

PRELIMINARY LEGAL PROVISIONS

Question 1

Explain briefly the correctness of the following statement with reference to the Finance Act, 1994 relating to service tax.

The application of the provisions in respect of classification of services under Section 65A do not apply in case of specific taxable services. (3 Marks)(May 2011)

Answer

The statement is correct. With effect from 1.7.2010, the provisions of section 65A do not apply to any service when the same is rendered entirely within (i) the port or (ii) other port; or (iii) the Airport of Civil enclave.

Now, port service means any service rendered within a port in any manner. Similar changes have been effected in respect of other port and airport services as well.

Question 2

State with reference to the provisions of the Finance Act, 1994 whether service tax is leviable on services provided in the Continental Shelf of India and Exclusive Economic Zone of India.

(2 Marks)(Nov 2010)

Answer

Notification No. 14/2010-ST dated 27-2-2010 has extended the levy of service tax to the specified areas of continental shelf and exclusive economic zone for the specified purposes as under:

S.No.	The areas in the Continental Shelf and the Exclusive Economic Zone of India	Purpose
1.	Whole of continental shelf and exclusive economic zone of India	Any service provided for all activities pertaining to construction of installations, structures and vessels for the purposes of prospecting or extraction or production of

		mineral oil and natural gas and supply thereof.
2.	The installations, structures and vessels within the continental shelf and the exclusive economic zone of India, constructed for the purposes of prospecting or extraction or production of mineral oil and natural gas	Any service provided or to be provided by or to such installations, structures and vessels and for supply of any goods connected with the said activity.

Question 3

Write a brief note explaining the circumstances under which expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable services under the Service Tax (Determination of Value) Rules, 2006. (4 Marks)(Nov 2009)

Answer

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

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

Question 4

Briefly explain the gross amount charged with reference to the Finance Act, 1994.

(2 Marks)(Nov 2009)

Answer

Explanation to section 67 of the Finance Act, 1994 as amended provides that "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

Question 5

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

		₹
(i)	Gross amount for the works contract (excluding VAT)	1,00,000
(ii)	Value of goods and materials sold in the execution of works contract (Vat is payable on them)	70,000
(iii)	CENVAT credit on (ii) above	1,000
(iv)	Service tax paid on input services	1,000
(v)	CENVAT credit on capital goods issued in the provision of works contract service	1,000
(vi)	Service tax rate	10.3%

Make suitable assumptions and provide explanations where required. (5 Marks)(Nov. 2008)

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

	₹
Gross amount charged (excluding VAT)	1,00,000
Less: Value of goods and materials	<u>70,000</u>
	<u>30,000</u>
Service tax @ 10.3%	3,090
Less: CENVAT credit of service tax paid on input service + CENVAT credit of excise duty paid on capital goods (50%) [₹ 1,000 + (50% of ₹ 1,000)] [Note 2]	<u>1,500</u>
Net service tax payable	<u>1590</u>

Notes –

1. CENVAT credit of ₹ 1,000 on value of goods and materials sold in the execution of works contract would not be available to the assessee. The value for the purpose of levy of

service tax under works contract service does not include the value pertaining to transfer of property in goods involved in the execution of a works contract leviable to VAT/Sales tax. *[Circular No. 98/2007 ST dated 04.01.2008]*

2. CENVAT credit in respect of capital goods would be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year and balance 50% would be available in the subsequent financial year [Rule 4(2) of the CENVAT Credit Rules, 2004].