(a) Capital goods used outside the factory for electricity generation for captive use eligible under rule 2(a)

With effect from 01.04.2011, CENVAT credit of duty paid on capital goods used outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory has been permitted [Item (1A) in sub-clause (A)].

[Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011]

(b) Dumpers or Tippers eligible capital goods for availing CENVAT credit

Dumpers or tippers used for providing site preparation and clearance, excavation, earth moving and demolition services and mining services would be treated as capital goods if they are registered in the name of such output service provider [Sub-clause (C)].

[Notification No. 25/2010 CE (NT) dated 22.06.2010]

(c) Components, spares and accessories of motor vehicles, dumpers or tippers used for providing prescribed taxable services eligible for CENVAT credit as capital goods

Components, spares and accessories of motor vehicles, dumpers or tippers, as the case may be, used to provide the following taxable services would be treated as capital goods:-

- Courier services
- Tour operator's services
- Rent-a-cab scheme operator's services
- Cargo handling services
- Goods Transport Agency services
- Outdoor catering services
- Pandal/Shamiana services
- Site preparation and clearance, excavation, earth moving and demolition services
- Mining services

[Sub-clause (D)]

[Notification No. 29/2010 CE (NT) dated 24.09.2010]

(ii) Definition of exempted goods [Rule 2(d)]

Prior to Amendment

Exempted goods means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty.

Amendment made by *Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011*

With effect from 01.03.2011, definition of exempted goods has been amended to include goods in respect of which the benefit of an exemption under *Notification No. 1/2011-C.E. dated 01.03.2011* is availed.

Implication of the amendment

Henceforth, credit attributable to such goods would have to be reversed when common inputs and input services are used for both these goods and otherwise dutiable goods.

(iii) Definition of exempted services [Rule 2(e)]

Prior to Amendment

Exempted services means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under section 66 of the Finance Act.

Amendment made by *Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011*

With effect from 01.04.2011, definition of exempted services has been amended to include taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken.

Further, it has been clarified that "exempted services" include trading.

(iv) New definition of inputs [Rule 2(k)]

With effect from 01.04.2011, definition of inputs has been substituted with the following new definition:-

Input means -

(i) all goods used in the factory by the manufacturer of the final product; or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam for captive use; or

(iv) all goods used for providing any output service;

but excludes -

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

(B) any goods used for -

(a) construction of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of any of the following taxable service:-

- Port services
- Other port services
- Airport services
- Construction in respect of commercial or industrial buildings or civil structures

- Construction services in respect of residential complexes
- Works contract services

(C) capital goods except when used as parts or components in the manufacture of a final product;

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

Meaning of free warranty
Free warranty means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer.

Clarification

In respect of the aforesaid amendment, *D.O.F.No.334/ 3/2011-TRU* clarifies as follows:-

- The requirement that goods should be used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not has been removed.
- Henceforth, all goods used in the factory by the manufacturer of the final product, except those specified in the negative list and goods having no relationship whatsoever with the manufacture of final product, would qualify for treatment as inputs.
- Another feature of the new definition is that goods used primarily for personal use or consumption of any employee including food articles etc. have been expressly excluded.

[Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011]

(v) New definition of input service [Rule 2(l)]

With effect from 01.04.2011, definition of input service has been substituted with the following new definition:-

I. Meaning

Input service means any service, -

(i) used by a provider of taxable service for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and

II. Inclusions

Input service includes:-

Services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

III. Exclusions

Input service excludes:-

(A) Following specified services, in so far as they are used for construction of a building or a civil structure or a part thereof; or laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services:-

- Architect's services
- Port services
- Other port services
- Airport services
- Construction in respect of commercial or industrial buildings or civil structures
- Construction services in respect of residential complexes
- Works contract services

Analysis

The aforementioned seven specified services would not be eligible as input services if they are used for-

(a) construction of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods.

However, if any of the said specified services are used for provision of one or more of these specified services, they shall be eligible as input services.

For instance, architect's services used for providing works contract services would be eligible as input service.

The intention is to align the aforesaid sub-clause with sub-clause (B) of the exclusions in the definition of inputs under rule 2(k).

(B) Following specified services, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods:-

- General insurance business
- Rent-a-cab scheme operator's services
- Service Stations' services
- Supply of tangible goods services

Analysis

The services relating to motor vehicle i.e. rent-a-cab, use of tangible goods, insurance or repair of vehicle shall not constitute an input service. However, the aforementioned specified services would be eligible as input services when these services are used for the provision of any of the following taxable services for which the credit on motor vehicle is available as capital goods:-

- Courier Agency services
- Tour operator's services
- Rent-a-cab scheme operator's services
- Cargo handling services
- Transport of goods by road services
- Outdoor caterer's services
- Pandal or shamiana services

(C) Services such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee.

Analysis

The aforesaid services are not eligible as input services when they are used primarily for personal use or consumption of any employee.

Departmental Clarification

In respect of the aforesaid amendment, *D.O.F.No.334/ 3/2011-TRU dated 28.02.2011* clarifies as follows:-

1. The distinction between goods and services is diminishing and many goods can be received as services. Accordingly the definition of "input service" has been aligned with the definition of "input" such that goods that do not constitute "input" do not qualify as "input service".
2. Similarly, a service meant primarily for the personal use or consumption of

employees will not constitute an input service. A list of specific services has also been given by way of example in the definition. Most of these services constitute a part of the cost-to-company package of the employee and are provided either free of charge or on concessional basis to company employees.

3. Expression "activities relating to business" has been deleted and Business exhibition and legal services have been added in the list of services.

[Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011]

(vi) New definition of manufacturer or producer [Rule 2(naa)]

With effect from 01.03.2011, definition of "manufacturer or producer" has been substituted with the following new definition:-

Manufacturer or producer-

(i) in relation to articles of jewellery or articles of goldsmiths' or silversmiths' wares of precious metals falling under heading 7113 or 7114 as the case may be, of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1) of rule 12AA of the Central Excise Rules, 2002;

(ii) in relation to goods falling under Chapters 61, 62 or 63 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1A) of rule 4 of the Central Excise Rules, 2002.

[Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011]

(vii) Amendments in rule 3-Utilization of CENVAT credit

(a) CENVAT credit of basic excise duty, paid on the goods on which exemption under *Notification No.1/2011- CE* has been availed, not available [Proviso to rule 3(1)(i)]

With effect from 01.03.2011, CENVAT credit of the basic excise duty shall not be allowed to be taken when paid on any goods in respect of which the benefit of an exemption under *Notification No.1/2011-CE dated 01.03.2011* is availed.

[Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011]

(b) CENVAT credit of only 85% of CVD, paid on ships, boats and other floating structures for breaking up, allowed [Proviso to rule 3(1)(vii)]

With effect from 01.03.2011, CENVAT credit shall not be allowed in excess of 85% of the additional duty of customs paid under section 3(1) of the Customs Tariff Act, on ships, boats and other floating structures for breaking up (falling under tariff item 8908 00 00 of the First Schedule to the Customs Tariff Act).

Reason for the amendment

D.O.F. No. 334/ 3/2011-TRU provides the reason for the aforesaid amendment as follows:-

The process of obtaining goods and material mainly melting scrap and re-rollable scrap of steel, by breaking up of ships, boats and other floating structures is deemed to be a process of manufacture in terms of section note 9 of Section XV of the Central Excise Tariff. In the breaking of ships, a number of used serviceable articles such as pumps, air-conditioners, furniture, kitchen equipment, wooden panels etc. are also generated. These are generally sold as second hand goods by ship breaking units but no excise duty is payable as they do not emerge from a manufacturing process.

At the same time, ship breaking units are allowed to avail full credit of additional duty of customs paid on the ship when it is imported for breaking it. This anomaly was resulting in misuse of the Cenvat credit scheme. Rule 3 has been amended to prescribe that Cenvat credit shall not be allowed in excess of 85% of the additional duty of customs paid on ships, boats etc. imported for breaking.

[Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011]

(c) Utilisation of CENVAT credit not allowed for payment of excise duty on the goods on which exemption under *Notification No.1/2011- CE* has been availed [Second proviso to rule 3(4)]

With effect from 01.03.2011, CENVAT credit shall not be utilised for payment of any duty of excise on goods in respect of which the benefit of an exemption under *Notification No. 1/2011-CE dated 01.03.2011* is availed.

[Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011]

(d) CENVAT credit cannot be used for paying Clean Energy Cess [Sixth proviso to rule 3(4)]

Rule 3(4) of the CENVAT Credit Rules, 2004 has been amended to provide that the CENVAT credit of any duty specified in sub-rule (1) of rule 3 cannot be utilized for payment of the Clean Energy Cess.

[Notification No. 26/2010 CE (NT) dated 29.06.2010]

(e) In case any inputs are removed as such outside the factory for providing free warranty for final products, CENVAT credit availed need not be reversed [Second proviso to rule 3(5)]

Rule 3(5) provides that when inputs/capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9.

Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011 provides that with effect from 01.04.2011, such payment shall not be required to be made where any inputs are removed outside the factory for providing free warranty for final products.

(f) In case inputs/capital goods written off *partially* before being put to use, amount equivalent to the CENVAT credit taken on such inputs/capital goods required to be paid [Rule 3(5B)]

Prior to Amendment

Earlier, rule 3(5B) stipulated that a manufacturer/service provider was required to pay an amount equivalent to the CENVAT credit taken in respect of inputs or capital goods where the value of such inputs or capital goods is written off ***fully*** before being put to use.

Amendment made by *Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011*

With effect from 01.03.2011, rule 3(5B) has been amended to provide that a manufacturer /service provider is required to pay an amount equivalent to the CENVAT credit taken in respect of inputs or capital goods even where the value of such inputs or capital goods is written off *partially* before being put to use.

(viii) Amendment in rule 4- Conditions for allowing CENVAT credit

(a) Special provisions relating to job work in case of articles of jewellery extended to articles of goldsmiths' or silversmiths' wares [Proviso to rule 4(1)]

Prior to Amendment

The proviso to rule 4(1) lays down that where articles of jewellery of precious metals (falling under heading 7113 of the Central Excise Tariff) are manufactured on job work basis, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the principal manufacturer subject to the condition that such inputs are used in the manufacture of articles of jewellery by the job worker.

Amendment made by *Notification No. 9/2011-C.E. (N.T.) dated 24.03.2011*

The aforesaid provisions relating to job work in case of articles of jewellery of precious metals (falling under heading 7113 of the Central Excise Tariff) have been extended to articles of goldsmiths' or silversmiths' wares of precious metals (falling under heading 7114 of the Central Excise Tariff).

(b) Restriction of availing 50% credit in the same financial year extended to the capital goods received outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory [Rule 4(2)(a)]

Prior to Amendment

Rule 4(2)(a) restricts the quantum of credit in respect of capital goods received in a factory or in the premises of the provider of output service at any point of time in a given financial year as under:

a. Upto 50% in the same financial year;

b. Balance in one or more subsequent financial years

provided the capital goods are still in the possession and use of the manufacturer or the output service provider.

Amendment made by *Notification No. 3/2011-C.E. (N.T.) dated 1-3-2011*

With effect from 01.04.2011, the aforesaid restriction of availing only 50% credit in the same financial year has been extended to the capital goods received outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory.

(c) CENVAT credit on input service to be allowed, on/after the day of receipt of invoice/bill/challan [Rule 4(7)]

Prior to amendment

Earlier, since the service tax was payable on receipt basis, the CENVAT credit in respect of input service was allowed, on or after the day which payment was made of the value of input service and the service tax paid/payable as was indicated in invoice, bill or, as the case may be, challan referred to in rule 9.

Amendment made by *Notification No. 13/2011-C.E. (N.T.) dated 31-3-2011*

With effect from 01.04.2011, sub-rule (7) has been substituted with the new sub-rule (7) in alignment with the Point of Taxation Rules, 2011. New rule stipulates as follows:-

The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received.

A. Where service tax is paid on reverse charge mechanism

In case of an input service where the service tax is paid on reverse charge by the recipient of the service, the CENVAT credit in respect of such input service shall be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9.

B. Where the payment of value of input service and service tax payable thereon is not made within 3 months of the date of invoice/bill/challan

In case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9, is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.

C. In case any payment towards an input service is refunded or a credit note is received by the manufacturer/service provider

If any payment or part thereof, made towards an input service is refunded or a credit note is received by the manufacturer or the service provider who has taken credit on such input service, he shall pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited.

D. CENVAT credit in respect of an invoice/bill/challan issued before the 01.04.2011

CENVAT credit in respect of an invoice, bill or, as the case may be, challan referred to in rule 9, issued before the 01.04.2011 shall be allowed, on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9.

Points which merit consideration

1. The amount mentioned in this sub-rule, unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.
2. If the manufacturer of goods or the provider of output service fails to pay the amount payable under this sub-rule, it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.
3. In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, “following month” and “month of March” occurring in sub-rule (7) shall be read respectively as “following quarter” and “quarter ending with the month of March.

(ix) Amendments in rule 6-Obligation of manufacturer or producer of final products and a provider of taxable service

Rule 6 has undergone major changes vide *Notification No. 27/2010 CE(NT) dated 01.07.2010*, *Notification No. 21/2010 CE (NT) dated 18.05.2010* and *Notification No. 3/2011-C.E. (N.T.) dated 1-3-2011*.

Amended rule 6 provides as follows:-

(1) No CENVAT credit on inputs/input services used in manufacture of exempted goods/for provision of exempted services [Sub-rule(1)]

The CENVAT credit shall not be allowed on:-

(i) such quantity of input used in/in relation to the manufacture of exempted goods or for provision of exempted services

or

(ii) input service used in/in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services

except in the circumstances mentioned in sub-rule (2).

CENVAT credit available in respect of the goods removed without payment of duty by job worker under rule 12AA of the Central Excise Rules, 2002

The CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

Since, as per rule 12AA, the liability of payment of duty has been cast on the principal manufacturer, goods are cleared by a job-worker without payment of duty. However, CENVAT credit on the inputs used in the manufacture of such goods shall not be denied.

(2) CENVAT credit on inputs/input services allowed in case of maintenance of separate accounts [Sub-rule (2)]

Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts in respect of the following -

(a) Receipt, consumption and inventory of following INPUTS–

(i) Exempted goods and services

- Inputs used in or in relation to the manufacture of exempted goods.
- Inputs used for the provision of exempted services.

(ii) Dutiable goods and taxable services

- *Inputs used in or in relation to the manufacture of dutiable final products excluding exempted goods.*
- *Inputs used for the provision of output services excluding exempted services*

and

(b) Receipt and use of following INPUT SERVICES—

(i) Exempted goods and services

- Input services used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal.
- Input services used for the provision of exempted services.

(ii) Dutiable goods and taxable services

- *Input services used in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal.*
- *Input services used for the provision of output services excluding exempted services.*

and shall take CENVAT credit only on inputs under sub-point (ii) of point (a) and input services under sub-point (ii) of point (b) above.

(3) Options in case of non-maintenance of separate accounts [Sub-rule(3)]

Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods/the provider of output service, opting not to maintain separate accounts, shall follow any one of the following options, as applicable to him, namely:-

(i) Option to pay 5% of value of exempted goods/services [Clause (i)]

The manufacturer of goods/the provider of output service has an option to pay the following amount:-

Particulars	Amount (Rs.)
5% of value of the exempted goods and/or exempted services	xxxx
Less: Duty of excise, if any, paid on the exempted goods	xxxx
Amount payable under rule 6(3)(i)	xxxx

5% of the exempted value of the service to be paid in case of exempted services that are partially taxed with no facility of credits

However, if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be 5% of the value so exempted.

For example, if the abatement on certain service is 60%, the amount required to be paid shall be 3% (5% of 60) of the full value of the exempted service.

(ii) Option to pay amount determined under sub-rule (3A) [Clause (ii)]

The manufacturer of goods/the provider of output service has an option to pay an amount as determined under sub-rule (3A).

(iii) Option to maintain separate accounts only in respect of inputs and payment of amount under sub-rule (3A) in respect of input services [Clause(iii)]

The manufacturer of goods/the provider of output service has an option to:-

(i) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a)

and

(ii) pay an amount as determined under sub-rule (3A) in respect of input services.

However, the provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment.

Points which merit consideration

1. If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.
2. It is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services.
3. No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.

(4) Method of computation of amount payable under sub-rule 3(ii) [Sub-rule (3A)]

For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely :-

(a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-

(i) name, address and registration No. of the manufacturer of goods or provider of output service;

(ii) date from which the option under this clause is exercised or proposed to be exercised;

(iii) description of dutiable goods or taxable services;

(iv) description of exempted goods or exempted services;

(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(b) the manufacturer of goods or the provider of output service shall, determine and pay, provisionally, for every month,-

(i) the amount equivalent to CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, denoted as A;

(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional)= (B/C) multiplied by D, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods [and their clearance upto the place of removal] or provision of exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month;

(c) the manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely :-

(i) the amount of CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods, denoted as H;

(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services = (J/K) multiplied by L, where J denotes the total value of exempted services provided during the financial year, K denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the financial year and L denotes total CENVAT credit taken on inputs during the financial year minus H;

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods [and their clearance upto the place of removal] or provision of exempted services = (M/N) multiplied by P, where [M] denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, [1][N] denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and P denotes total CENVAT credit taken on input services during the financial year;

(d) the manufacturer of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per condition (c) and the aggregate amount determined and paid as per condition (b), on or before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the amount paid;

(e) the manufacturer of goods or the provider of output service, shall, in addition to the amount short-paid, be liable to pay interest at the rate of twenty-four per cent. per annum from the due date, i.e., 30th June till the date of payment, where the amount short-paid is not paid within the said due date;

(f) where the amount determined as per condition (c) is less than the amount determined and paid as per condition (b), the said manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount;

(g) the manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per condition (d) and (f) respectively, the following particulars, namely :-

(i) details of CENVAT credit attributable to exempted goods and exempted services, monthwise, for the whole financial year, determined provisionally as per condition (b),

(ii) CENVAT credit attributable to exempted goods and exempted services for the whole financial year, determined as per condition (c),

(iii) amount short paid determined as per condition (d), alongwith the date of payment of the amount short-paid,

(iv) interest payable and paid, if any, on the amount short-paid, determined as per condition (e), and

(v) credit taken on account of excess payment, if any, determined as per condition (f);

(h) where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as prescribed in condition (b), due to reasons that no dutiable goods were manufactured and no taxable service was provided in the preceding financial year, then the manufacturer of goods or the provider of output service is not required to determine and pay such amount provisionally for each month, but shall determine the CENVAT credit attributable to exempted goods or exempted services for the whole year as prescribed in condition (c) and pay the amount so calculated on or before 30th June of the succeeding financial year.

(i) where the amount determined under condition (h) is not paid within the said due date, i.e., the 30th June, the manufacturer of goods or the provider of output service shall, in addition to the said amount, be liable to pay interest at the rate of twenty four per cent. per annum from the due date till the date of payment.

(5) Banking company & financial institution (including NBFC) required to pay 50% of credit availed [Sub-rule (3B)]

Notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial institution including a non-banking financial company (NBFC), providing taxable service specified in sub-clause (zm) of clause (105) of section 65 of the Finance Act, shall pay for every month an amount equal to 50% of the CENVAT credit availed on inputs and input services in that month.

(6) Providers of service of life insurance or management of ULIP required to pay 20% of credit availed [Sub-rule (3C)]

Notwithstanding anything contained in sub-rules (1), (2), (3) and (3B), a provider of output service providing taxable services as specified in sub-clauses (zx) and (zzzzf) of clause (105) of section 65 of the Finance Act, shall pay for every month an amount equal to 20% of the CENVAT credit availed on inputs and input services in that month.

In respect of the aforesaid amendment, *D.O.F.No.334/ 3/2011-TRU* clarifies as follows:-

A substantial part of the income of a bank or a life insurance company is from investments or by way of interest in which a number of inputs and input services are used. There have been difficulties in ascertaining the amount of credit flowing into earning these amounts. Thus a banking company or a financial institution, including NBFC, providing banking and financial services are being obligated to pay an amount equal to 50% of the credit availed. In case of services relating to life insurance or management of ULIPs, such amount will be equal to 20% of credit availed. Other options of payment of amount under rule 6 shall not be available for these taxpayers.

(7) Payment under sub-rule (3) deemed to be CENVAT credit not taken for the purpose of exemption notification [Sub-rule (3D)]

Payment of an amount under sub-rule (3) shall be deemed to be CENVAT credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT credit of inputs and input services shall be taken.

"Value" for the purpose of sub-rules (3) and (3A)

(a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made thereunder or, as the case may be, the value determined under section 3, 4 or 4A of the Excise Act, read with rules made thereunder;

(b) in the case of a taxable service, when the option available under sub-rules (7), (7B) or (7C) of rule 6 of the Service Tax Rules, 1994, or the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 has been availed, shall be the value on which the rate of service tax under section 66 of the Finance Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed; or

(c) in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or 10% of the cost of goods sold, whichever is more.

Points which merit consideration

1. The amount mentioned in sub-rules (3), (3A), (3B) and (3C), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.
2. If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rule (3), (3A), (3B) and (3C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.
3. In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, "following month" and "month of March" occurring in sub-rules (3) and (3A) shall be read respectively as "following quarter" and "quarter ending with the month of March.

(8) CENVAT credit not allowed on capital goods used exclusively in manufacture of exempted goods/for provision of exempted services [Sub-rule (4)]

No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods/in providing exempted services.

However, CENVAT credit in respect of the capital goods used in the manufacture of the exempted final products of an SSI unit shall be allowed.

Note: An SSI unit can avail the CENVAT credit of the capital goods used exclusively in manufacture of the exempted final product, but can be utilised for payment of duty on clearances exceeding Rs. 150 lakh.

(9) Provisions of sub-rule (1) to (4) not applicable in certain cases [Sub-rule (6)]

The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable certain cases. In certain cases, although the final products are removed without payment of duty, CENVAT credit on inputs/capital goods/input services used in the manufacture of such final products shall be allowed. Such cases are as follows:-

(i) Clearances to unit/developer of SEZ

The excisable goods cleared to a unit in a special economic zone (SEZ) or to a developer of a special economic zone for their authorized operations without payment of duty.

(ii) Clearances to 100% EOU

The excisable goods cleared to a hundred percent export-oriented undertaking (100% EOU) without payment of duty.

(iii) Clearances to EHTP/STP

The excisable goods cleared to a unit in an Electronic Hardware Technology Park (EHTP) / Software Technology Park (STP) without payment of duty.

(iv) Goods supplied to the UN/International organization

The excisable goods supplied, without payment of duty, to the United Nations (UN) or an international organization for their official use or supplied to projects funded by them exempted under *Notification No. 108/95-CE dated 28.08.1995.*

(iva) Goods supplied to diplomatic missions/consular missions etc.

The excisable goods supplied, without payment of duty, for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of *Notification No. 6/2006-CE dated 01.03.2006*.

(v) Export under bond

The excisable goods cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002 without payment of duty.

(vi) Gold/silver (falling within Chapter 71)

Gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting.

(vii) Specifed goods exempt from import duty and CVD

All goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied, —

(a) against International Competitive Bidding; or

(b) to a power project from which power supply has been tied up through tariff based competitive bidding; or

(c) to a power project awarded to a developer through tariff based competitive bidding,

in terms of *Notification No. 6/2006-CE dated 03.03.2006*.

(10) Provision of services, without payment of duty, to a unit/developer of SEZ [Sub-rule (6A)]

The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a Unit in a Special Economic Zone (SEZ) or to a Developer of a Special Economic Zone for their authorised operations.

Note: Sub-rule (5) of rule 6 has been omitted vide Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011.

(x) Amendments in rule 9-Documents and accounts

(a) Sub-rule (1)

Sub-rule (1) enumerates the documents on the basis of which the CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be. Clause (bb) inserted prescribes the following additional document to be furnished:-

A supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax.

The aforesaid amendment is effective from 01.04.2011.

[Notification No. 13/2011-C.E. (N.T.) dated 31.03.2011]

(b) Proviso to sub-rule (7)-SSI required to file the return within 10 days of the close of the quarter

Prior to Amendment

Earlier, proviso to rule 9(7) of the CENVAT Credit Rules, 2004 required that SSI shall file a quarterly return in the form specified, by notification, by the Board within *twenty* days after the close of the quarter to which the return relates.

However, as per clause (a) of the second proviso to rule 12(1), SSI is required to file a quarterly return of production and removal of goods within *ten* days after the close of the quarter to which the return relates.

Amendment made by *Notification No. 3/2011-C.E. (N.T.) dated 1-3-2011*

In order to remove the anomaly, with effect from 01.03.2011, the said proviso has been amended so as to provide that SSI shall file a quarterly return in the form specified, by notification, by the Board within *ten* days after the close of the quarter to which the return relates.

(c) Proviso to sub-rule (8)

With effect from 01.06.2011, the quarterly return of CENVATABLE invoices submitted by the first/second stage dealer under rule 9(8) of the CENVAT Credit Rules, 2004 shall be filed electronically unconditionally.

[Notification No. 21/2010 CE (NT) dated 18.05.2010]

(xi) ER-5 and ER-6 to be filed electronically if excise duty of Rs.10,00,000 or more is paid in the preceding financial year [Rule 9A]

With effect from 01.06.2010, the CENVAT Credit Rules, 2004 have been amended to provide that the following statements/returns shall be filed electronically if the manufacturer of final products has paid total excise duty of Rs.10,00,000 or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year:

(i) Information relating to principal inputs - ER-5 [Rule 9A(1) of the CENVAT Credit Rules, 2004]

(ii) Monthly return of receipt and consumption of each of principal inputs - ER-6 [Rule 9A(3) of the CENVAT Credit Rules, 2004]

[Notification No. 21/2010 CE (NT) dated 18.05.2010]

CLARIFICATIONS

1. Clarifications on various issues arising out of Budget 2011 amendments

The CENVAT Credit Rules 2004 were amended along with the Budget 2011 announcements vide *Notification 3/2011-CE (NT) dated 1.3.2011*. A few changes were further effected vide *Notification 13/2011-CE (NT) dated 31.3.2011*. Accordingly the following clarifications are presented on few issues in a tabular format:-

S.No.	Issue	Clarification
1	Can credit of capital goods be availed of when used in manufacture of dutiable goods	As per Rule 6(4) no credit can be availed on capital goods used exclusively in manufacture of

	on which benefit under *Notification 1/2011- CE* is availed or in provision of a service whose part of value is exempted on the condition that no credit of inputs and input services is taken?	exempted goods or in providing exempted service. Goods in respect of which the benefit of an exemption under *Notification No. 1/2011-CE, dated 01.03.2011* is availed are exempted goods [Rule 2(d)]. Taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service shall be taken are exempted services [Rule 2(e)]. Hence credit of capital goods used exclusively in manufacture of such goods or in providing such service is not allowed.
2	Is the credit of only specified goods and services listed in the definition of inputs and input services not allowed such as goods used in a club, outdoor catering etc, or is the list only illustrative?	The list is only illustrative. The principle is that CENVATcredit is not allowed when any goods and services are used primarily for personal use or consumption of employees.
3	How is the "no relationship whatsoever with the manufacture of a final product" to be determined?	Credit of all goods used in the factory is allowed except in so far as it is specifically denied. The expression "no relationship whatsoever with the manufacture of a final product" must be interpreted and applied strictly and not loosely. The expression does not include any goods used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. Only credit of goods used in the factory but having absolutely no relationship with the manufacture of final product is not allowed. Goods such as furniture and stationary used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit of same is allowed.

4	Is the credit of input services used for repair or renovation of factory or office available?	Credit of input services used for repair or renovation of factory or office is allowed. Services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services.
5	Is the credit of Business Auxiliary Service (BAS) on account of sales commission now disallowed after the deletion of expression "activities related to business"?	The definition of input services allows all credit on services used for clearance of final products upto the place of removal. Moreover activity of sale promotion is specifically allowed and on many occasions the remuneration for same is linked to actual sale. Reading the provisions harmoniously it is clarified that credit is admissible on the services of sale of dutiable goods on commission basis.
6	Can the credit of input or input services used exclusively in trading, be availed?	Trading is an exempted service. Hence the credit of any inputs or input services used exclusively in trading cannot be availed.
7	What shall be the treatment of credit of input and input services used in trading before 1.4.2008?	Trading is an exempted service. Hence credit of any inputs or input services used exclusively in trading cannot be availed. Credit of common inputs and input services could be availed subject to restriction of utilization of credit up to 20% of the total duty liability as provided for in extant Rules.
8	While calculating the value of trading what principle to follow- FIFO, LIFO or one to one correlation?	The method normally followed by the concern for its accounting purpose as per generally accepted accounting principles should be used.
9	Are the taxes and year end discounts to be included in the sale price and cost of goods sold while calculating the value of trading?	Generally accepted accounting principles need to be followed in this regard. All taxes for which set off or credit is available or are refundable/ refunded may not be included. Discounts are to be included.

10	Does the expression "in or in relation" used in Rule 6 override the definition of "input" under Rule 2(k) for determining the eligibility of CENVAT credit?	The definition of "input" is given in Rule 2(k) and Rule 6 only intends to segregate the credits of inputs used towards dutiable goods and exempted goods. While applying Rule 6, the expression "in or in relation" must be read harmoniously with the definition of "inputs".
11	Sub-rules 3B and 3C of rule 6 apply to whole entity or independently in respect of each registration?	The sub-rules 6(3B) and 6(3C) impose obligation on the entities providing banking and financial services (in case of a bank and a financial institution including a non-banking financial company) or life insurance services or management of investment under ULIP service. The obligation is applicable independently in respect of each registration. When such a concern is exclusively rendering any other service from a registered premise, the said rules do not apply. In addition to BoFS and life insurance services if any other service is rendered from the same registered premises, the said rules will apply and due reversals need to be done.
12	Is the credit available on services received before 1.4.11 on which credit is not allowed now? e.g. rent-a-cab service	The credit on such service shall be available if its provision had been completed before 1.4.2011.

[Circular No.943/04/2011-CX dated 29.04.2011]

2. Interest liability arises where CENVAT credit wrongly taken but reversed before utilisation

Earlier, *Circular No. 897/17/2009-CX dated 3-9-2009* had clarified that in light of clear and unambiguous provisions of rule 14 of the CENVAT Credit Rules, 2004, the interest shall be recoverable when credit has been wrongly "taken", even if it has not been utilized.

The said issue has been re-examined. It is clarified that the matter has been conclusively decided by the judgment under *UOI v. Ind-Swift Laboratories Ltd. 2011 (265) E.L.T. 3 (S.C.)* wherein it is held that if the provision of rule 14 is read as a whole, there is no reason to read the word "OR" in between the expressions 'taken or utilized wrongly or has been erroneously refunded' as the word "AND". On the happening of any of the three circumstances, such credit becomes recoverable along with interest. In effect, therefore, the view taken by the Board in circular dated 3-9-09 has now been endorsed by the Apex Court.

[Circular No. 942/3/2011-CX. dated 14-3-2011]

C. OTHER AMENDMENTS

1. Effective rate of duty of 1% on specified items if the CENVAT credit is not availed on inputs/input services

Notification No. 1/2011-C.E. dated 1-3-2011 has withdrawn a number of exemptions from Central excise duty (about 130 items). These include some cases where the rate of duty is Nil by tariff. A nominal duty of 1% *ad valorem has been* imposed on these items with the condition that no credit of the duty paid on input and input services is taken.

2. Rate of interest for delayed payment of duty increased by 5% per annum [Section 11AB]

Prior to amendment

Earlier, the rate of interest notified by the Central Government under section 11AB was 13% per annum vide *Notification No. 66/2003-C.E. (N.T.) dated 12-9-2003.*

Amendment made by *Notification No. 06/2011 CE (NT) dated 01.03.2011*

With effect from 01.04.2011, the said notification has been superseded to fix the rate of interest at 18% per annum.

3. Rate of interest for delayed payment of duty increased by 3% per annum [Section 11AA]

Prior to amendment

Earlier, the rate of interest notified by the Central Government under section 11AA was 15% per annum vide *Notification No. 18/2002-C.E. (N.T.) dated 13-5-2002.*

Amendment made by *Notification No. 05/2011 CE (NT) dated 01.03.2011*

With effect from 01.04.2011, the said notification has been superseded to fix the rate of interest at 18% per annum.

4. Mines engaged in the production/manufacture of specified goods exempt from obtaining registration if the producer/manufacturer of such goods has a centralized billing/accounting system in respect of such goods

Every mine engaged in the production/manufacture of following goods is exempt from obtaining registration where the producer/manufacturer of such goods has a centralized billing/accounting system in respect of such goods produced by different mines and opts for registering only the premises or office from where such centralized billing or accounting is done:-

- Coal, briquettes, ovoids and similar solid fuels manufactured from coal [Chapter heading 2701]
- Lignite, whether or not agglomerated, excluding jet [Chapter heading 2702]
- Peat (including peat litter), whether or not agglomerated [Chapter heading 2703]
- Coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated; retort carbon [Chapter heading 2704]
- Tar distilled from coal, from lignite or from peat and other mineral tars, whether or not dehydrated or partially distilled, including reconstituted tars [Chapter heading 2706]

[Notification No. 10/2011-CE (NT) dated 24.03.2011]

5. Exemption to other units of manufacturers of recorded smart cards when premises from where centralised billing done are registered

Manufacturing units engaged in the manufacture of recorded smart cards falling under sub-heading 8523 have been exempted from obtaining registration if the manufacturer of such goods has a centralized billing or accounting system in respect of such goods manufactured by different manufacturing units and he opts for registering only the premises or office from where such centralized billing or accounting is done.

[Notification No. 14/2011 CE (NT) dated 03.06.2011]

6. Clean Energy Cess levied from 01.07.2010

Clean energy cess announced in the Budget has been levied on coal @ Rs.50 per tonne with effect from 01.07.2010. Exemption has been granted in respect of education cess and secondary higher education cess leviable on such products. Further, exemption has been granted in respect of goods produced or extracted as per traditional and customary rights enjoyed by local tribals in Meghalaya without any license or lease.

The procedures relating to exemption, registration, recovery, demand, interest, refund, offences, penalty etc. in respect of such cess are being governed by the provisions as applicable under the Central Excise Act, 1944 in regard to like matters.

Clean Energy Cess Rules, 2010 have been notified which prescribe the procedures relating to registration, payment of cess, filing of returns, maintenance of records etc. All coal producers would have to register with the designated officer within 30 days and pay cess on the removal of the produce from their mines. The new levy will be paid on the basis of self assessment. The cess should be shown separately in the invoice or bill issued by the producers.

[Notification Nos. 1-6/2010 CE dated 22.06.2010 and Notifications Nos. 28-29/2010 CE dated 22.06.2010]

7. Goods supplied to UN or an international organisation exempted from additional and special additional duty of excise

All goods falling under the Schedule to the Central Excise Tariff Act, when supplied to the United Nations or an international organisation for their official use, have been exempted from the whole of the additional and special additional duty of the excise.

Condition to be satisfied

Above exemption will be available only if the manufacturer produces a certificate before the jurisdictional Assistant /Deputy Commissioner of Central Excise from the United Nations or the international organisation that the goods are intended for such use.

Meaning of international organization
"International organisation" means an international organisation to which the Central Government has declared, in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947, that the provisions of the Schedule to the said Act shall apply.

[Notification No. 33/2010 CE dated 19.10.2010]

8. Relaxation from brand name restriction under the SSI exemption scheme extended to all packing materials

Prior to amendment

Earlier, SSI exemption was available to certain *specified* packing materials even if they bear the brand name of others.

Amendment made by *Notification No. 24/2010-CE dated 29.04.2010 and Notification No. 28/2011 dated 28.03.2011*

Now, SSI exemption is available in case the specified goods are in the nature of packing materials and are meant for use as packing material by or on behalf of the person whose brand name they bear even if they bear the brand name of others.

For the removal of doubts, it is hereby clarified that "packing material" includes labels of all kinds.

D. CLARIFICATIONS

1. Cost of return fare of vehicles not to be added for determining assessable value

Circular No. 634/34/2002-CX dated 1st July 2002 as amended *inter alia* clarified that cost of return fare of vehicles was to be included in the assessable value of the excisable goods. The clarification to this extent has been withdrawn and it has been re-clarified that cost of return fare of vehicles is not required to be added for determining value. This clarification has been issued in view of the Tribunal's decisions in case of *DCW Ltd. v. CCE [2007 (217) ELT 541 (Mad.)]* and *Haldia Petrochemicals Limited v. CCEx. Haldia [2009 (233) E.L.T. 344 (Tri. - Kolkata)}*

[Circular No. 923/13/2010 – CX dated 19.05.2010]

2. **Pre-delivery Inspection charges and after-sale service charges collected by the dealers to be included in the assessable value**

   CBEC, in view of the judgment of the Larger Bench of CESTAT in case of *Maruti Suzuki India Ltd. v. CCE 2010 (257) E.L.T. 226 (Tri. – LB)* has again clarified that Pre-delivery Inspection charges and after-sale service charges collected by the dealers are to be included in the assessable value under section 4 of the Central Excise Act, 1944.

   [Circular No. 936/26/2010-CX. dated 27-10-2010]

3. **Pickling and oiling is not manufacture**

   It has been clarified that the process of pickling and oiling does not amount to manufacture.

   "Pickling is removing surface oxides from metals by chemical or electro chemical reaction" and pickle means "the chemical removal of surface oxides (scale) and other contaminants such as dirt from metal by immersion in an aqueous acid solution." Therefore it can be said that the process of pickling is only a chemical cleaning process to remove scales and dirt from the metal by immersion in chemical solution and does not result in emergence of any new commercially different commodity.

   The Tribunal has also in the case of *Resistance Alloys [1996 (84) ELT 507 (T)] & Bothra Metal Industries [1998 (99) E.L.T. 120 (Tribunal)]* held that the process of pickling being preparatory process to drawing of wire does not amount to manufacture.

   Therefore it has been clarified that mere undertaking the process of oiling and pickling as preparatory steps do not amount to manufacture.

   [Circular No. 927/17/2010-CX dated 24.06.2010]

4. **Polyester Staple Fibre manufactured out of PET scrap and waste bottles is a textile material classifiable under Section XI of the Central Excise Tariff**

   It has been clarified that polyester staple fibre manufactured out of PET scrap and waste bottles is nothing but a textile material and hence will be classified as textile material under heading 55032000 under Section XI and not as article of plastic in Chapter 39.

   [Circular No. 929/19/2010-CX dated 29.06.2010]

5. **Superintendents empowered to adjudicate cases involving duty and/or CENVAT credit upto Rs. 1 Lakh in individual show cause notices**

   Circular No. 752/68/2003-CX dated 01.10.03 as amended has been further amended to confer the power of adjudication on Superintendents for cases involving duty and/or CENVAT credit upto ` 1 Lakh in individual show cause notices. However, they would not be eligible to decide cases which involve excisability of a product, classification, eligibility of exemption, valuation and cases involving suppression of facts, fraud etc. Consequently, the Assistant/Deputy Commissioners are now empowered to adjudicate cases involving duty upto Rs.5 lakh (except the cases where Superintendents are empowered to adjudicate).

   [Circular No. 922/12/ 2010-CX dated 18.05.2010]

6. Exempted goods not to be exported under bond

Notification No. 42/2001-CE (NT) dated 26.06.01 prescribes the procedures and conditions for export without payment of duty under bond.

The said notification has been amended vide ***Notification No. 24/2010-CE (NT) dated 26.05.10*** to provide that goods which are exempted from payment of duty or chargeable to nil rate of duty shall not be allowed to be exported under bond. Since, 100% EOU's are required to export the goods under bond, in terms of Customs and Excise notifications, the exports from 100% EOU's have been specifically excluded from the purview of this amendment.

The rationale behind the amendment made in *Notification No. 42/2001-CE (NT) dated 26.06.01* has been explained vide a circular. As a policy, the Government does not tax exports. There are different methodologies and procedures for refund in different situations. If the goods are exempted, then the department has prescribed a detailed procedure for refund of input taxes through *Notification No. 21/2004-CE (NT) dated 06.09.2004,* wherein a detailed procedure requiring verification of details like manufacturing process, input-output ratio, wastages etc., by the departmental officer is prescribed. The reason for the same is that in case of exempted goods, the department does not exercise control. In order to avoid such detailed verification and scrutiny by the department for claiming of refund of input taxes, some of the exporters were exporting the exempted goods under bond and claiming refund under rule 5 of the CENVAT Credit Rules, 2004, though a bond is executed only when goods are liable for payment of excise duty. If there is no excise duty then there is no question of exporting under bond. This was the reason for amending *Notification No. 42/2001-CE (NT) dated 26.06.01* in the above manner.

[Circular No. 928/18/2010-CX dated 28.06.2010]

7. Goods cleared from an EOU for sale in DTA, when actual sale transaction does not take place at the time of clearance but on a subsequent date, to be valued by sequential application of Rules 3 to 9 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007

The value of goods cleared from a 100% Export Oriented Undertaking to a depot from where the sale thereof to Domestic Tariff Area is effected through consignment agents will have to be determined by sequential application of Rules 3 to 9 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007.

The same view has been expressed by the CESTAT in following cases:-

(a) Endress Hauser Flowtec (I) Pvt Ltd. [2009 (237) ELT 598 (T)]

(b) Morarjee Brembana Ltd. [2003 (154) ELT 500 (T)]

(c) Uniworth Textile Ltd. [2009 (244) ELT 401 (T)]

The earlier clarification issued vide *Circular No 268/85-CX.8 dated 29. 09.1994* clarifying that valuation of goods in such situations will have to be done in accordance with the Rule 8 of the Customs Valuation Rule (Determination of Price of Imported Goods), 1988 as it existed then has been withdrawn.

[Circular No. 933/23/2010 CX dated 16.08.2010]

8. Textiles and textile articles — No option to pay duty when full exemption available

Issue	Clarification
During the period between 07.12.2008 and 06.07.2009, while one notification granted full exemption to certain items of Textile Sector without any condition, another notification prescribed a concessional rate of duty of 4% on these items, with the benefit of CENVAT credit*. The issue is as to whether an assessee can avail the benefit of either of the above said two notifications whichever is beneficial to him or he is bound to avail the unconditional exemption under first notification during the period under dispute in terms of the provisions of section 5A(1A) of the Central Excise Act, 1944?	1. On the basis of the opinion of the Law Ministry, it is clarified that in view of the specific bar provided under section 5A(1A) of the Central Excise Act, 1944, the manufacturer cannot opt to pay the duty under second notification in respect of unconditionally fully exempted goods and he cannot avail the CENVAT credit of the duty paid on inputs. *[Circular No. 937/27/2010-CX. dated 26-11-10]* 2. It is further clarified that in case the assessee pays any amount as excise duty on such exempted goods, the same cannot be allowed as "CENVAT credit" to the downstream units, as the amount paid by the assessee cannot be termed as "duty of excise" under rule 3 of the CENVAT Credit Rules, 2004. 3. The amount so paid by the assessee on exempted goods and collected from the buyers by representing it as "duty of excise" will have to be deposited with the Central Government in terms of section 11D of the Central Excise Act, 1944. 4. Moreover, the CENVAT Credit of such amount utilized by downstream units also needs to be recovered in terms of the rule 14 of the CENVAT Credit Rules, 2004. *[Circular No. 940/1/2011-CX., dated 14-1-2011]*

**Note - Students may note that in the case of ready-made garments and made-up articles bearing a brand name/sold under a brand name, no such option is henceforth available and a duty of 10% is payable regardless of the composition of the item/article.*

II. CUSTOMS

NOTIFICATIONS

1. Extension of time period for filing drawback claim under rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995

Proviso to rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 has been substituted with a new proviso. Rule 5(1) provides that a claim for drawback shall be filed within three months from the date on which an order permitting clearance and loading of goods for exportation is made by proper officer of customs.

The new proviso lays down that the said period of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fees of 1% of the FOB value of exports or Rs. 1000/- whichever is less and a further period of six months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or Rs. 2000/- whichever is less.

[Notification No. 48/2010 Cus. (N.T.) dated 17.06.2010]

2. Amendments in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995

(a) Change in time periods available under rules 6, 7, 15 and 16A

Following amendments have been made in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995:

(i) The time period for the following has been extended from sixty days to three months:

(a) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback [Rule 6].

(b) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback where the amount or rate of drawback is low [Rule 7].

Further, the aforesaid periods of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fees of 1% of the FOB value of exports or Rs. 1000/- whichever is less and a further period of six months by Commissioner of Central Excise/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or Rs. 2000/- whichever is less.

(ii) The extended period of nine months for filing a supplementary claim under rule 15 will now be available on making an application accompanied with a fees of 1% of the FOB value of exports or Rs. 1000/- whichever is less. Further, the said period may be extended by six months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or Rs. 2000/- whichever is less [Rule 15].

(iii) The time period available to an exporter for producing evidence of realisation of export proceeds, where the drawback has been recovered by the Government due to non-realisation of the export proceeds by the exporter, has been reduced from one year to three months from the date of realisation of sale proceeds provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India [Rule 16A].

Further, the aforesaid period of three months may be extended by a period of nine months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 1% of the FOB value of exports or Rs. 1000/- whichever is less.

[Notification No. 49/2010 Cus. (N.T.) dated 17.06.2010]

(b) In case of non-realization of sale proceeds within prescribed time, drawback not to be recovered under specified circumstances/conditions [Rule 16A]

Prior to Amendment

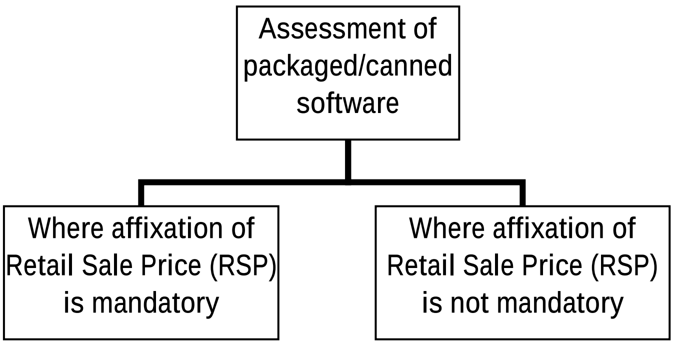
The drawback granted to an exporter or a person authorised by him shall be recovered from him if the sale proceeds in respect of such export goods have not been realised in India within the period allowed under the Foreign Exchange Management Act, 1999, including any extension of such period [Sub-rule (1) of rule 16A].

Amendment made by *Notification No. 30/2011-Cus. (N.T.) dated 11-4-2011*

Sub-rule (1) has been amended to provide that such drawback shall not be recovered under circumstances or conditions specified in sub-rule (5). Further, sub-rule (5) provides as follows-

Where sale proceeds are not realised by an exporter within the period allowed under the Foreign Exchange Management Act, 1999, but such non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer, the amount of drawback paid to the exporter or the claimant shall not be recovered.

3. Applicability of indirect taxes on packaged/canned software



A. Assessment of packaged software where affixation of Retail Sale Price (RSP) is mandatory under the Standards of Weights and Measures Act, 1976

(i) Excise duty

MRP based valuation of the packaged or canned software

Packaged or canned software is to be valued on the basis of MRP* under section 4A of the Central Excise Act, 1944 for the purpose of charging excise duty. An abatement of 15% of retail sale price is allowed while arriving at the assessable value.

[Notification No. 30/2010-C.E. (N.T.) dated 21-12-2010]

**Note: Such retail sale price declared will be combined values of the software and licenses (right to use) [clarified vide Circular No. 15/2011-Cus. dated 18.03.2011].*

(ii) Custom duty

Packaged or canned software is to be valued on the basis of MRP under section 4A of the Central Excise Act, 1944 for the purpose of charging additional duty of customs under section 3(1) of the Customs Tariff Act.

**Note: Such retail sale price declared will be combined values of the software and licenses (right to use) [clarified vide Circular No. 15/2011-Cus. dated 18.03.2011].*

(iii) Service tax

Exemption to packaged/canned software from service tax on specified taxable service when excise/customs duty is paid

Notification No. 53/2010-S.T. dated 21.12.2010 has been issued to exempt the service of providing the right to use the packaged or canned software (hereinafter referred to as 'said goods') under 'information technology software services' from the whole of service tax.

Conditions to be fulfilled:-

(i) the value of the said goods domestically produced/imported, for the purposes of excise duty or countervailing duty (if imported) has been determined on the basis of MRP valuation (i.e. under section 4A of the Central Excise Act, 1944) and

(ii) (a) In case of domestic production: the appropriate duties of excise on such value have been paid by the manufacturer, duplicator or the person holding the copyright to such software, as the case may be, in respect of software manufactured in India; or

(b) In case of import: the appropriate duties of customs including the additional duty of customs on such value, have been paid by the importer in respect of software which has been imported into India.

(iii) a declaration made by the service provider on the invoice relating to such service that no amount in excess of the retail sale price declared on the said goods has been recovered from the customer.

Note: Notification No. 02/2010 and 17/2010 have been rescinded by Notification No. 51/2010 and 52/2010 respectively.

Meaning of important terms
(i) Appropriate duties of excise
It means the duties of excise leviable under section 3 of the Central Excise Act, 1944 and a notification, for the time being in force, issued in accordance with the provision of sub-section (1) of section 5A of the said Central Excise Act; and
(ii) Appropriate duties of customs
It means the duties of customs leviable under section 12 of the Customs Act, 1962 and any of the provisions of the Customs Tariff Act, 1975 and a notification, for the time being in force, issued in accordance with the provision of section 25(1) of the said Customs Act.

B. Assessment of packaged software which does not require affixation of Retail Sale Price (RSP) under the Standards of Weights and Measures Act, 1976

(i) Excise duty

Exclusion of consideration for transfer of right to use such packaged/canned software from the assessable value

Such packaged/ canned software, on which affixation of retail sale price is not required under the Standards of Weights and Measures Act, 1976, the assessment would be based on the value determined under section 4 of the Central Excise Act, 1944. Further, the excise duty will be charged only on the value, excluding the value representing consideration for transfer of right to use such packaged/canned software.

[Notification No. 14/2011-C.E. dated 1-3-2011]

(ii) Custom duty

Exclusion of consideration for transfer of right to use such packaged/canned software from the assessable value

Such packaged/ canned software, on which affixation of retail sale price is not required under the Standards of Weights and Measures Act, 1976, additional duty of customs under section 3(1) of the said Customs Tariff Act would be charged on the value excluding the value representing consideration for transfer of right to use such packaged/canned software.

[Notification No. 25/2011-Cus. dated 1-3-2011]

(iii) Service tax

Service tax would be charged under the category of information technology software service on the value representing consideration for transfer of right to use such packaged/canned software.

Meaning of packaged or canned software "Packaged software or canned software" means a software developed to meet the needs of variety of users, and which is intended for sale or capable of being sold off the shelf.

4. Rate of interest for delayed payment of duty increased by 5% per annum [Section 28AB]

Prior to amendment

Earlier, the rate of interest notified by the Central Government under section 28AB was 13% per annum vide *Notification No. 76/2003-Cus. (N.T.) dated 12-9-2003.*

Amendment made by *Notification No. 18/2011-Cus. (NT) dated 01.03.2011*

With effect from 01.04.2011, the said notification has been superseded to fix the rate of interest at 18% per annum.

5. Rate of interest for delayed payment of duty increased by 3% per annum [Section 28AA]

Prior to amendment

Earlier, the rate of interest notified by the Central Government under section 28AA was 15% per annum vide *Notification No. 26/2002-Cus. (N.T.) dated 13-5-2002.*

Amendment made by *Notification No. 17/2011-Cus. (NT) dated 01.03.2011*

With effect from 01.04.2011, the said notification has been superseded to fix the rate of interest at 18% per annum.

CLARIFICATIONS

1. Clarification on determination of assessable value in case of sale of warehoused goods before being cleared for home consumption

The following issue has been clarified:

Issue: Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption should be taken as the price at which the original importer has sold the goods, before a Bill of Entry for home consumption is filed?

Clarification: With effect from 10.10.2007, section 14 of the Customs Act has been amended to provide that the value of the imported goods shall be the transaction value of goods. Transaction value is defined to mean the price actually paid or payable for the goods *when sold for export to India* for delivery at the time and place of importation. In the instant case, the goods are sold after being warehoused, therefore, it cannot be said that export of goods is not complete and thus the sale of warehoused goods cannot be considered a *sale for export to India*. Hence, the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per section 14.

However, as per erstwhile section 14, applicable to period prior to October 2007, the value of the imported goods is deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, or as the case may be, *in the course of international trade.* In this case also, the sale of imported goods made after warehousing cannot be considered to have been made *in the course of international trade* and hence, the price at which such sale takes place cannot be the assessable value in terms of erstwhile section 14.

[Circular No.11/2010 dated 03.06.2010]

2. Clarification regarding classification of paper licenses of software and PUK cards

Issue: Whether documents of title for IT software/documents that enable the transfer of the right to use such software at the time of its sale i.e. paper licenses of software and PUK cards, when imported without the packaged software should be classified under Customs Tariff Heading 8523 i.e. the heading applicable to IT software?

Clarification: The documents conveying the right to use software by themselves do not satisfy the definition of information technology software provided in the supplementary note to Chapter 85 and therefore, do not qualify for classification under this tariff item because they do not contain any representation of instructions, data, sound or image recorded in a machine readable form, which is capable of being manipulated or providing interactivity to a user.

Classification of paper licenses of software

On the other hand, tariff item 49070030 of heading 4907 refers directly to “Documents of title conveying the right to use Information Technology software”. Hence, as per rule 1 of the Rules for the interpretation of the Tariff Schedule, such paper licenses which are essentially documents conveying the right to use such IT software, merit classification under CTH 49070030.

Classification of PUK cards

PUK cards are not documents of title conveying the right to use Information Technology software per se, but are actually printed matter containing numbers which when entered; enable the importer to access right to use such IT software. Hence, they are liable to classified under CTH 4911 as “other printed matter”.

Documents of title for IT software/documents that enable the transfer of the right to use such software at the time of its sale
There are frequent imports of such documents *without any accompanying software*. Such packages do not contain software, but consist of paper licenses or PUK (Personal Unlocking Key, usually in the form of a scratch card of paper board or plastic) that are used to convey the right to use such IT software. The software in these cases could be freely downloadable or loaded by the OEM supplier under an arrangement with the software company as pre-loaded trial version of software on the computer system requiring the customer to purchase license or PUK after the trial period. Typically, these licenses are used either to authorize additional uses against a sale of IT software that has already taken place in the past or to service transactions where the connected software is downloaded electronically by the customer.

[Circular No. 15/2011-Cus. dated 18.03.2011]

3. Adjudicating powers of the Customs Officers revised

CBEC has revised the monetary limits for adjudication of cases by different grades of customs officers as under:

(a) Adjudication of cases where show cause notices are issued under section 28 of the Customs Act, 1962:

Level of Adjudication officer	Nature of cases	Amount of duty involved
Customs Commissioner	All cases	Without limit
Additional Commissioner/Joint Commissioner	All cases	Upto ₹ 50 lakhs
Assistant Commissioner/Deputy Commissioner	All cases	Upto ₹ 5 lakhs

(b) Adjudication of cases under rule 16 of the Customs, Central Excise and Service Tax Drawback Rules, 1995

Level of Adjudication Officer	Amount of Drawback
(i) Simple demand of erroneously paid drawback	
Assistant/Deputy Commissioner of Customs	Without any limit
(ii) Cases involving collusion, wilful misstatement or suppression of facts etc.	
Additional/Joint Commissioner of Customs	Without any limit
Deputy/Assistant Commissioner of Customs	Upto ₹ 5 lakhs

(c) Adjudication of Export Promotion Schemes i.e. DEPB / Advance Authorization / DFIA / Reward Schemes etc.

Level of Adjudication officer	Duty Incentive amount
Commissioner of Customs	Without any limit.
Additional/Joint Commissioner of Customs	Upto ₹ 50 lakhs.
Deputy/Assistant Commissioner of Customs	Upto ₹ 5 lakhs.

[Circular No. 24/2011-Cus dated 31.05.2011]

III. SERVICE TAX

New services and amendments in the existing services to be effective from 1st May, 2011

The new services introduced by the Finance Act, 2011 and the amendments made in the existing services vide the Finance Act, 2011 would be effective from 01.05.2011.

[Notification No. 29/2011 ST dated 25.04.2011]

A. EXEMPTIONS/AMENDMENTS IN/WITHDRAWALS OF EXISTING EXEMPTIONS

1. Transport of passengers by air service

(a) Air travel of specified persons exempted

With effect from 01.07.2010, air transport of following persons has been exempted from service tax:

(a) persons in transit in the course of international journey who have not passed through immigration;

(b) crew members on board the aircraft.

[Notification No. 25/2010 ST dated 22.06.2010]

(b) Air journeys originating/terminating in North-Eastern States exempted

With effect from 01.07.2010, air transport of passengers embarking on a journey originating or terminating in an airport located in any of the North-Eastern States (Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura) or at Baghdogra located in West Bengal have been exempted from service tax.

[Notification No. 27/2010 ST dated 22.06.2010]

(c) Specified rates of service tax for transport of passengers by air

The rates of service tax on travel by air are as follows:-

Type of Travel		Service tax leviable at the rate of	
		01.07.2010-31.03.2011	01.04.2011 onwards
		Notification No. 26/2010 ST dated 22.06.2010	*Notification No. 04/2011-ST dated 01.03.2011*
Domestic	Economy	(a) 10% of the gross value	(a) 10% of the gross value

Travel	Class	of the ticket or (b) ₹ 100 per journey whichever is less	of the ticket or (b) ₹ 150 per journey whichever is less
	Other than Economy Class	(a) 10% of the gross value of the ticket or (b) ₹ 100 per journey whichever is less	10% (Standard rate)
International Travel	Economy Class	(a) 10% of the gross value of the ticket or (b) ₹ 500 per journey whichever is less	(a) 10% of the gross value of the ticket or (b) ₹ 750 per journey whichever is less
	Other than Economy Class	10% (Standard rate)	10% (Standard rate)

These special provisions apply only where excise duty credit has not been taken on inputs used for providing such taxable service.

Meaning of economy class

Economy class in an aircraft means, —

(i) where there is more than one class of travel: the class attracting the lowest standard fare; or

(ii) where there is only one class of travel: that class.

2. Construction services

(a) Construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana exempted

With effect from 01.07.2010, the construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana has been exempted from service tax.

[Notification No. 28/2010 ST dated 22.06.2010]

(b) Abatement of 75% for construction services

With effect from 01.07.2010, service tax is payable on 25% of the gross amount charged in case of “commercial or industrial construction services” and “construction of complex services” provided the gross amount charged includes the value of goods and materials supplied/provided/used for providing the taxable service and the cost of land. This exemption is not available in cases where the taxable services provided are only completion and finishing services.

[Notification No. 29/2010 ST dated 22.06.2010]

3. Port/Other Port/Airport services

(a) Specified services provided within a port or an airport exempted

A negative list of services provided within a port or an airport has been notified with effect from 01.07.2010. In other words, the following services provided within a port or an airport have been exempted from service tax with effect from 01.07.2010:

(i) repair of ships/boats/vessels owned by the Government (including Navy or Coast Guard or Customs) but excluding Government owned Public Sector Undertakings;

(ii) repair of ships/boats/vessels where such repair amounts to 'manufacture' as per section 2(f) of the Central Excise Act, 1944;

(iii) supply of water;

(iv) supply of electricity;

(v) treatment of persons by a dispensary, hospital, nursing home or multi-specialty clinic (except cosmetic or plastic surgery service);

(vi) services provided by a school or centre to provide formal education other than those services provided by commercial coaching or training centre;

(vii) services provided by fire service agencies

(viii) pollution control services.

[Notification No. 31/2010 ST dated 22.06.2010]

(b) Exemption to commercial or industrial construction of wharves, quays, docks etc. within the port

With effect from 01.07.2010, commercial or industrial construction when provided wholly within the port or other port, for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways has been exempted from service tax.

[Notification No. 38/2010 ST dated 28.06.2010]

(c) Abatements available to specified services to continue when provided wholly within a port/airport

The following services when provided wholly within an airport or a port or other port will continue to be eligible for the abatements available to them under *Notification No.1/2006 ST dated 01.03.2006*:

(a) Renting of a cab service

(b) Erection, Commissioning & Installation Service

(c) Goods Transport Agency service

(d) Commercial or Industrial construction service

(e) Construction of complex service

(f) Transport of goods by rail service

Reason for the amendment

Definitions of port, other port and airport services were amended vide the Finance Act, 2010 so as to provide *inter alia* that all services provided entirely within the airport/port premises would be classified under these services. This would have led to the situation where abatements and exemptions presently available under individually defined taxable services would get denied when provided within airport or port merely as they would now be taxable under newly introduced taxable services. This Notification has been issued to take care of such situations.

[Notification No. 40/2010 ST dated 28.06.2010 as corrected by corrigendum dated 30.06.2010 and Notification No. 43/2010 ST dated 30.06.2010]

(d) Exemptions available to cargo handling agency and storage or warehouse keeper in respect of agricultural produce, air transport of export goods etc. to continue when provided wholly within port/airport

With effect from 01.07.2010, the following services when provided wholly within the port or other port or airport have been exempted from payment of service tax:

(i) taxable service provided by a cargo handling agency in relation to, agricultural produce or goods intended to be stored in a cold storage;

(ii) taxable service provided by storage or warehouse keeper in relation to storage and warehousing of agricultural produce or any service provided for storage of or any service provided by a cold storage;

(iii) taxable service in relation to transport of export goods in an aircraft by an aircraft operator;

(iv) taxable service of site formation and clearance, excavation and earthmoving and demolition and such other similar activities.

Exemptions to these services are already available under their respective category. The above exemption has been provided in view of the classification of these services getting changed when provided wholly within a port or an airport.

[Notification No. 41/2010-ST dated 28.06.2010]

(e) Commercial or Industrial Construction provided wholly within the airport exempt from service tax

With effect from 01.07.2010, commercial or industrial construction when provided wholly within the airport has been exempted from payment of service tax.

The definition of commercial or industrial construction *inter alia* excludes services of such kind provided in respect of airports. On account of the amendment in the definition of airport service, commercial or industrial construction when provided wholly within the airport would be classified as airport service. Therefore, the exclusion to such construction has been provided by way of the above exemption notification.

[Notification No. 42/2010-ST dated 28.06.2010]

(f) Service tax paid on service provided by airports authority to an exporter for export of goods eligible for refund

Service tax paid on certain taxable services that are used in relation to or for export of goods are eligible for refund under *Notification No. 17/2009 ST dated 07.07.2009*. The said Notification covers port service within its ambit but does not include 'airport service'. Such anomaly has been corrected by amending the said Notification so as to include 'airport service' in the list of eligible services under the said refund scheme.

[Notification No. 37/2010 ST dated 28.06.2010]

(g) Exemption to works contract service provided wholly within an airport and classified under section 65(105)(zzm)

Works contract services, when provided wholly within an airport and classified under airport services [Section 65(105)(zzm) of the Finance Act, 1994], have been exempted from the whole of service tax.

[Notification No. 10/2011-ST dated 01.03.2011]

(h) Exemption to works contract service provided wholly within a port/other port

Works contract services, when provided wholly within the port or other port, for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways have been exempted from the whole of service tax.

[Notification No. 11/2011-ST dated 01.03.2011]

4. <u>Business auxiliary services</u>

(a) Taxable services provided for distribution of electricity exempted

Taxable services provided by a distribution licencee, a distribution franchisee, or any other person authorized to distribute power under the Electricity Act, 2003 for distribution of electricity have been exempted from service tax.

[Notification No. 32/2010 ST dated 22.06.2010]

(b) **Service tax payable on transmission and distribution of electricity upto 26th February and 21st June, 2010 respectively not required to be paid**

The Central Government vide the powers conferred by section 11C of the Central Excise Act, 1944 read with section 83 of the Finance Act, 1994 has directed that service tax payable on all taxable services, which was not being levied in accordance with a generally prevalent practice, provided by a person to any other person in relation to:

(a) transmission of electricity is not required to be paid for the period up to 26.02.2010;

(b) distribution of electricity is not required to be paid for the period up to 21.06.2010.

It is important to note here that transmission and distribution of electricity have been exempted from service tax with effect from 27.02.2010 and 22.06.2010 vide *Notification Nos. 11/2010 and 32/2010* respectively.

[Notification No. 45/ 2010-ST dated 20.07.2010]

5. General Insurance services

(a) **Exemption to the general insurance business provided under the Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme**

The General Insurance services provided under the Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture, have been exempted from the whole of the service tax leviable thereon.

[Notification No.58/2010-ST dated 21.12.2010]

(b) **Exemption to the general insurance service provided under "Rashtriya Swasthya Bima Yojna"**

The General Insurance service provided by an insurer carrying on General Insurance Business to any person for providing insurance under the Rashtriya Swasthya Bima Yojana has been exempted from the whole of the service tax.

[Notification No. 07/2011-ST dated 01.03.2011]

6. Transport of goods by air/road/rail service

(a) **Exemption to services of transportation of goods by air/road/rail provided to a person located in India when the goods are transported from a place outside India to a destination outside India**

With effect from 01.04.2011, following taxable services provided to any person located in India have been exempted from the whole of service tax, when the goods are transported from a place located outside India to a final destination which is also outside India:-

(a) Transport of goods by air services

(b) Transport of goods by rail service

(c) Transport of goods by road service

[Notification No. 08/2011-ST dated 01.03.2011]

(b) Exemption to the transport of goods by air service to the extent air freight is included in the customs value of goods

With effect from 01.04.2011, services of transport of goods by air have been exempted from service tax to the extent so much of the value as is equal to the amount of air freight included in the value determined under section 14 of the Customs Act, 1962 or the rules made thereunder for the purpose of charging customs duties.

[Notification No. 09/2011-ST dated 01.03.2011]

(c) Exemption/withdrawal of exemption from service tax on service provided in relation to 'transport of goods by rail'

The exemptions/withdrawal of exemptions with regard to service provided in relation to 'transport of goods by rail' can be summarized as follows:-

Notification No.	Amendment	Effect of amendment
38/2011 ST dated 14.06.2011	Has amended *Notification No. 7/2010 dated 27.02.2010*	Following services also shall now be subject to service tax levy with effect from 1st January, 2012:- (i) Transport of goods by Government railway. (ii) Transport of goods by rail otherwise than in containers.
39/2011 ST dated 14.06.2011	Has amended *Notification No. 8/2010 dated 27.02.2010*	Exemption provided to transport of specified goods by rail shall now be restored with effect from 1st January, 2012.
40/2011 ST dated 14.06.2011	Has amended *Notification No. 9/2010 dated 27.02.2010*	Abatement of 70% of the gross value of the freight charged on goods (other than exempted goods), in case of transportation of goods by rail, shall now be effective from 1st January, 2012.

7. Sponsorship services provided for tournaments/championships organised by specified bodies exempted

With effect from 01.07.2010, the sponsorship services provided for the tournaments or championships organised by the following bodies has been exempted from service tax:

(i) National Sports Federations or Federations affiliated to such National Sports Federations, where the participating teams or individuals represent any District, State or Zone;

(ii) Association of Indian Universities – Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India (for the physically challenged), Special Olympics Bharat (for the mentally challenged);

(iii) Central Civil Services Cultural and Sports Board;

(iv) Indian Olympic Association as part of National Games;

(v) Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme.

[Notification No. 30/2010 ST dated 22.06.2010]

8. Exemption to advance received prior to 01.07.2010 towards new services as introduced by the Finance Act, 2010 and existing services whose scope have been widened by the said Act

Advance payments received prior to 01.07.2010 towards eight new services introduced by the Finance Act, 2010 have been exempted from payment of service tax. Similarly, advances received prior to 01.07.2010 towards activities brought into service tax net on account of expansion of scope of existing services vide the Finance Act, 2010 have also been exempted from payment of service tax. However, such an exemption would not be available to commercial training or coaching services and renting of immovable property service.

For example, service tax would not be payable in case of a domestic air journey performed after 01.07.2010 if the payment for the ticket of such journey has been made prior to 01.07.2010. However, this exemption would be available only if the advance is received by the service provider/ person liable to pay the tax and not by an agent, who in turn transfers such amount to such person after 01.07.2010.

[Notification No.36/2010 ST dated 28.06.2010 as corrected vide corrigendum dated 29.06.2010]

9. Outdoor Catering for Mid-Day Meal Scheme exempted from service tax

Taxable service of outdoor catering provided by a Non Government Organisation registered under any Central Act or State Act, under the centrally assisted Mid-Day Meal Scheme has been exempted from the whole of service tax leviable thereon.

[Notification No. 47/2010 ST dated 03.09.2010]

10. Persons marketing lottery tickets to authorized Distributors/Selling Agents opting for new Composition Scheme exempt from service tax

Persons marketing the lottery tickets, other than the authorized distributors or selling agents, have been exempted from service tax if the distributor or selling agent avails of optional composition scheme notified vide *Notification No. 49/2010 ST dated 08.10.2010* in respect of such lottery during the financial year.

However, the exemption will not be available when such person markets lottery tickets to the distributors or selling agents who have not opted for the above-mentioned composition scheme.

Meaning of distributor or selling agent
Distributor or selling agent means an individual or firm or body corporate or other legal entity under law so appointed by the Organising State through an agreement to market and sell lotteries on behalf of the Organising State [Rule 2(c) of the Lottery (Regulation) Rules, 2010]
and shall include distributor/selling agent authorised by the lottery organising State.

[Notification No. 50/2010 ST dated 08.10.2010]

11. **Exemption to service of management, maintenance or repair of roads extended to bridges, tunnels, dams, airports, railways and transport terminals**

Prior to amendment

The taxable service provided to any person by any other person in relation to management, maintenance or repair of roads was exempt from the whole of the service tax leviable thereon vide *Notification No. 24/2009 ST dated 27.07.2009*

Amendment made by the *Notification No. 54/2010-ST dated 21.12.2010*

The aforesaid exemption has been extended to the service of management, maintenance or repair of bridges, tunnels, dams, airports, railways and transport terminals also.

12. **Exemption to business exhibition held outside India**

The business exhibition service provided by an organiser of business exhibition for holding a business exhibition outside India has been exempted from the whole of the service tax.

[Notification No. 05/2011-ST dated 01.03.2011]

13. **Exemption to works contract service rendered for carrying out construction services under Jawaharlal Nehru Urban Renewable Mission (JNURM) and Rajiv Awaas Yojana**

The taxable service of execution of a works contract provided for the purpose of carrying out-

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

(b) completion and finishing services of new residential complex or part thereof ,

under Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana has been exempted from whole of the service tax.

[Notification No. 06/2011-ST dated 01.03.2011]

14. **Abatement of 25% of the gross amount charged to the transport of coastal goods, goods through National Waterways/ inland water**

Notification No. 01/2006 dated 01.03.2006 has been amended so to provide an abatement of 25% of the gross amount charged for the services provided or to be provided, to any person, by any other person, in relation to transport of-

(i) Coastal goods;

(ii) Goods through national waterway; or

(iii) Goods through inland water.

[Notification No. 16/2011-ST dated 01.03.2011]

15. Exemption to services received by a developer or units of a special economic zone, (refund of service tax paid) - *Notification No. 9/2009-ST dated 03.03.2009* superseded

(A) <u>Eligibility for exemption</u>

The taxable services received by any of the following are eligible for exemption under this notification:-

- a unit located in a Special Economic Zone (hereinafter referred to as SEZ)
- developer of SEZ for the authorized operations

(B) <u>Conditions to be fulfilled</u>

(a) Refund route/upfront exemption

(i) Option not to pay service tax *ab-intio* in case the specified services wholly consumed within the SEZ available only where the specified services are wholly consumed within the SEZ

Service provider/service receiver (reverse charge basis) has the option not to pay the service tax. Hence, under this option, instead of the Unit or Developer claiming exemption by way of refund, service tax may not be paid *ab intio*.

(ii) Refund route available where the specified services are not wholly consumed within the SEZ

Where the specified services received and used for authorised operations are partially consumed within the SEZ and partially outside SEZ, i.e. shared services the exemption shall be provided only by way of refund of service tax paid on the specified services received for the authorised operations in a SEZ. Hence, the option of not paying the service tax *ab-intio* is not available here.

Meaning of wholly consumed
For the purposes of this notification, the expression —
Wholly consumed refer to following taxable services, received by a developer or unit of a SEZ, for the authorised operations, namely:-

(i)	services listed in clause (i) of sub-rule (1) of rule 3 of the Export of Services Rules, 2005 in relation to an immovable property situated within the SEZ; or
(ii)	services listed in clause (ii) of sub-rule (1) of rule 3 of the Export of Services Rules, 2005, as are wholly performed within the SEZ; or
(iii)	services other than those falling under (i) and (ii) above, provided to a Developer or Unit of SEZ, who does not own or carry on any business other than the operations in the SEZ*.

*Clarification of meaning of the expression *'who does not own or carry on any business other than the operations in the SEZ'* which creates a difference between 'standalone' and 'non-standalone' SEZ Unit/Developer

The expression refers to an entity which is carrying out business operations only in SEZ. In other words, the expression does not cover entity which carries out business operations in SEZ and also in DTA. Merely having an office in the DTA for purpose of liaison/business promotion, does not restrict a SEZ Unit from availing benefit extended to a standalone unit.

(b) List of taxable services required to be approved by the Approval Committee

For the purpose of claiming exemption, the Developer or Unit of SEZ shall obtain a list of taxable services as are required for the authorised operations approved by the Approval Committee (hereinafter referred to as the specified services) of the concerned SEZ.

(c) Declaration in case the developer/unit of SEZ not owning/carrying out any business other than SEZ operations

The Developer or Unit of SEZ who does not own or carry out any business other than SEZ operations, shall furnish a declaration to that effect in Form A-1, verified by the Specified Officer of the SEZ, in addition to obtaining list under condition (a) above, for the purpose of claiming exemption.

Clarifications

1. Issue: Does aforesaid condition restricts the non-standalone Units/Developers, from availing upfront exemption for wholly consumed services which fall under category (i) and (ii) of the definition of wholly consumed services?

Clarification: In respect of services of category (i) and (ii) of the definition of wholly consumed services, upfront exemption is made available to all SEZ Units/Developers, who fulfill the conditions of notification.

Only in the case of category (iii), difference is created between standalone and non-standalone SEZ Units/Developers.

2. Issue: For whom and for what purpose, Declaration in Form A-1 is required?

Clarification: Declaration in Form A-1 is required to be produced, to a service provider, to claim upfront exemption (after striking out the inapplicable portion). This is a one-time Declaration. Original Declaration can be retained with the SEZ Unit/Developer for business record or for production to the jurisdictional Central Excise/Service Tax authorities, if need be, for any verification; a copy has to be retained by SEZ Specified Officer; self-attested photocopies of the Declaration can be submitted to service provider to avail upfront exemption, subject to fulfillment of other conditions mentioned in the notification

(d) **Restricted amount of refund in case the specified services are not wholly consumed within the SEZ**

Where the specified services received by Unit or Developer, are not wholly consumed within SEZ, i.e., shared between authorised operations in SEZ Unit and Domestic Tariff Area(DTA) Unit, refund shall be restricted to the extent of the ratio of export turnover to the total turnover for the given period to which the claim relates.

$$\boxed{\text{Maximum refund} = \frac{ST \times ET}{TT}}$$

where

ST stands for service tax paid on specified services used for SEZ authorised operations shared with DTA Unit for the period

ET stands for Export turnover of SEZ Unit for the period

TT stands for Total turnover for the period

<u>Meaning of important terms</u>

For the purposes of condition (d),-

(a) **Total turnover** means the sum total of the value of:-

(i) all output services and exempted services provided, including the value of services exported;

(ii) all excisable and non-excisable goods cleared, including the value of the goods exported;

(iii) bought out goods sold,

during the period to which the invoices pertain and the exporter claims the facility of refund under this notification.

(b) **Turnover of SEZ Unit** means the sum total of the value of:-

(i) final products exported,

(ii) output services exported

during the period of which the invoices pertain and the exporter claims the facility of refund under this notification.

Clarifications

1. Issue: Whether the expression "total turnover" refers to turnover of SEZ Unit or the entity (including DTA and SEZ Unit)?

Clarification: Total turnover includes turnover of DTA Unit and also export turnover of SEZ Unit. This is the way to calculate proportionate refund.

2. Issue: A Developer may not have export turnover; therefore, he cannot get refund of service tax based on the formula provided above for shared services. How can a Developer claim exemption under the notification?

Clarification: Upfront exemption is available for SEZ Developers using services of category (i) and (ii) of the definition of wholly consumed services, irrespective of whether the Developer is standalone or not. As another option, refund route is also available.

In the case of category (iii) services if Developer is standalone, upfront exemption is available. If Developer is not standalone, on service tax paid on category (iii) services, which are exclusively used for the authorised operations in SEZ, he can avail exemption through refund route.

3. Issue: Whether the proportionate amount of service tax paid on shared services that have not been refunded after applying the formula provided above shall be available to the DTA Units of the entity as CENVAT credit?

Clarification: Yes, the proportionate amount of service tax paid on shared services that have not been refunded after applying the formula provided above shall be available to the DTA Units of the entity as CENVAT credit.

(e) Declaration that the specified services have been actually used for the authorized operations

Any Developer or Unit of SEZ claiming the exemption shall declare that the specified services on which exemption and/ or refund is claimed to have been actually used for the authorized operations.

(f) Developer/unit of SEZ claiming refund must actually pay the amount indicated in invoice

The Developer or unit of SEZ claiming the exemption, by way of refund has actually paid the amount indicated in the invoice, bill or as the case may be, challan, including the service tax payable, to the person liable to pay the said tax or the amount of service tax payable under reverse charge, as the case may be, under the provisions of the Finance Act.

(g) No CENVAT credit of service tax paid on the specified services availed

No CENVAT credit of service tax paid on the specified services used for the authorized operations in a SEZ has been taken under the CENVAT Credit Rules, 2004.

(h) **No exemption/refund of service tax paid on specified services claimed under any other notification**

Exemption of service tax paid on the specified services (refund, in case of other than wholly consumed services) used for the authorised operations in a SEZ shall not be claimed except under this notification.

(i) **Maintenance of proper account of receipt and use of the specified services**

The developer or unit of a SEZ, who intends to avail exemption and or refund under this notification, shall maintain proper account of receipt and use of the specified services on which exemption is claimed, for authorised operations in the SEZ.

(C) Procedure for claiming the benefit of the exemption

(a) **Refund claim to be filed by Developer or Unit of a SEZ**

The Developer or Unit of a SEZ, who has paid the service tax under sections 66 of the Finance Act, shall avail the exemption by filling a claim for refund of service tax paid on specified services used for the authorised operations.

(b) **Registered Developer or Unit of a SEZ to file the claim to jurisdictional Assistant/Deputy Commissioner of Central Excise**

The Developer or Unit of a SEZ who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made there under, or the Finance Act, 1994 or the rules made there under, shall file the claim for refund to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the Developer or Unit, as the case may be, in Form A-2.

(c) **Unregistered Developer or Unit of a SEZ to file a declaration in Form A-3 with the jurisdictional Assistant/Deputy Commissioner of Central Excise before filing claim**

The Developer or Unit of a SEZ who is not so registered under the provisions referred to in clause (b), shall, before filing a claim for refund under this notification, file a declaration with the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the Developer or Unit, as the case may be, in Form A-3.

(d) **Allotment of service tax code number within 7 days in Form A-3**

The Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the Developer or Unit of SEZ, referred to in clause (c), within seven days from the date of receipt of the said declaration, in Form A-3.

(e) **Time-limit of one year for filing the refund claim**

The claim for refund shall be filed, within one year from the end of the month in which actual payment of service tax was made by such developer or unit to the registered service provider.

Extension of time-limit of one year

The aforesaid period of one year can be extended if the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, so permit.

(f) Documents to accompany the refund claim

The refund claim shall be accompanied by the following documents, namely:-

(i) a copy of the list of specified services as are required for the authorized operations in the SEZ, as approved by the Approval Committee; wherever applicable, document specified in 2(c), i.e. , declaration in Form A-1;

(ii) invoice or a bill or as the case may be, a challan, issued in accordance with the provisions of Finance Act or rules made thereunder, in the name of the Developer or Unit of a SEZ, by the registered service provider, along with proof of payment for such specified services used for the authorised operations and service tax paid, in original;

(iii) a declaration by the Developer or Unit of SEZ, claiming such exemption, to the effect that—

(A) the specified services on which refund of service tax claimed, has been actually used for the authorized operations in the SEZ ;

(B) proper account of the specified services received and used for the authorised operations are maintained by the developer or unit of the SEZ and the same shall be produced to the officer sanctioning refund, on demand;

(C) accounts or documents furnished by the Developer or Unit as proof of payment of service tax claimed as refund, based on the invoice, or bill , or as the case may be challan issued by the registered service provider indicating the service tax paid on such specified services, are true and correct in all respects.

(g) Grant of refund after due verification

The Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, after verifying that,-

(i) the refund claim is complete in all respects;

(ii) the information furnished in Form A-2 and in supporting documents correctly indicate the service tax involved in the specified services used for the authorised operations in the SEZ, which is claimed as refund, and has been actually paid to the service provider,

shall refund the service tax paid on the specified services.

(h) Service provider to provide the specified services falling under wholly consumed category under exemption provided Developer or Unit of SEZ produce the specified documents

A service provider shall provide the specified services falling under wholly consumed category, under exemption granted by this notification, to a Developer or Unit of SEZ, for authorized operations, subject to the production of documents specified in sub-para (b) of para (B). and in addition wherever applicable, documents specified in sub-para (c) para (B), i.e., declaration in Form A-1.

(i) Recovery of erroneous refund

Where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service tax refunded shall be recoverable under the provisions of the Finance Act, 1994 and the rules made there under, as if it is recovery of service tax erroneously refunded.

[Notification No. 17/2011 ST dated 01.03.2011]

Other Clarifications

Circular No. 142/11/2011-S.T. dated 18-5-2011 clarifies the issues regarding refund of service tax to SEZ units/developers. Some of the clarifications have been inserted at the respective places. Other clarifications are as follows:-

S. No.	Issues	Clarifications
1.	To claim the refund arising out of service tax paid under section 66A, no proforma is prescribed in the notification; how to claim it?	In the notification, there is no difference in treatment of service tax paid under section 66 and section 66A of Finance Act, 1994. Where refund arises, Table-A, in Form A-2 can be used for making a refund claim.
2.	Whether Approval by UAC is necessary, to claim benefit under the notification?	Yes. Unit Approval Committee (UAC) of the SEZ determines goods and services required for the authorised operations of a Unit/Developer, under the SEZ law. Hence approval of the UAC is necessary for availing the notification benefit, on the taxable services.
3.	Whether consolidated refund claim under Notification No. 17/2011-ST can be filed by an entity having more than one SEZ unit and a centralized service tax registration.	If an entity is having multiple SEZ Units with a centralized service tax registration, consolidated refund claim can be filed, provided separate accounts are maintained for receipt and use of services for the authorised operations in SEZ Unit.
4.	Whether certified copies of invoices can be used for claiming refund, if originals are needed for other	In terms of the notification, original invoices are needed for claiming refund; after receiving the refund, originals can be taken back on submission

S. No.	Issues	Clarifications
	statutory purpose; Whether on the basis of single invoice, one can claim proportionate refund for SEZ Unit and balance as cenvat credit.	of copies certified by Chartered Accountant. On a single invoice, if proportionate refund (by SEZ Unit) and cenvat credit (by DTA Unit) needs to be obtained, then also similar system shall be followed.

16. Exemption to inter-bank transactions of purchase or sale of foreign currency undertaken by any banks /money changers

Prior to amendment

Earlier, *Notification No. 19/2009-ST dated 07.07.2009* had exempted the money changer services provided in relation to sale and purchase of foreign currency by one Scheduled bank to another Scheduled bank.

Amendment made by *Notification No.27/2011 – ST dated 31.03.2011*

With effect from 01.04.2011, the aforesaid notification has been amended to provide that money changer services provided in relation to sale and purchase of foreign currency to any bank, including a bank located outside India, or money changer, by any other bank or money changer are exempt.

17. Exemption to accommodation services when the declared tariff for providing of such accommodation is less than Rs. 1000 per day

With effect from 01.05.2011, the accommodation services are exempt from whole of the service tax when the declared tariff for providing of such accommodation is less than Rs. 1000 per day.

Declared tariff
includes charges for all amenities provided in the unit of accommodation like furniture, air-conditioner, refrigerators etc.,
but does not include any discount offered on the published charges for such unit.

[Notification No.31/2011 – ST dated 25.04.2011]

18. Withdrawal of exemption to the practicing Chartered Accountant, practicing Company Secretary and practicing Cost Accountant representing the client before any statutory authority in the course of proceedings initiated under any law

Prior to amendment

Earlier, the taxable services provided or to be provided by a practicing Chartered Accountant/ practicing Company Secretary/ practicing Cost 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, were exempt from the whole of service tax leviable thereon vide *Notification No. 25/2006 ST dated 13.07.2006.*

Amendment made by *Notification No.32/2011—ST dated 25.04.2011*

With effect from 01.05.2011, the said exemption stands withdrawn. It implies that the representational services provided by practicing Chartered Accountants, practicing Cost Accountants and practicing Companies Secretaries are liable to service tax.

19. Exemption to preschool coaching and training and coaching leading to grant of a certificate/diploma/degree/educational qualification recognised by any law

With effect from 01.05.2011, the following services provided by any commercial coaching or training centre have been exempted from service tax:-

(i) any preschool coaching and training;

(ii) any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which is recognised by any law for the time being in force.

[Notification No. 33/2011 ST dated 25.04.2011]

Clarification as to whether the service tax is leviable on the Flying Training Schools and Aircraft Maintenance Engineering Institutes

It has been clarified that that the coaching provided by Flying Training Schools and Aircraft Maintenance Engineering Institutes would not come under the scope of aforesaid exemption. The course certificates given by these academies cannot be held as "recognized in law" for the purposes of service tax exemption unless and until the course *per se* is specifically recognized by law which is not so in the current case. The term "recognized by law" has to construe a direct nexus only between the degree/ certificate being awarded by the Coaching centre and the statute.

The intent of amendment in the definition of commercial training or coaching centre as made by Finance Act, 2011 is to include all the coaching and training that is not recognised by law, irrespective of whether the institute is providing any other course(s) recognised by law.

Therefore, CBEC has clarified that service tax is leviable on Flying Training Institutes providing training for obtaining Commercial Pilot Licence (CPL) and on Aircraft Engineering Institutes for obtaining Basic Aircraft Maintenance Engineer Licence (BAMEL). CPL and BAMEL are granted by Directorate General of Civil Aviation after conducting required examinations.

[CBEC Letter No. F. No. 137/132/2010 - ST 11.05.2011]

B. AMENDMENTS IN THE WORKS CONTRACT (COMPOSITION SCHEME FOR PAYMENT OF SERVICE TAX) RULES, 2007

Restriction of CENVAT credit to 40% of the tax paid on specified services

Sub-rule (2A) has been inserted vide *Notification No. 01/2011-ST dated 01.03.2011* after sub-rule (2) to rule 3 of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. The said rule reads as follows:-

The CENVAT credit of tax paid on taxable services as referred to under sub-clauses (zzd), (zzq) and (zzzh) of clause (105) of section 65 of the Finance Act, 1994, shall be available only to the extent of 40% of the service tax paid when such tax has been paid on the full value of the service after availing CENVAT credit on inputs.

Analysis

The restriction of CENVAT credit only upto 40% of the service tax paid on the input services would apply if the following two conditions are satisfied:-

(a) The input services of the service provider are either of the following services:-

- Erection, commissioning and installation services [Section 65(105)(zzd)]
- Services of commercial or industrial construction [Section 65(105)(zzq)]
- Construction services in respect of residential complexes [Section 65(105)(zzzh)]

(b) The service tax on such input services has been paid on the full value of service, i.e., benefit of *Notification No. 01/2006 dated 01.03.2006* has not been availed.

Purpose of amendment

In case the service provider providing works contract service opts for the composition scheme, he shall not be eligible to avail the CENVAT credit of the inputs of duties or cess paid on any inputs, used in or in relation to the said works contract. However, if the service tax on the input services is paid on the full value of the service after availing CENVAT credit on inputs i.e. without availing exemption under *Notification 1/2006-ST dated 01.03.2006*, service provider can indirectly avail the CENVAT credit on inputs while availing the composition scheme.

C. AMENDMENTS IN THE SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006

1. Determination of value of service in relation to money changing [Rule 2A]

Rule 2B inserted after rule 2A provides the manner of determination of the value of taxable service for the banking and other financial services so far as it pertains to purchase or sale of foreign currency, including money changing. The value of service shall be determined as follows:-

(a) For a currency, when exchanged from, or to, Indian Rupees (INR)

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency.

Example I: US$ 1,000 are sold by a customer at the rate of ₹ 45 per US$.

RBI reference rate for US$ is ₹ 45.50 for that day.

Value of taxable service= (RBI reference rate for $ – Selling rate for $) × Total units

= ₹ (45.50 - 45) × 1,000

=₹ 0.50 × 1,000

The taxable value shall be ₹ 500.

Example II: INR 70,000 is changed into Great Britain Pound (GBP) and the exchange rate offered is ₹ 70, thereby giving GBP 1000.

RBI reference rate for that day for GBP is ₹ 69.

The taxable value shall be ₹ 1,000.

(b) **Where the RBI reference rate for a currency is not available**

Where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money.

(c) **Where neither of the currencies exchanged is Indian Rupee**

Where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.

The aforementioned amendment shall come into force on 01.04.2011.

[Notification No. 02/2011-ST dated 01.03.2011 as amended by *Notification No. 24/2011 dated 31.03.2011]*

2. **Value of taxable service for the telecommunication service [Explanation to rule 5(1)]**

Following explanation to rule 5(1) has been inserted vide *Notification No. 02/2011-ST dated 01.03.2011* to provide clarification regarding the value of taxable service under telecommunication service:-

For the removal of doubts, it is hereby clarified that for the telecommunication service [Section 65(105)(zzzx)], the value of the taxable service shall be the gross amount paid by the person to whom telecom service is provided by the telegraph authority.

Clarification

In this regard, *DOF No. 334/3/2011-TRU dated 28.02.2011* clarifies that in case of service provided by way of recharge coupons or prepaid cards or the like, the value shall be the gross amount charged from the subscriber or the ultimate user of the service and not the amount paid by the distributor or any such intermediary to the telegraph authority.

D. AMENDMENTS IN THE SERVICE TAX RULES, 1994

1. Amendments in rule 4A - Taxable service to be provided or credit to be distributed on invoice, bill or challan

(a) Air ticket to be considered a valid invoice/bill/challan under rule 4A

Rule 4A of the Service Tax Rules, 1994 has been amended to provide that in case of aircraft operation services, the ticket (in any form, including electronic form whatever may be the name) showing the name of the passenger, description of the journey and the amount of service tax collected would be deemed to be the invoice/ bill /challan for the purposes of the rule. The ticket would be a valid invoice/ bill /challan even if it does not contain registration number of the service provider or the classification of the service received or address of the service receiver.

As per the provisions of rule 4A of the Service Tax Rules, 1944, invoice/ bill/ challan is required to be issued by the provider of taxable service within 14 days of the provision of the taxable service or the receipt of the consideration. In case of air-travel, the airlines or the agent may not issue a separate invoice to the passenger but may issue the ticket showing the price of such ticket as well. In such a case, the requirement of an invoice would cast an additional compliance burden on the service provider. Therefore, the above amendment has been made in the said rule.

[Notification No.39/2010 ST dated 28.06.2010 as corrected vide corrigendum dated 30.06.2010]

(b) Time-limit for issuance of invoice, bill or challan in case of continuous supply of service [Third proviso to rule 4A]

With effect from 01.04.2011, third proviso to rule 4A has been substituted with the following proviso to align it with the Point of Taxation Rules, 2011:-

In case of continuous supply of service, every person providing such taxable service shall issue an invoice, bill or challan, as the case may be, within 14 days of the date when each event specified in the contract, which requires the service receiver to make any payment to service provider, is completed.

[Notification No. 03/2011-ST dated 01.03.2011]

2. Date for determination of rate [Rule 5B]

With effect from 01.04.2011, rule 5B has been inserted vide *Notification No. 03/2011-ST dated 01.03.2011* containing provision relating to the date for determination of rate of service tax. It stipulates as follows:-

The rate of tax in case of services provided, or to be provided shall be the rate prevailing at the time when the services are deemed to have been provided under the rules (Point of Taxation Rules, 2011) made in this regard.

The aforesaid provision aims at alignment with the Point of Taxation Rules, 2011.

3. Amendments in rule 6-Payment of service tax

(a) Sub-rule (1) - Due dates for payment of service tax

Prior to amendment

Earlier, rule 6(1) and three provisos to rule 6(1) provided as follows:-

Service tax on the value of taxable services received:

(i) by an individual or a proprietary firm or a partnership firm during any quarter is payable by the 5th day/6th day (if duty is deposited electronically) of the month immediately following the quarter in which payments are received, towards the value of taxable services [Sub-section (1)]

(ii) in other cases (company and HUF) during any calendar month is payable by the 5th day/6th day (if duty is deposited electronically) of the month immediately following the calendar month in which payments are received, towards the value of taxable services [First proviso].

However, the service tax on the value of taxable services received during the month of march or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by 31st day of March of the calendar year [Third proviso].

Notwithstanding the time of receipt of payment towards the value of services, no service tax shall be payable for the part or whole of the value of services, which is attributable to the services provided during the period when such services were not taxable [Second proviso].

In case of transactions of taxable services involving any associated enterprise, any payment received towards the value of taxable service includes 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 [Explanation to third proviso].

Amendment made by *Notification No. 03/2011-ST dated 01.03.2011*

With effect from 01.04.2011, following amendments have been carried out in rule 6(1) and three provisos to rule 6(1):-

Service tax on the value of taxable services received:

(i) by an individual or a proprietary firm or a partnership firm during any quarter is payable by the 5th day of the month immediately following the quarter in which service is deemed to be provided as per the rules (Point of Taxation Rules, 2011) framed in this regard [Sub-section (1)]

(ii) in other cases (company and HUF) during any calendar month is payable by the 5th day of the month immediately following the calendar month in which service is deemed to be provided as per the rules (Point of Taxation Rules, 2011) framed in this regard [First proviso].

However, the service tax on the service deemed to be provided in the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year [Third proviso].

Second proviso and explanation after third proviso have been omitted.

The aforesaid amendments aim at aligning the provisions consequent to the introduction of the Point of Taxation Rules, 2011.

(b) Self adjustment of service tax where services are partly or wholly not rendered [Sub-rule (3)]

Prior to amendment

Under rule 6(3), the assessee is allowed to adjust against his subsequent period's liability the excess service tax paid by him for services which are not wholly or partially rendered by him for any reason, provided he has refunded the amount charged and also the service tax thereon to the client.

Amendment made by *Notification No. 03/2011-ST dated 01.03.2011* as amended by *Notification No. 26/2011-ST dated 31.03.2011*

With effect from 01.04.2011, sub-rule (3) has been substituted with the following sub-rule-

Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract, the assessee may take the credit of such excess service tax paid by him, if the assessee:

(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or

(b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued.

(c) Excess payment of service tax [Sub-rule (4B)]

Prior to amendment

In case the service provider has made excess payment, the same may be utilized for the payment of service tax for the subsequent month liability subject to certain conditions as prescribed under various clauses of sub-rule (4B) of rule 6.

Clause (iii) of the said sub-rule stipulates that the adjustment of excess amount paid shall be subject to maximum of ₹ 1,00,000/- for a relevant month or quarter, as the case may be, in cases where the excess payment is not due to delayed receipt of details of payments towards taxable services.

Amendment made by *Notification No. 03/2011-ST dated 01.03.2011*

With effect from 01.04.2011, the aforesaid limit of ₹ 1,00,000 has been increased to Rs. 2,00,000.

(d) Recovery of the amount of service tax short paid/not paid under self-assessment [Sub-rule (6A)]

With effect from 01.04.2011, sub-rule (6A) has been inserted vide *Notification No. 03/2011-ST dated 01.03.2011* which provides as follows:-

Where an amount of service tax payable has been self-assessed under sub-section (1) of section 70 of the Act, but not paid, either in full or part, the same, shall be recoverable alongwith interest in the manner prescribed under section 87 of the Act.

(e) Special rate of service tax leviable on life insurance increased from 1% to 1.5% [Sub-rule (7A)]

Prior to amendment

An insurer carrying on life insurance business liable for paying the service tax has the option to pay an amount calculated @ 1% of the gross amount of premium charged by such insurer towards the discharge of his service tax liability instead of paying service tax@ 10%.

Amendment made by *Notification No. 35/2011 ST dated 25.04.2011*

With effect from 01.05.2011, the insurer carrying on life insurance business would have the option to pay service tax on the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service. In all other cases, the insurer may pay service tax @ 1.5% of the gross amount of premium charged from a policy holder.

However, such option would not be available if the entire premium is only towards risk cover in life insurance.

(f) Special rate of service tax in case of sale/purchase of foreign currency including money changing amended [Sub-rule (7B)]

Prior to amendment

Hitherto, sub-rule (7B) to rule 6 provided a special rate of service tax in case of sale/purchase of foreign currency including money changing at the rate of 0.25% of the gross amount of currency exchanged.

However, such option was not be available in cases where the consideration for the service provided or to be provided is shown separately in the invoice, bill or, as the case may be, challan issued by the service provider [Proviso to sub-rule (7B)].

Amendment made by *Notification No. 26/2011-ST dated 31.03.2011*

With effect from 01.04.2011, sub-rule (7B) to rule 6 has been amended to provide as follows:-

Person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer, referred to in section 65(105)(zm) and section 65(105)(zzk) as amended had the option to pay an amount at the following rates instead of paying service tax @ 10%:-

S.No.	For an amount	Service tax shall be calculated at the rate of
1.	Upto ₹ 100,000	0.1 % of the gross amount of currency exchanged or ₹ 25 whichever is higher
2.	Exceeding ₹ 1,00,000 and upto Rs. 10,00,000	₹ 100 + 0.05 % of the gross amount of currency exchanged
3.	Exceeding ₹ 10,00,000	₹ 550 + 0.01 % of the gross amount of currency exchanged or ₹ 5,000 whichever is lower

However, the person providing the service shall exercise such option for a financial year and such option shall not be withdrawn during the remaining part of that financial year [Proviso to sub-rule (7B)].

(g) Optional Composition Scheme for Distributor or Selling Agents of Lotteries [Sub-rule (7C)]

An optional mode of payment of service tax has been provided to a distributor or selling agent of lotteries by inserting sub-rule (7C) in rule 6 of the Service Tax Rules, 1994. The distributor or selling agents rendering the taxable service of promotion, marketing or organising/assisting in organising lottery can discharge their service tax liability in the following manner instead of paying service tax @10%:

Where the guaranteed lottery prize payout is > 80%	₹ 6000/- on every ₹ 10 Lakh (or part of ₹ 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw.
Where the guaranteed lottery prize payout is < 80%	₹ 9000/- on every ₹ 10 Lakh (or part of ₹ 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw.

Points to be noted:-

1. In case of online lottery, the aggregate face value of lottery tickets will be the aggregate value of tickets sold.
2. The distributor/selling agent will have to exercise such option within a period of one month of the beginning of each financial year. The new service provider can exercise such option within one month of providing the service.
3. The option once exercised cannot be withdrawn during the remaining part of the financial year.
4. For the financial year 2010-11, the distributor or selling agent will have to exercise such option by 07.11.2010.

Meaning of important terms

(a) Distributor or selling agent: means an individual or firm or body corporate or other legal entity under law so appointed by the Organising State through an agreement to market and sell lotteries on behalf of the Organising State [Rule 2(c) of the Lottery (Regulation) Rules, 2010]

and shall include the distributor/selling agent authorized by lottery organizing State.

(b) Draw: means a method by which the prize winning numbers are drawn for each lottery/lottery scheme by operating the draw machine or any other mechanical method based on random technology which is visibly transparent to the viewers [Rule 2(d) of the Lottery (Regulation) Rules, 2010].

(c) Online lottery: means a system created to permit players to purchase lottery tickets generated by the computer or online machine at the lottery terminals where the information about the sale of a ticket and the player's choice of any particular number or combination of numbers is simultaneously registered with the central computer server [Rule 2(e) of the Lottery (Regulation) Rules, 2010].

(d) Organising State: means the State Government which conducts the lottery either in its own territory or sells its tickets in the territory of any other State [Rule 2(f) of the Lottery (Regulation) Rules, 2010].

[Notification No. 49/2010 ST dated 08.10.2010]

E. AMENDMENTS MADE IN THE EXPORT OF SERVICES RULES, 2005 & TAXATION OF SERVICES (PROVIDED FROM OUTSIDE INDIA AND RECEIVED IN INDIA) RULES, 2006

1. New services introduced vide the Finance Act, 2010 to be classified under the residual category

New services notified through the Finance Act, 2010 fall under rule 3(1)(iii) and rule 3(iii) of the Export of Services Rules 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 respectively. In other words, under both the Export and Import Rules, the new services will fall under the residual category [Category (III)].

[Circular No. 129/11/2010-ST dated 21.09.2010]

2. Re-categorisation of certain services

S. No.	Taxable service	Sub-clause of section 65(105)	Export of Services Rules, 2005		Taxation of Services (Provided from Outside India and Received in India) Rules, 2006	
			Prior to amendment	After the amendment	Prior to amendment	After the amendment
1.	Special services provided by builder etc. to the prospective buyers	(zzzzu)	(III)	(I)	(III)	(I)
2.	Credit rating agency's services	(x)	(II)	(III)	(II)	(III)
3.	Market research agency's services	(y)	(II)	(III)	(II)	(III)
4.	Technical testing and analysis services	(zzh)	(II)	(III)	(II)	(III)
5.	Transport of goods by air services	(zzn)	(II)	(III)	(II)	(III)
6.	Transport of goods by road	(zzp)	(II)	(III)	(II)	(III)
7.	Opinion poll services	(zzs)	(II)	(III)	(II)	(III)

8.	Rail travel agent's services	(zz)	(III)	(II)	(III)	(II)
9.	Games of chance service	(zzzzo)	(III)	(II)	(III)	(II)

[Notification No. 12-13/2011-S.T. dated 01.03.2011 & Notification No. 22-23/2010-S.T. dated 31.03.2011]

Note: In the table above, please note that (I), (II) and (III) are as follows:-

(I) Immovable property related services [Rule 3(1)(i) of the Export of Service Rules, 2005/rule 3(i) of Taxation of Services (Provided From Outside India and Received in India) Rules, 2006]

(II) Performance related services [Rule 3(1)(ii) of the Export of Service Rules, 2005/rule 3(ii) of Taxation of Services (Provided From Outside India and Received in India) Rules, 2006]

(III) Location of recipient related services [Rule 3(1)(iii) of the Export of Service Rules, 2005/rule 3(iii) of Taxation of Services (Provided From Outside India and Received in India) Rules, 2006]

3. Amendment of second proviso to rule 3(1)(ii)/ second proviso to rule 3(ii) of the said rules

Second proviso to rule 3(1)(ii) of the Export of Services Rules, 2005 lays down that where management, maintenance or repair service, technical testing and analysis agency's service and technical inspection and certification service provided in relation to any goods or material or any immovable property, as the case may be, situated outside India at the time of provision of service, through internet or an electronic network including a computer network or any other means, then such taxable service, whether or not performed outside India, would be treated as the taxable service performed outside India.

The said proviso has been amended so as to exclude the technical testing and analysis agency's service from the purview of the said proviso.

Similarly, the technical testing and analysis agency's service has also been removed from the purview of second proviso to rule 3(ii) of the Taxation of Services (Provided From Outside India and Received in India) Rules, 2006.

[Notification No. 22/2011-S.T. dated 31-3-2011]

F. POINT OF TAXATION RULES, 2011

The Point of Taxation Rules, 2011 were formulated vide *Notification No.18/2011-ST dated 01.03.2011* as amended by *Notification No. 25/2011-ST dated 31.03.2011.* The said rules are effective from 01.04.2011.

The Point of Taxation Rules, 2011-a precursor to GST- have brought a paradigm shift in the point of taxation of services. Earlier, the provider of the service was liable for payment of service tax only when the consideration towards the value of taxable services was 'received'. These rules have shifted the point of taxation for service tax from receipt basis to hybrid basis.

The detailed provisions of the said rules along with their analysis are as under:-

1. **Determination of point of taxation [Rule 3]-** For the purposes of these rules, unless otherwise provided, 'point of taxation' shall be-

(a) the time when the invoice for the service provided/to be provided is issued.

However, in case the invoice is not issued within 14 days of the completion of the provision of the service, the point of taxation shall be date of such completion.

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

> **Point of taxation in case of advance received by service provider**
>
> For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be **the date of receipt of each such advance.**

ANALYSIS

As per rule 3 of the said rules, point of taxation would be determined as follows:-

S.No.	In case	Point of taxation would be
1.	the invoice is issued within the prescribed period of 14 days from the date of completion of provision of service	(a) Date of invoice or (b) Date of payment whichever is earlier
2.	the invoice is not issued within the prescribed period of 14 days from the date of completion of provision of service	(a) Date of completion of service or (b) Date of payment whichever is earlier

The principle of point of taxation can be better understood with the help of the following tabular summary followed by an illustration:-

Case	In case where	Point of Taxation
I	Invoice is issued within 14 days from the completion of service and payment is	Date of invoice

<table>
<tr><td></td><td>received after invoice</td><td colspan="2"></td></tr>
<tr><td>II</td><td>Invoice is issued within 14 days from the completion of service, but payment is received before invoice</td><td colspan="2">Date on which payment is received.</td></tr>
<tr><td>III</td><td>Invoice is not issued within 14 days from the completion of service and payment is received after completion of service</td><td colspan="2">Date of completion of service</td></tr>
<tr><td rowspan="3">IV</td><td rowspan="3">Invoice is not issued within 14 days from the completion of service. However, part payment is received before the completion of service and remaining payment is received after the completion of service.</td><td>For the payment received</td><td>Point of taxation is</td></tr>
<tr><td>before the date of completion of service</td><td>the date on which payment is received.</td></tr>
<tr><td>after the date of completion of service</td><td>the date of completion of service.</td></tr>
</table>

Case	Date of completion of service	Date of invoice	Date on which payment received	Point of Taxation
I	September 5, 2011	September 15, 2011	September 25, 2011	September 15, 2011
II	September 5, 2011	September 15, 2011	September 10, 2011	September 10, 2011
III	September 5, 2011	September 21, 2011	September 25, 2011	September 5, 2011
IV	September 5, 2011	September 21, 2011	Amount received partly on September 3, 2011 and remaining on September 20, 2011	September 3, 2011 and September 5, 2011 for respective amounts

2. Determination of point of taxation in case of change in effective rate of tax [Rule 4]- Notwithstanding anything contained in rule 3, the point of taxation in cases where there is a change in effective rate of tax in respect of a service, shall be determined in the manner laid down in the following table namely:-

In case a taxable service has been provided	Invoice has been issued	Payment received for the invoice	Point of taxation shall be
(i) BEFORE the change in effective rate of tax.	AFTER the change in effective rate of tax	AFTER the change in effective rate of tax	(a) date of issuance of invoice or (b) date of receipt of payment whichever is earlier
	PRIOR to the change in effective rate of tax	AFTER the change in effective rate of tax	date of issuance of invoice
	AFTER the change in effective rate of tax	PRIOR to the change in effective rate of tax	date of receipt of payment
(ii) AFTER the change in effective rate of tax.	PRIOR to the change in effective rate of tax	AFTER the change in effective rate of tax	date of receipt of payment
	PRIOR to the change in effective rate of tax	PRIOR to the change in effective rate of tax	(a) date of issuance of invoice or (b) date of receipt of payment whichever is earlier
	AFTER the change in effective rate of tax	PRIOR to the change in effective rate of tax	date of issuance of invoice

Change in effective rate of tax

For the purposes of this rule, "change in effective rate of tax" shall include a change in the portion of value on which tax is payable in terms of a notification issued under the provisions of Finance Act, 1994 or rules made thereunder.

Hence, change in effective rate of tax would include the following:-

(a) Change in the percentage of the exemption granted in value for various services vide *Notification No. 1/2006-ST dated 01.03.2006* which has the effect of payment of tax only on a part of the value.

(b) Change in the rate/values under optional composition schemes provided under various sub-rules of rule 6 of the Service Tax Rules, 1994 to the following service providers:-

(i) Air travel agent [Sub-rule (7)]

(ii) Insurer carrying on life insurance business [Sub-rule (7A)]

(iii) Foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer [Sub-rule (7B)]

(iv) Distributor or selling agents of lotteries [Sub-rule (7C)]

(c) Change in composition rates under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007

(d) Issuance, rescission, or amendment in any other notification thereby altering the taxability of any service

3. Payment of tax in cases of new services [Rule 5] - Where a service, not being a service covered by rule 6, is taxed for the first time, then, –

(a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;

(b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within the period referred to in rule 4A of the Service Tax Rules, 1994.

ANALYSIS

This rule specifically discusses the situation where a service (which is not a continuous supply of service) is charged to tax for the first time i.e. becomes taxable for the first time.

The rule provides that:-

(a) If an invoice has been issued and payment is received before a service becomes taxable, no tax would be charged even if the service is provided after the same has become taxable. This provision is consistent with the other similar provisions in these rules, and ensures that a financial transaction which has achieved finality before a service was taxable shall not be reopened for collection of tax.

(b) If any payment has been received prior to a service being chargeable to tax, no tax shall be chargeable if an invoice has also been issued within the period prescribed in rule 4A of the Service Tax Rules, 1994, i.e. within 14 days of receipt of payment.

The rule also clearly lays down that any service, which is a not a continuous supply of service, if provided before the service becomes chargeable to tax, shall not be subjected to tax.

4. **Determination of point of taxation in case of continuous supply of service [Rule 6]-** Notwithstanding anything contained in rules 3,4 or 8, in case of continuous supply of service, the 'point of taxation' shall be-

(a) the time when the invoice for the service provided or to be provided is issued:

However, where the invoice is not issued within 14 days of the completion of the provision of the service, the point of taxation shall be date of such completion.

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

1. **Date of completion of provision of continuous service**

For the purpose of this rule, where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the service receiver to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

2. **Point of taxation in case of advance received by service provider**

For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be **the date of receipt of each such advance.**

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The application of the rule can be better understood with the help of the following detailed tabular summary:-

S. No.	Scenario	Point of Taxation
1.	Invoice issued within 14 days from the completion of milestone for payment and payment is received after invoice	Date of invoice
2.	Invoice issued within 14 days from the completion of milestone for payment and advance payment is received before invoice	Date of receipt to the extent of such advance
3.	Invoice NOT issued within 14 days from the completion of milestone for payment and payment is received after completion of such milestone	Date of completion of milestone for payment
4.	Invoice issued before completion of milestone for payment	Date of invoice

5.	No milestone for payment agreed in the contract and no amount received till completion of service and invoice raised within 14 days from the completion	Date of invoice
6.	No milestone for payment agreed in the contract and no amount received till completion of service and invoice not issued	Date of completion of service
7.	No milestone for payment and part amount received before completion	Date of such receipt to the extent of such amount

The aforesaid rule will have primacy over rules 3, 4 and 8.

Departmental clarification

DOF No. 341/34/2010-TRU dated 31.03.2011 clarifies that rule 6 relating to continuous supply of service is in alignment with rule 3 relating to single supply service. However, the date of completion of continuous service shall be the date of completion of the specified event stated in the contract which obligates payment in part or whole for the contract. For instance, in the case of construction services if the payments are linked to stage-by-stage completion of construction, the provision of service shall be deemed to be completed in part when each such stage of construction is completed.

5. Determination of point of taxation in case of specified services or persons [Rule 7]- Notwithstanding anything contained in these rules, the point of taxation in respect of-

(a) the services covered by sub-rule (1) of rule 3 of Export of Services Rules, 2005;

(b) the persons required to pay tax as recipients under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Finance Act, 1994;

(c) individuals or proprietary firms or partnership firms providing taxable services referred to in sub-clauses (p), (q), (s), (t), (u), (za), (zzzzm) of clause (105) of section 65 of the Finance Act, 1994,

shall be the date on which payment is received or made, as the case may be:

However, in case of services referred to in clause (a), where payment is not received within the period specified by the Reserve Bank of India, the point of taxation shall be determined, as if this rule does not exist.

Further, in case of services referred to in clause (b) where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist.

Moreover, in case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be the date of credit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

ANALYSIS

S.No.	Cases where date of receipt or payment of consideration would be the point of taxation	Condition to be satisfied	Point of taxation would be determined as per the general rule of completion of service or date of issue of invoice, whichever is earlier
1.	Services covered by rule 3(1) of Export of Services Rules, 2005	the amount must be realized within the period prescribed by RBI.	where payment is not received within the period specified by the Reserve Bank of India
2.	Person liable to pay service tax under reverse charge mechanism	the payment must be been made within a period of 6 months from the date of invoice	where the payment is not made within a period of six months of the date of invoice
3.	Individuals or proprietary firms or partnership firms providing the any of the following taxable services:- (a) Architect's Services (b) Interior Decorator's Services (c) Practicing Chartered Accountant's Services (d) Practicing Cost Accountant's Services (e) Practicing Company Secretary's Services (f) Scientific or Technical Consultancy Services (g) Legal Consultancy Services (h) Consulting Engineer's Services (inserted vide *Notification No. 41/2011 ST dated 27.06.2011)* Point which merit consideration: The benefit shall not be available in case of any other service also supplied by the person concerned along with the specified services.		

Point of taxation in case of import of services by "associated enterprises"

In case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be:-

(a) the date of credit in the books of account of the person receiving the service

or

(b) date of making the payment

whichever is earlier.

6. **Determination of point of taxation in case of copyrights, etc. [Rule 8]-** Rule 8 applies where in case of royalties and payments pertaining to copyrights, trademarks, designs or patents, the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration.

   In such a case, the service shall be treated as having been provided each time when:-

(a) a payment in respect of such use/benefit is received by the provider in respect thereof

or

(b) an invoice is issued by the provider

whichever is earlier.

7. **Transitional Provisions [Rule 9]-**Nothing contained in these rules shall be applicable-

(i) where the provision of service is completed; or

(ii) where invoices are issued

prior to April 01, 2011.

However, the point of taxation shall, at the option of the taxpayer, be the date on which the payment is received/made as the case may be in the following two cases:-

(i) Services for which provision is completed on/before 30.06.2011

or

(ii) where the invoices are issued upto 30.06.2011.

ANALYSIS

Assessees	Benefit under transitional provisions will apply to
who switch over to the new rules on 01.04.2011	(a) all invoices issued before 01.04.2011 (b) services for which provision has been completed before 01.04.2011
who like to shift to the new rules on 01.07.2011	(a) invoices issued before 01.07.2011 (b) services for which provision has been completed before 01.07.2011

DOF No. 341/34/2010-TRU dated 31.03.2011 clarifies that the payments received before the new rules come into force do not require any transitional provisions as they are already required to pay tax on payment basis.

Important definitions [Rule 2]

In these rules, unless the context otherwise requires,

(a) Act means the Finance Act, 1994.

(b) Associated enterprises shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961.

(c) Continuous supply of service means

(i) any service which is provided, or to be provided continuously, under a contract, for a period exceeding three months,

or

(ii) where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition.

Services notified by the Central Government

In this regard the Central Government has prescribed the provision of following services to be a continuous supply of service:-

(i) Construction in respect of Commercial or Industrial Buildings or Civil Structures

(ii) Construction Services of Residential Complexes

(iii) Telecommunication Services

(iv) Internet Telecommunication Services

(v) Works Contract Services

[Notification No. 28/2011-ST dated 01.04.2011]

Hence, it implies that the aforesaid services will constitute "continuous supply of services" irrespective of the period for which they are provided or agreed to be provided. Other services will be considered continuous supply only if they are provided or agreed to be provided continuously for a period exceeding three months.

(d) Invoice means the invoice referred to in rule 4A of the Service Tax Rules, 1994 and shall include any document as referred to in the said rule.

(e) Point of taxation means the point in time when a service shall be deemed to have been provided.

(f) Taxable service means a service which is subjected to service tax, whether or not the same is fully exempt by the Central Government under section 93 of the Act.

G. CLARIFICATIONS

1. Clarification on applicability of service tax on laying of cables under or alongside roads and similar activities

The taxability of following activities has been clarified:

- laying of cables under or alongside roads,
- shifting of overhead cables to underground on account of renovation/widening of roads;
- laying of electrical cables under or alongside roads/railway tracks;
- electrification of railways, installation of street-lights, traffic lights, flood-lights etc.

The chargeability of the above activities under specific categories of service has been explained in the following table:

S. No.	Taxable service	Coverage of the above activities under the respective services
1.	Commercial or industrial construction services	Only such electrical works that are parts of (or which result in emergence of a fixture of) buildings, civil structures, pipelines or conduits are covered under this taxable service. Further, such activities undertaken in respect of roads, railways, transport terminals, bridges, tunnels and dams are outside the scope of levy of service tax under this taxable service.
2.	Erection, commissioning or installation services	Activity resulting in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or resulting in installation of an electrical or electronic device (i.e. a machine or equipment that uses electricity to perform some other function) are covered under this taxable service,
3.	Works Contract	Activities excluded from aforesaid two services would generally remain excluded from this taxable service as well.
4.	Site formation and clearance, excavation, earthmoving and demolition services	Services provided independently and not as part of a complete work are covered under this taxable service. Thus, site formation and excavation activities provided in respect of a complete work like that of laying of cables under the road will not be taxable.

Further, the taxable status of various activities, on which disputes have arisen is clarified in the following table:

S. No.	Activity	Taxable Service/Non-taxable service	Relevant category of service	Relevant clause of Section 65(105) of the Finance Act, 1994
1.	Shifting of overhead cables/ wires for any reasons such as widening/renovation of roads	Non-taxable service	-	-
2.	Laying of cables under or alongside roads	Non-taxable service	-	-
3.	Laying of electric cables between grids/sub-stations/transformer stations en route	Non-taxable service	-	-
4.	Installation of transformer/ sub-stations undertaken independently	Taxable service	Erection, commissioning or installation services	(zzd)
5.	Laying of electric cables up to distribution point of residential or commercial localities/complexes	Non-taxable service	-	-
6.	Laying of electric cables beyond the distribution point of residential or commercial localities/complexes.	Taxable service	Commercial or industrial construction' **or** 'Construction of complex' service	(zzq)/(zzzh)
7.	Installation of street lights, traffic lights flood lights, or other electrical and electronic appliances/devices or providing electric connections to them	Taxable service	Erection, commissioning or installation services	(zzd)
8.	Railway electrification, electrification along the railway track	Non-taxable service	-	-

The clarifications are essentially general in nature. Thus, facts and circumstances of each case will have to be considered while applying these clarifications. The pending disputes /cases may be decided based on the clarifications contained in this circular.

[Circular No.123/5/2010-TRU dated 24.05.2010]

2. Architect/Chartered Engineer/Licensed Surveyor notified as 'authority competent' to issue a completion certificate in respect of residential/commercial complex

With effect from 01.07.2010, a registered architect or a registered chartered engineer or a licenced surveyor of the local body of the city/town/village/development or planning authority (in addition to any Government authority) have been notified as competent authority to issue a completion certificate in respect of residential or commercial or industrial complex, as a precondition for its occupation.

[M.F.(D.R.) Order No. 1/2010 dated 22.06.2010]

3. Services provided by State Governments under Centrally Sponsored Schemes (CSS) are not liable to service tax

It is clarified that levy and collection of service tax on State Government agencies/ departments implementing CSS under a central grant, is not legally tenable. The fact that State Governments are implementing agencies for the Central Government within the framework of CSS does not make them service providers. Consequently, Central Government cannot be taken as service receiver. Grant released by the Central Government under a centrally sponsored scheme cannot be presumed as consideration for providing a taxable service.

[Circular No. 125/7/2010-S.T. dated 30-7-2010]

CENTRALLY SPONSORED SCHEMES

CSSs are special purpose grants extended by the Central Government to States to encourage and motivate State Governments to plan and implement programmes that help attain national goals and objectives, for instance, extending clean drinking water and sanitation to every habitation, eradicating polio and tuberculosis, making primary education universal for every female and male child, and so on. CSSs are formulated by concerned Ministries and Departments and implemented through counterpart State level departments and para-statal bodies identified for the purpose.

For instance, in the case of the centrally sponsored National Biogas and Manure Management Program operating under Ministry of New and Renewable Energy, State Government agencies were involved in setting up of bio-gas plants in villages. Certain expenses incurred by the State Governments or their departments/agencies during the course of setting up of such bio-gas plants were reimbursed by the Central Government by way of a grant under the CSS. Jurisdictional service tax authorities demanded service tax from the State Government department/agency, saying that the reimbursements received by the concerned State Government department/ agency (as service provider) are nothing but consideration for installation and commissioning service received from the Central Government (service receiver).

4. Underwriting commission received by the Primary Dealers for the auction of Government Securities not liable to service tax

The terms ‘underwriting’ and ‘underwriter’ as provided in the Finance Act, 1994 and further defined in the Securities and Exchange Board of India (Underwriters) Rules, 1993, pertain to dealing in securities of a body corporate. In other words, service tax is leviable on underwriting only when the securities of a body corporate are underwritten.

Though the Government securities are issued by the Reserve Bank of India (RBI), which is a 'body corporate' in terms of section 3(2) of the RBI Act, 1934, Government securities are not securities of a body corporate as the Government securities are sovereign securities having zero default risk and RBI of India only manages the issue as also the auction of Government Securities on behalf of the Government of India.

The Primary Dealers registered with the RBI (as opposed to registration with the Securities Exchange Board of India) deal in Government Securities, issued by the RBI on behalf of the Government of India, as a part of the Central Government's market borrowing program.

Therefore, it has been clarified that service tax liability does not arise on Underwriting Fee or Underwriting Commission received by the Primary Dealers during the course of the dealing in Government Securities.

[Circular No.126/08/2010 ST dated 10.08.2010]

5. Donations and grants-in-aid received by a Charitable Foundation imparting free livelihood training to the youth not liable to service tax

It has been clarified that donations and grants-in-aid received from different sources by a Charitable Foundation imparting free livelihood training to the poor and marginalized youth, will not be treated as ‘consideration’ received for such training and thus not subjected to service tax under ‘commercial training or coaching service as donation or grant-in-aid is not specifically meant for a person receiving such training or to the specific activity, but is in general meant for the charitable cause championed by the registered Foundation. There is no relationship other than universal humanitarian interest between the provider of donation/grant and the trainee. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training.

[Circular No.127/09/2010 ST dated 16.08.2010]

6. Construction; erection, commissioning or installation; repair services etc. in the nature of on-going works contract to be classified as works contract service from 1st June 2007 even if the contract is entered before that date

In respect of on-going works contracts entered till 31st May, 2007, composition scheme to be available only when service tax has not been paid till 31st May, 2007

(i) With effect from 01.06.2007, when the new service 'Works Contract' service was made effective, classification of construction; erection, commissioning or installation; repair services in the nature of works contract would undergo a change in case of long term contracts even though part of the service was classified under the respective taxable service prior to 01.06.2007 as 'works contract' describes the nature of the activity more specifically. Therefore, as per the provisions of section 65A of the Finance Act, 1994, it would be the appropriate classification for the part of the service provided after that date.

(ii) The on-going works contract, entered till 31.05.2007, satisfying rule 3(3) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 only would be entitled for Composition Scheme. Rule 3(3) casts an obligation for exercising an option to choose the scheme prior to payment of service tax in respect of a particular works contract. Once such an option is made, it is applicable for the entire contract and cannot be altered.

Therefore, in case a contract where the provision of service commenced prior to 01.06.2007 and any payment of service tax was made under the respective taxable service before 01.06.2007, the said condition under rule 3(3) was not satisfied and thus no portion of that contract would be eligible for composition scheme. On the other hand, even if the provision of service commenced before 01.06.2007 but no payment of service tax was made till the taxpayer opted for the composition scheme after its coming into effect from 01.06.2007, such contracts would be eligible for opting of the composition scheme.

The Board's previous *Circular No. 98/1/2008-ST dated 04.01.2008* and the ratio of judgment of the High Court of Andhra Pradesh in the matter of M/s. Nagarjuna Construction Company Limited vs. Government of India (2010 TIOL 403 HC AP ST) are in line with the above interpretation.

[Circular No.128/10/2010 ST dated 24.08.2010]

7. Monetary limits of adjudication under section 73 revised

The monetary limits for adjudication of penalty by Central Excise Officers have been revised by the Central Board of Excise and Customs vide *Notification No. 48/2010 ST dated 08.09.2010.* Under the revised limits, Superintendents have been empowered to adjudicate cases involving service tax upto Rs. 1 lakh in a show cause notice. Similar monetary limits for the purpose of adjudication under section 73 have been prescribed vide *Circular No. 130/12/2010 ST dated 20.09.2010*.

Further, in respect of the above powers of adjudication conferred on the Superintendents, the following has been clarified vide the circular:

(i) The Superintendents would be competent to decide cases that involve service tax and / or CENVAT credit upto Rs. one lakh in individual show cause notices.

(ii) They would not be competent to decide cases that involve taxability of services, valuation of services, eligibility of exemption and cases involving suppression of facts, fraud, collusion, willful mis-statement etc.

(iii) They would be competent to decide cases involving wrong availment of CENVAT credit upto a monetary limit of Rs. one lakh.

[Circular No. 130/12/2010 ST dated 20.09.2010]

8. Electricity meter installed in consumers' premises and hire charges collected are eligible for exemption for transmission and distribution of electricity

Issue	Clarification
Whether renting of electricity meter by a service provider rendering the service of transmission or distribution of electricity is covered by the exemption available under *Notification No. 11/2010-ST dated 27.02.2010* and/or *32/2010-ST dated 22.06.2010*?	· It is a general practice among electricity transmission(TRANSCO)/distribution companies (DISCOM) to install electricity meters at the premises of the consumers, to measure the amount of electricity consumed by them and 'hire charges' are collected periodically. · Supply of electricity meters for hire to the consumers being an essential activity having direct and close nexus with transmission and distribution of electricity, the same is covered by the exemption for transmission and distribution of electricity, extended under the relevant notifications.

[Circular No. 131/13/2010 – ST dated 07.12.2011]

9. Fumigation of export cargo in compliance of export obligation is not taxable under 'cleaning services'

Issue	Clarification
Whether the activity of fumigation of export cargo including agricultural/horti	· It is clarified that fumigation*, per se, is a cleaning activity. However, fumigation of export cargo including agricultural/horticultural produce, whether loaded into containers or otherwise, does not satisfy the statutory definition of 'cleaning activity' under section 65(24b) of the

cultural produce, whether loaded into containers or otherwise is a taxable service falling under 'cleaning services' or not?	Finance Act, 1994. · Specialised cleaning services of containers used for export goods are exempt from the service tax by virtue of an exemption notification. This is in line with the international practice of making the export consignments free from taxation in the country of its origin. However, the wordings of the exemption notification cannot be used to interpret the scope of service defined under Section 65(105)(zzzd) of the Finance Act, 1994.

[Circular No. 132/1/2011 ST dated 12.01.2011]

*Note: Fumigation is the method of pest control. In this method, a lethal chemical (fumigant) is released in gaseous state into an enclosed area to eliminate an infestation of pests by poisoning or suffocating them.

10. Clarification of the scope and meaning of 'Janata Personal Accident Policy (JPAP)' exempt under *Notification No. 3/1994 dated 30.06.1994*

Notification No. 3/1994 dated 30.06.1994 inter alia provides that 'Janata Personal Accident Policy (JPAP)' is exempt from whole of the service tax leviable thereon.

Since a description of JPAP is not available in the relevant notification, it is clarified that customized group JPAP insurance schemes floated by various insurance companies as per the specifications of State Governments concerned, to extend risk cover to target populations, and to fulfill the prescribed 'rural or social sector' obligation, are covered by the subject service tax exemption.

[Circular No. 133/2/2011-S.T., dated 18-1-2011]

Janata Personal Accident Policy (JPAP)

JPAP is a customized group insurance policy scheme floated by various insurance companies as specified by State Governments, to extend risk cover to certain specified target populations, under varying terms of insurance.

Generally, a standard JPAP is an individual oriented policy with a fixed 'sum assured'. The sum assured in these JPAP policies is often as low as Rs. 25,000/- , so that even people without regular income can afford to purchase a risk cover for themselves.

For the insurers, JPAP offers a vehicle to fulfill the 'rural or social sector' obligation prescribed by the Insurance Regulatory Development Authority (IRDA).

11. Visa facilitators not liable to service tax

Service provided by a visa facilitator, in the form of assistance to individuals directly, to obtain a visa, does not fall under any of the taxable services under section 65(105) of the Finance Act, 1994. Hence service tax is not attracted. Visa facilitators collect certain statutory charges like visa fee, certification fee, attestation fee, emigration fee, etc. from the visa applicant, which are remitted to the respective authorities, and in addition collect service charges for themselves as remuneration for the assistance provided by them to obtain the visa.

It has been clarified that assistance provided by a visa facilitator, for obtaining visa, to a visa applicant or for foreign employer does not fall within the scope of supply of manpower service or business auxiliary service as visa facilitator does not act on behalf of the embassies, as agents of the principal. Such services can also not be classified as business support services as the visa applicant pays the service charge on his own meaning such service charge is not borne by any business entity.

However, service tax would be leviable on any service provided other than direct assistance to individuals for obtaining visa, falling under the description of any taxable service, as classifiable under the appropriate heading. For example, where visa facilitators also act as agents of recruitment or of foreign employer, service tax would be leviable to the extent under the service of 'supply of manpower'. Where the visa facilitator renders visa assistance to individuals who are employed in a business entity and the service charges are paid by the business entity on behalf of those individuals, to the visa facilitator, service tax would be leviable under 'business support service'.

[Circular No. 137/6/2011 ST dated 20.04.2011]

12. Service tax exemption applies to Education Cess and Secondary and Higher Education Cess as well

It has been clarified that since Education Cess and Secondary and Higher Education Cess are levied and collected as percentage of service tax, when and wherever service tax is NIL by virtue of exemption, Education Cess and Secondary and Higher Education Cess would also be NIL.

According to section 95(1) of the Finance (No.2) Act, 2004 and section 140(1) of the Finance Act, 2007, Education Cess and Secondary and Higher Education Cess are leviable and collected as service tax, and when whole of service tax is exempt, the same applies to education cess and secondary and higher education cess as well.

[Circular No. 134/3/2011 ST dated 08.04.2011]

13. Audit of service tax assessees — Frequency norms

Director General of Audit, New Delhi has published Service Tax Audit Manual, 2010. As per the guidelines, frequency of audit the taxpayers would be as per following norms:-

S.No.	Taxpayers with Service tax payment (Cash + CENVAT)	To be audited
1.	above ₹ 3 crores (Mandatory Units)	every year
2.	between ₹ 1 crore and ₹ 3 crores	once every two years
3.	between ₹ 25 lakhs and ₹ 1 crore	once every five years
4.	upto ₹ 25 lakhs	2% of taxpayers to be audited every year

14. Services provided by the sub-contractors/consultants to the principal service provider not classifiable under the same category as the service provided by the principal service provider

Issue	Clarification
Whether the various services provided by the sub-contractors/consultants to the principal service provider are classifiable under the same category as the service provided by the principal service provider?	It has been clarified that the various services provided by the sub-contractors/consultants to the principal service provider are not classifiable under the same category as the service provided by the principal service provider. The services provided by the sub-contractors/consultants and other service providers are classifiable as per section 65A of the Finance Act, 1994 under respective sub-clauses to section 65(105) of the Finance Act, 1944 and chargeable to service tax accordingly. The Board has clarified that the services received by the Works Contract service (WCS) provider from its sub-contractors are distinctly classifiable under the respective sub-clauses of section 65 (105) of the Finance Act by their description. As per section 65A, when a descriptive sub-clause is available for classification, the service cannot be classified under another sub-clause which is generic in nature. As such, the services that are being provided by the sub-contractors of WCS providers are classifiable under the respective heads and not under WCS.

Representation by Jaiprakash Associates Limited

The Works Contract service (WCS) in respect of construction of Dams, Tunnels, Road, Bridges etc. is exempt from service tax. WCS providers engage sub-contractors who provide services such as Architect's Service, Consulting Engineer's Service, Construction of Complex Service, Design Services, Erection Commissioning or Installation Service, Management, Maintenance or Repair Service etc.

A representation was received from Jaiprakash Associates Limited which seeks to extend the benefit of such exemption to the sub-contractors providing various services to the WCS provider by arguing that the service provided by the sub-contractors are 'in relation to' the exempted works contract service and hence they deserve classification under WCS itself. Consequently, the aforesaid clarification is issued.

[Circular No. 138/07/2011 – ST dated 06.05.2011]

15. Clarification pertaining to various issues arising in implementation of new services introduced by the Finance Act, 2011

A. Short Term Accommodation Service

S. No.	Queries	Clarification
1.	What is the relevance of declared	"Declared tariff" includes charges for all

	tariff? Is the tax required to be paid on declared tariff or actual amount charged?	amenities provided in the unit of accommodation like furniture, air-conditioner, refrigerators etc., but does not include any discount offered on the published charges for such unit. The relevance of 'declared tariff' is in determining the liability to pay service tax as far as short term accommodation is concerned. However, the actual tax will be liable to be paid on the amount charged i.e. declared tariff minus any discount offered. Thus if the declared tariff is ₹ 1100/-, but actual room rent charged is ₹ 800/-, tax will be required to be paid @ 5% on ₹ 800/-.
2.	Is it possible to levy separate tariff for the same accommodation in respect of corporate/privileged customers and other normal customers?	It is possible to levy separate tariff for the same accommodation in respect of a class of customers which can be recognized as a distinct class on an intelligible criterion. However, it is not applicable for a single or few corporate entities.
3.	Is the declared tariff supposed to include cost of meals or beverages?	Where the declared tariff includes the cost of food or beverages. Service Tax will be charged on the total value of declared tariff. But where the bill is separately raised for food or beverages, and the amount is charged in the bill, such amount is not considered as part of declared tariff.
4.	What is the position relating to off-season prices? Will they be considered as declared tariff?	When the declared tariff is revised as per the tourist season, the liability to pay Service Tax shall be only on the declared tariff for the accommodation where the published/printed tariff is above ₹ 1000/-. However, the revision in tariff should be made uniformly applicable to all customers and declared when such change takes place.
5.	Is the luxury tax imposed by States required to be included for the purpose of determining either the declared tariff or the actual room rent?	For the purpose of service tax luxury tax has to be excluded from the taxable value.

B. Restaurants service

1.	If there are more than one restaurants belonging to the same entity in a complex, out of which only one or more satisfy both the criteria relating to air-	Service Tax is leviable on the service provide by a restaurant which satisfies two conditions : (i) it should have the facility of air conditioning in any part of the

	conditioning and licence to serve liquor, will the other restaurant(s) be also liable to pay Service Tax?	establishment and (ii) it should have license to serve alcoholic beverages. Within the same entity, if there are more than one restaurant, which are clearly demarcated and separately named, the ones which satisfy both the criteria is only liable to service tax.
2.	Will the services provided by taxable restaurant in other parts of the hotel e.g. swimming pool, or an open area attached to a restaurant be also liable to Service Tax?	The taxable services provided by a restaurant in other parts of the hotel e.g. swimming pool, or an open area attached to the restaurant are also liable to Service Tax as these areas become extensions of the restaurant.
3.	Is the serving of food and/or beverages by way of room service liable to service tax?	When the food is served in the room, service tax cannot be charged under the restaurant service as the service is not provided in the premises of the air-conditioned restaurant with a licence to serve liquor. Also, the same cannot be charged under the Short Term Accommodation head if the bill for the food will be raised separately and it does not form part of the declared tariff.
4.	Is the value added tax imposed by States required to be included for the purpose of service tax?	For the purpose of service tax, State Value Added Tax (VAT) has to be excluded from the

[Circular No. 139/08/2011 – ST dated 10.05.2011]

15. Client threshing of tobacco and client processing of raw cashew to recover kerenels thereof not liable to service tax

Notification No. 14/2004-ST dated 10.09.2004 inter-alia exempts business auxiliary service in relation to processing of goods for, or on behalf of the clients when provided 'in relation to agriculture'. It has been clarified that the following are covered within the expression 'in relation to agriculture' and thus are eligible for exemption provided in the said notification:

(i) process of threshing and drying of tobacco leaves and thereafter packing the same;

and

(ii) processing of raw cashew involving roasting/drying, shelling and peeling of raw cashew to recover kernel

The Board has clarified that tobacco or raw cashew, which are subject to client processing retain their essential characteristics at the output stage and therefore the processes undertaken on behalf of client should be considered as covered by the expression 'in relation to agriculture'.

Further, it has been clarified that where the commission agents stationed abroad provide business auxiliary service to promote the export of rice, said business auxiliary service is covered by *Notification 13/2003-ST* (as amended) because, the word 'rice' is mentioned under the explanation to the term 'agricultural produce', in the inclusive portion along with other items like cereals, pulses, etc.

[Circular No. 143/12/ 2011 – ST dated 26.05.2011]

H. OTHER AMENDMENTS

1. Monetary limits for adjudication of penalty under service tax revised

Central Board of Excise and Customs has revised the monetary limits for adjudication of penalty by Central Excise Officers by amending *Notification No. 30/2005-ST dated 10.08.2005* in the following manner:

Sr. No.	Central Excise Officer	Amount of service tax or CENVAT credit specified in a notice for the purpose of adjudication under Section 83A
(1)	Superintendent of Central Excise	Up to ₹ 1,00,000 (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation)
(2)	Assistant/Deputy Commissioner of Central Excise	Up to ₹ 5,00,000 (except cases where Superintendents are empowered to adjudicate.)
(3)	Joint Commissioner of Central Excise	₹ 5,00,000 to ₹ 50,00,000
(4)	Additional Commissioner of Central Excise	₹ 20,00,000 to ₹ 50,00,000
(5)	Commissioner of Central Excise	Without limit.

[Notification No. 48/2010 ST dated 08.09.2010]

2. Rate of interest for amount collected of service tax in excess increased by 5% per annum [Section 73B]

Earlier, the rate of interest notified by the Central Government under section 73B was 13% per annum vide *Notification No. 8/2006 dated 19.04.2006.*

Amendment made by *Notification No. 15/2011 dated 01.03.2011*

With effect from 01.04.2011, the said notification has been amended to increase the rate of interest to 18% per annum.

Note: It may be noted that a concessional rate of interest of 15% per annum is available to the tax payers whose turnover during any of the years covered in the notice issued under section 73A(3) or the preceding financial year is below Rs 60 lakh.

2. Rate of interest for delayed payment of service tax increased by 5% per annum [Section 75]

Earlier, the rate of interest notified by the Central Government under section 75 was 13% per annum vide *Notification No. 26/2004 dated 10.09.2004.*

Amendment made by *Notification No. 14/2011 dated 01.03.2011*

With effect from 01.04.2011, the said notification has been amended to increase the rate of interest to 18% per annum.

Note: It may be noted that a concessional rate of interest of 15% per annum is available to the tax payers whose turnover during any of the years covered in the notice or the preceding financial year is below Rs 60 lakh.