

GAMUT & COVERAGE OF TAXABLE SERVICES

Question 1

M/s. Commercial Goods Services, a goods transport agency, furnishes the following information in respect of services provided for the year ending March 31, 2011. Determine the value of taxable services and tax thereon under 'transport of goods by road' falling under section 65(105)(zzp) of the Finance Act, 1994.

		₹
(i)	Service provided to M/s. XYZ Co. Ltd.	30,00,000
(ii)	Freight for transport of food grains and pulses	1,50,000
(iii)	Service to an unregistered firm	6,00,000
(iv)	Service provided as a 'clearing and forwarding agent'	2,00,000
(v)	Composite service provided which includes packing/unpacking, loading, unloading in the course of transportation by road	2,00,000
(vi)	Service tax paid on input services used for providing goods transport agency services	72,000

(Provide suitable explanations where required)

(5 Marks)(May 2011)

Answer

Computation of value of taxable services and service tax payable thereon by Commercial Goods Services under Goods Transport Agency's(GTA)service for the year ending 31.3.2011:-

		₹
(i)	Service provided to M/s XYZ Co. Ltd.	Not taxable
(ii)	Freight for transporting food grains/pulses	Exempt
(iii)	Service provided to an unregistered firm	6,00,000
(iv)	Service provided as clearing & forwarding agent	Not covered
(v)	Composite services provided which include packing/ unpacking, loading/unloading	<u>2,00,000</u>

	Gross Taxable Value	8,00,000
	Less: Abatement @ 75%	<u>6,00,000</u>
	Net taxable value	<u>2,00,000</u>
	Service tax payable @10.30%	20,600

Notes:

Item (i) Service has been provided to company. Hence, service tax is to be paid by the person paying freight and not by M/s Commercial Goods Services [Rule 2(d)(v) of the Service Tax Rules, 1994]

Item (ii) Freight for transporting food grains/pulses/fruit etc. is exempt [Notification No. 33/2004 ST dated 03.12.2004]

Item (iii) Since, service has been provided to unregistered firm, service tax liability is on the service provider i.e., M/S. Commercial Goods Services [Rule 2(d)(v) of the Service Tax Rules, 1994]

Item (iv) Service provided as 'clearing & forwarding agent' does not come under the purview of "transport of goods by road" service

Item (v) Composite services included in the invoice issued by GTA form part of GTA service and are eligible for abatement. [Circular No.104/07/2008-ST dated 06.08.2008]

As per rule 2(p) of the CENVAT Credit Rules, 2004, definition of output service specifically excludes goods transport agency service. Hence, CENVAT credit of the service tax of ₹72,000 paid on the input services used in providing GTA services cannot be availed.

Question 2

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

With regard to residential complex service [Section 65(105)(zzzh)] unless the entire payment for the property is paid by the buyer after completion of construction, the activity of construction would be deemed to be a taxable service. (3 Marks)(May 2011)

Answer

The statement is correct. The Finance Act, 2010 had added an explanation to section 65(105)(zzzh) to the effect that the construction of a complex which is intended for sale wholly or in part by a builder or any person authorized by the builder, before during or after construction except in cases where no sum is received from or on behalf of the buyer before issue of completion certification by the competent authority, is to be deemed to be a service provided by the builder to the buyer.

Question 3

Sweet Sugar Mills is engaged in the manufacture of sugar. Government of India had issued directions under the Sugar Control Order for sugar companies to maintain buffer stock of sugar of certain quantity for a specified period. In order to compensate the Sugar mill, the Government had extended buffer stock subsidy towards storage, interest and insurance charges in respect of the buffer stock of sugar actually held by the sugar mill. The department has issued a show cause notice to the assessee raising a demand of service tax on the ground that the amount received by the Sugar mill as buffer subsidy is covered under the taxable service of 'storage and warehousing'. Discuss briefly with reference to decided case law whether the action of the department is sustainable in law. (5 Marks)(May 2011)

Answer

No, the action of the Department is not sustainable in law. The facts of the case are similar to the case of *CCE v. Nahar Industrial Enterprises Ltd.* 2010 (19) STR 166 (P & H). While dismissing the contention of Revenue, the High Court, after perusing the relevant sections viz. section 65(105)(zza) and 65(102) of Finance Act, 1994, said that it is apparent that service tax can be levied only if service of 'storage and warehousing' is provided. Nobody can provide service to himself.

In the present case, it is undisputed that the assessee stored the goods owned by himself. After the expiry of the storage period, the assessee was free to sell to the buyers of its own choice. The assessee had stored goods in compliance to directions of Government of India issued under Sugar Control Order. The assessee had received subsidy not on account of services rendered to Government of India but had received compensation on account of loss of interest, cost of insurance etc., incurred on account of maintenance of stock. The act of assessee cannot be called as rendering of services.

The High Court concurred with the Tribunal's decision that just because the storage period of free sale sugar had to be extended at the behest of Government of India, neither the assessee becomes 'storage and warehouse keeper' nor the Government of India becomes their 'client' in this regard. Therefore, the storage of specific quantity of free sale sugar could not be treated as providing 'storage and warehousing' services to Government of India.

Question 4

'Smartphone' is in the business of providing mobile telephone service. The assessee sells 'SIMCARDS' to its mobile telephone subscribers for a price. 'Smartphone' pays service tax on the activation and other charges. On the 'SIMCARDS' sold to the customers, VAT under the applicable State law is paid. The Department's view is that the 'SIMCARDS' is used for provision of mobile services and is a part of the service and therefore the value of the 'SIMCARDS' has to be included in the category of 'telecommunication services' for purpose of service tax. Explain with a brief note and reference to decided case law whether the view taken by the department is correct in law. (5 Marks)(May 2011)

Answer

Yes, the view taken by the Department is correct in law. The facts of the above case are similar to the case of **Idea Mobile Communication Ltd. V Commissioner of Central Excise and Customs, Cochin-2011-TIOL-71-SC-ST**. The Apex Court held in this case that sale of SIM cards is part of value of taxable service, and thus service tax would be leviable and not sales tax. SIM card has no intrinsic sale value and it is supplied to the customs for providing mobile service to them. The sales tax authorities have themselves conceded the position before the High Court that no assessment of sales tax would be made on the sale value of SIM Card supplied by the appellant to their customs irrespective of the fact whether have filed returns and remitted tax or not. The position in law is, therefore, clear that the amount received by the cellular telephone company from its subscribers towards SIM Card will form part of the taxable value for levy of service tax, for the SIM Cards are never sold as goods independent from services provided. They are considered part and parcel of the services provided and the dominant position of the transaction is to provide service and not to sell the material i.e. SIM Cards which on its own but without the service would hardly have any value at all.

The Supreme Court further explained that even if sales tax is wrongly remitted and paid, that would not absolve the assessee from the responsibility of payment of service tax, if otherwise there is a liability to pay the same. If the article is not susceptible to tax under the Sales Tax Act, the amount of tax paid by the assessee could be refunded or the assessee has to follow the law as may be applicable.

It is also worth mentioning that before the above decision of the Supreme Court, same decision was given in **CCE v. Idea Mobile Communications Ltd. 2010 (19) STR 18 (Ker.)**.

Question 5

Explain with a brief note with reference to the Finance Act, 1994 whether the business auxiliary service provided by a sub-broker to a stock-broker in relation to sale or purchase of securities listed on a registered stock exchange is liable to service tax. (3 Marks)(May 2011)

Answer

Notification No.31/2009-ST dated 1.9.2009 exempts the business auxiliary service provided by a sub-broker to a stock broker in relation to sale or purchase of securities listed on a registered stock exchange from the whole of the service tax leviable thereon. Thus, the **business auxiliary service** is not liable to service tax if it is provided by a sub-broker to a stock broker listed on a registered stock exchange.

The definition of stock broker under section 65(101) excludes sub-broker from the ambit of stock broker service. Consequently, the services provided by a sub-broker under stock broker service are outside the purview of service tax. The above notification exempts the service provided by the sub-broker under business auxiliary service also.

Question 6

D & Co. is engaged in the services of site preparation and clearance, excavation, earth moving and demolition services. The gross amount received during the quarter ended 30.6.2011 for the services provided by them are given below:

	₹
Core extraction services for construction	1,80,000
Land reclamation work	80,000
Services in relation to agriculture	2,00,000
Renovating or restoring water sources	3,50,000
Horizontal drilling of passage of cables or drain pipes	1,00,000
Soil stabilization	90,000
Construction of transport terminals	55,000

Calculate the value of taxable services under 'Site preparation and clearance, excavation, earth moving and demolition services' under the Finance Act, 1994 and the service tax payable thereon (Provide brief explanations where required.) (4 Marks)(Nov 2010)

Answer**Computation of value of taxable services provided of D & CO.:**

Gross amount received	₹
for core extraction services for construction	1,80,000
for land reclamation work	80,000
for horizontal drilling for passage of cables or drain pipes	1,00,000
for soil stabilization	<u>90,000</u>
Total value of taxable services	<u>4,50,000</u>
Service tax payable on above @ 10%	45,000
Education cess @ 2%	900
Secondary and higher education cess @ 1%	<u>450</u>
Total service tax payable	<u>46,350</u>

Notes:

1. Amount received for 'site preparation and clearance, excavation and earth moving and demolition services' provided in relation to agriculture and for renovating or restoring water sources are specifically excluded from the definition of "site formation and clearance, excavation and earth moving and demolition" under section 65(97a) of the Finance Act, 1994.

2. Amount received for 'site preparation and clearance, excavation and earth moving and demolition services' provided in the course of construction of transport terminals is exempt from whole of service tax vide *Notification No. 17/2005 ST dated 07.06.2005*.

Question 7

A private agency has built a canal system on build-own-operate-transfer basis under a contract with the State Government. User charges at commercial rates are levied by the private agency and the revenue so generated is utilized for servicing and repayment of the capital investment.

Briefly write a note with reference to 'commercial or industrial construction service' under the Finance Act, 1994 whether the user charges collected by the private agency is liable to service tax.
(4 Marks)(Nov 2010)

Answer

Circular No. 116/10/2009 ST dated 15.09.2009 clarifies that as per section 65(25b) of the Finance Act, 1994, "commercial or industrial construction service" is chargeable to service tax if it is used, occupied or engaged either wholly or primarily for the furtherance of commerce or industry.

As the canal system built by the Government or under Government projects, does not fall under commercial activity, the canal system built by the Government would not be chargeable to service tax. However, if the canal system is built by private agencies and is developed as a revenue generating measure, then such construction would be charged to service tax.

In this case, the canal system is built by a private agency and user charges are collected at commercial rates. Hence, the user charges collected by the private agency, in the given case, will be subject to service tax.

Question 8

X Bank Ltd furnishes the following information relating to services provided and the gross amount received:

	₹ (lakhs)
Merchant banking services	8
Asset Management (including portfolio management)	3
Service charges for services to the Government of India	1.5
Interest on overdraft and cash credits shown separately	2
Banker to the issue	5
Locker rent	2

Repayment of financial lease made by the customer to the bank ₹ 80 lakhs which includes a principal amount of ₹ 50 lakhs.

Compute the value of taxable service under "banking and other financial services" under the Finance Act, 1994 and the service tax liability of X Bank Ltd. (5 Marks)(Nov 2010)

Answer

Calculation of value of taxable services of X Bank Ltd.

Particulars	₹	₹
Amount received for merchant banking services		8,00,000
Amount received for asset management (including portfolio management) services		3,00,000
Service charges for services provided to Government of India (Note – 1)		Nil
Interest received on overdraft and cash credits (Note – 2)		Nil
Amount received for acting as banker to an issue		5,00,000
Amount received as locker rent		2,00,000
Installment amount received towards repayment of financial lease	80,00,000	
Less: Principal amount included in the above installments	<u>50,00,000</u>	
Interest on financial lease	30,00,000	
10% of the interest amount [₹ 30,00,000 × 10%] (Note – 3)		<u>3,00,000</u>
Total value of taxable services		<u>21,00,000</u>
Service tax payable thereon @ 10%		2,10,000
Education Cess @ 2%		4,200
Secondary and Higher Education Cess @ 1%		<u>2,100</u>
Total service tax payable including Cess		<u>2,16,300</u>

Notes:

1. Service charges for banking and other financial services provided to Government of India are exempt from service tax (Notification No. 13/2004 ST dated 10.09.04).
2. Interest received on cash credit and overdraft is exempt from service tax (Notification No. 29/2004 ST dated 22.09.2004).
3. Service tax is payable only on 10% of the interest on financial lease. Interest is the difference between the installment paid towards repayment of the lease amount and the principal amount contained in such installment (Notification No. 4/2006 ST dated 01.03.2006).

Question 9

State briefly with reference to the provisions of the Finance Act, 1994 whether the following services are liable to tax:

- (i) Permanent transfer of intellectual property rights.

- (ii) *Services provided in relation to handling, storage and warehousing of empty containers under storage and warehousing service.* (4 Marks)(Nov 2010)

Answer

- (i) The term 'intellectual property service', has been defined in section 65(55b) of the Finance Act, 1994 as:-

- (i) transferring, temporarily; or
- (ii) permitting the use or enjoyment of, an intellectual property right.

Hence, permanent transfer of intellectual property right does not attract service tax.

- (ii) *Master Circular No. 96/7/2007 ST dated 23.08.2007* has clarified that empty containers are covered within the meaning of 'goods' as per section 65(50). Thus, services provided in relation to storage and warehousing of empty containers is liable to service tax under 'storage and warehousing service'.

Question 10

The term 'business auxiliary service' was inserted by Finance Act, 2003 which came into force on 1.7.2003. The Parliament by Finance Act, 2008 inserted an explanation in the relevant sub-clause (ii) of section 65(19) stating that for the purpose of this sub-clause -

"Service in relation to promotion or marketing of service provided by the client includes any service provided in relation to marketing of games of chance, organised, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo."

Discuss, whether the explanation appended to sub-clause (ii) of section 65(19) is clarificatory in nature so as to be construed having retrospective effect and retroactive operation. You may take help of a decided case law, if any. (5 Marks)(May 2010)

Answer

The Apex Court, in a case of ***Union of India and Others v. Martin Lottery Agencies Ltd. (2009) 14 STR 593 (SC)***, ruled that by reason of an explanation, a substantive law may also be introduced. If a substantive law is introduced, it will have no retrospective effect. Subject to the constitutionality of the Finance Act, 1994 in view of the explanation appended to this, the Apex Court opined that the service tax, if any, would be payable only with a prospective effect and not with retrospective effect.

In a case of this nature, the Court must be satisfied that the Parliament did not intend to introduce a substantive change in the law. For the aforementioned purpose, the expressions like 'for the removal of doubts' are not conclusive. The said expressions appear to have been used under assumption that organizing games of chance would be rendition of service. It held that the explanation is not clarificatory or declaratory in nature. Hence, it could not be construed having retrospective effect and retroactive operation.

However, it is pertinent to specify that w.e.f. 01-07-2010, services of Promoting/Marketing/Organising of Games of Chance have been brought within the ambit of service tax under a separate category under section 65(105)(zzzzn). Consequently, the aforementioned services will not be taxable under Business Auxiliary Services w.e.f. 01-07-2010. Thus, the aforementioned explanation to section 65(19) has been deleted.

Nevertheless, the students must keep in mind the principle evolved by the Apex Court in case of Martin Lottery Agencies Ltd.

Question 11

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

- (i) *Services in relation to production of alcoholic liquor on job work basis.*
- (ii) *Service of transport of goods in container by Government Railway.*

(2 x 2 = 4 Marks)(May 2010)

Answer

- (i) Yes, the definition of business auxiliary service under section 65(19) of the Finance Act, 1994 excludes any activity that amounts to manufacture of excisable goods. Therefore, services provided in relation to manufacture of alcoholic liquor, which is not excisable, for or on behalf of the client would attract service tax.
- (ii) Service is taxable under the category 'Transport of goods by rail service' under section 65(105)(zzzp). However, Notification No. 7/2010-S.T. dated 27-2-2010 as amended by Notification No. 38/2011-S.T. dated 14-6-2011, has exempted transport of goods by Government railways, whether in containers or otherwise from payment of service tax till December 31, 2011.

Question 12

Whether the value of material supplied by the contractee to the contractor for use in the execution of the works contract shall be included in the value of works contract for payment of service tax under the composition scheme? What is the present rate of service tax under this scheme? Can the service provider avail CENVAT credit also? *(4 Marks)(May 2010)*

Answer

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

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

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

Question 13

Calculate the value of taxable service under 'cargo handling services' of Cargo Ltd. providing brief reasons where required with suitable assumptions based on the following information for the month of April, 2011:

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

(5 Marks)(Nov 2009)

Answer

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

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

Notes:

- The definition of 'cargo handling service' under section 65(23) of Finance Act 1994 specifically excludes handling of export cargo or passenger baggage. Hence, they do not form part of taxable services.

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

Question 14

M/s M Construction Ltd. constructs, builds and sells premises/flats in a building. During the course of development and construction of the building, it enters into a flat purchase agreement in terms of which the buyers are allotted flats in the building. The buyers pay the consideration to M/s. M Construction Ltd. in installments. The said 'flat purchase agreement' reflects the entire consideration for the purchase of flat. This agreement is registered and advance payments in installments are collected. The contention of M/s M Construction Ltd. is that the consideration is for the purchase and sale of the entire flat/premises and the company does not carry out any construction activity. Examine, with a brief note, whether the company is liable to pay service tax in terms of the Finance Act, 1994. (5 Marks)(Nov 2009)

Answer

In the given case M Construction Ltd. is providing taxable services under the category "Construction of complex" service under section 65(105)(zzzh). An **Explanation has been added** to Complex Construction Services w.e.f. 01-07-2010. As per this explanation **unless the entire consideration for a property is paid** either by a prospective buyer or on his behalf **after the completion of construction** (i.e. after issue of a completion certificate by a competent authority), the **construction activity will be deemed to be a taxable service provided** by the Promoter/Builder/Developer to the prospective buyer and service tax would be charged accordingly.

Since, in the given case the concerned prospective buyers are paying consideration to M Construction Ltd. in installments, the services provided by M Construction Ltd. will be deemed to a taxable service and charged to service tax. However, in accordance with *Notification No. 29/2010 dated 22-06-2010 w.e.f. 01-07-2010* M Construction Ltd. can avail **abatement of 75%** of the gross amount charged (which would include value of goods and materials supplied or provided or used for providing the services as well as **cost of land**). As a consequence, M Construction Ltd. can charge service tax on 25% of the gross amount charged from the prospective buyers **if the cost of the land has not been separately recovered** from the concerned buyers.

Question 15

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

- (i) *Service provided by a person to another person in relation to information technology software otherwise for use in course or furtherance of business or commerce.*
- (ii) *Transaction allowing another person to use goods without giving legal right of possession and control to the user of the goods.* (2 x 2 = 4 Marks)(Nov 2009)

Answer

- (i) As per section 65(105)(zzzze), the scope of services provided or to be provided in relation to Information Technology (IT) software includes the services provided for other than business or commerce purposes. As a consequence, service provided or to be provided in relation to IT software for both commercial and non-commercial purposes are liable to service tax under the category of "I.T. Software Services."
- (ii) Transaction of allowing another person to use the goods, **without giving legal right of possession and effective control** is liable to service tax under the category of "**Supply of Tangible Goods for use in India**". According to Section 65(105)(zzzz) of Finance Act 1994, **taxable service** means any service provided or to be provided to any person by any other person in relation to supply of tangible goods, including machinery, equipment, and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances.

Question 16

Good Luck Agencies is engaged in the purchase of lottery tickets in bulk from the State Government and sells them subsequently on behalf of the Government. However, no service tax is paid on the said activity. The Department has sought to levy service tax under the category of 'Services of Promoting, Marketing/Organising of Games of Chance' under section 65(105)(zzzzn). Discuss briefly, with a note whether the action of the Department is correct in law. (5 Marks)(Nov.2009)

Answer

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

Question 17

Calculate the value of taxable service of 'X' Transport Company engaged in the business of transport of goods by road. Give reasons for taxability or exemption of each item. No freight is received from any of the category of consignor/consignee specified in Rule 2(1)(d) of Service Tax Rules 1994. Suitable assumptions may be made wherever required.

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

(7 Marks)(June 2009)

Answer**Computation of value of taxable service**

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

Notes:

- Taxable service provided by a goods transport agency in relation to transport of vegetables, eggs, milk, food grains & pulses by road is exempt from service tax (Notification No. 33/2004-ST dated 03.12.2004 as amended by Notification No. 04/2010-ST dated 27-02-2010)
- Service tax is exempt where:
 - the gross amount charged on all consignments transported in a goods carriage does not exceed ₹ 1,500/- or
 - the gross amount charged on an individual consignment transported in a goods carriage does not exceed ₹ 750/-
 (Notification No. 34/ 2004-ST dated 3.12.2004)

3. As per Notification No. 13/2008-ST dated 1.3.2008, service tax is required to be paid on 25% of the gross amount charged i.e. 75% of the gross amount charged is allowed as **unconditional exemption**.

Question 18

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

(5 Marks)(May 2010) (June2009)

- (b) The assessee used to finance the purchase of vehicles manufactured by a leading automobile company which used to sell the vehicles through its distributors. Assessee financed part of the vehicle cost to the purchaser of vehicle, after signing an agreement with the purchaser of providing the right of repossession of the vehicle in case buyer of the vehicle defaulted in paying installment. Immediately on sale, purchaser of the vehicle became the owner and vehicle was registered in his name. The Department seeks to levy service tax in the category of "Banking and other Financial Services." Examine whether Department's stand is correct in terms of legal provisions and case law.

(5 Marks)(June2009)

Answer

- (a) The facts of the given case are similar to the case of **CCEx v. Dr. Lal Pathological Lab (P) Ltd 2007 (8) STR 337 (P&H)**.

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

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

Hence, the contention of the Department is not correct. The aforementioned judgement has also been followed in case of **CCE Vs Patient Service Centre 2008 (9)STR 229(P&H HC)**.

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

In this case, The Tribunal held that since hire purchase finance is not covered by the definition of banking and other financial services under section 65(12) of the Finance Act, 1994, service tax would not be attracted. This judgment has also been upheld subsequently by the Apex Court in *CCE v. Bajaj Auto Finance Ltd. 2008 (10) STR 433 (SC)*.

Question 19

- (i) State whether the following services are taxable under the provisions of the Finance Act, 1994 relating to service tax:
- A practicing Chartered Accountant representing a client before Income Tax Officer in assessment proceeding.
 - Royalty received from the publisher by an author of a text-book for printing and publishing his book. (2x2 = 4 Marks)(June 2009)
- (ii) Give four illustrations to explain the scope of service rendered by a consulting engineer. (4 Marks)(June 2009)
- (iii) List the services brought under the service tax net by the Finance Act, 2011. (4 Marks)(June 2009)

Answer

- (i) (a) With effect from 01.05.2011 the services provided or to be provided by a practicing chartered accountant in his professional capacity, to a client, relating to representing the client before any **statutory authority** in the course of proceedings **initiated under any law by way of issue of notice**, have been made taxable. The exemption given in this regard under Notification No. 25/2006-ST dated 13.7.2006 has been withdrawn with effect from 01.05.2011 vide Notification No. 32/2011 dated 25.04.2011.
- (b) Section 13(1)(a) of the Indian Copyrights Act, 1957 provides that the copyright subsists in the following classes of works:-
- Original literary, dramatic, musical and artistic works;
 - Recording of cinematographic films;

(iii) Sound recordings.

As per section[65(105)(zzzzt)], 'services related to copyrights on cinematographic films and sound recording', category (a) above has been kept out of the tax net while Category (b) and (c) have been made taxable under this service. Hence royalty service is not taxable.

(ii) Following is an illustrative list of services which fall within the ambit and scope of consulting engineer's services:-

- (i) Design engineering
- (ii) Pre design services/project report
- (iii) Supervision or construction and project management
- (iv) Feasibility study
- (v) Supervision of commissioning and initial operation
- (vi) Post operation and management
- (vii) Trouble shooting and technical services including establishing system and procedures for an existing plant.

(iii) Following new services have been brought under service tax net by the Finance Act, 2011 w.e.f. 01-05-2011,:-

- 1. Services provided by a restaurant having the facility of air-conditioning in any part of the establishment at any time during the financial year and which has licence to serve alcoholic beverages
- 2. Short-term accommodation services by a hotel, inn, guest house, club or campsite etc.

Question 20

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

Briefly explain, with reference to relevant provisions and case law, if any, whether the stand taken by the department is correct in law. (5 Marks)(Nov.2008)

(b) *M/s Krishna Computer Colour Lab is in the business of developing and printing of colour photographic films. It develops the negatives supplied by the customer and provides*

positive prints as per the order placed by the customer. The Department has demanded service tax on the entire amount charged from the customers without deduction of any amount towards cost of materials.

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

Briefly explain, with regard to decided case law, if any, whether the stand taken by M/s Krishna Computer Colour Lab is correct in law. (5 Marks) (Nov 2008)

Answer

- (a) No, the stand taken by the Department is not correct. The facts in the case are similar to the matter decided by the **Rajasthan High Court** in **S.B. Construction Company v. UOI (2006) 4 STR 545**. The High Court observed that the service tax is levied on cargo handling services, which undertake the activities of packing, unpacking, loading, unloading of goods to be transported by any means of transportation namely truck, rail, ship or aircraft. However, in the instant case, the services provided by the company under the contract is distinct i.e., transporting coal from wagons to thermal power station by conveyor belt and not by any means of transportation. Thus, the High Court held that the services rendered by the company could not fall under the ambit of cargo handling services and as such would not be liable to service tax. The above decision was also followed in *Sainik Mining & Allied Services Ltd. Vs CCE (2008) 12 STT 433 (CESTAT-Kol.)*
- (b) Yes, the stand taken by M/s. Krishna Computer Colour Lab is valid in law.

In case of **Shilpa Colour Lab. V. CCE (2007) 8 STT 102 (Tri.-Banglore)***, the Tribunal held that in the services relating to photography, if certain goods and materials are consumed, the value of those goods and materials cannot be included in the value of taxable service. The cost of unexposed photography film, unrecorded magnetic tape or other storage device, when sold to client in course of providing of photography service is excluded because it would amount to levy of sales tax, which constitutionally is a state subject and not that of union. However such an exclusion is subject to production of invoice/records regarding sale of the aforesaid goods.

*Note: It is to be noted that said case has been maintained in case of Commissioner vs. Shilpa Colour Lab-2009(14) S.T.R. J163 (S.C.) .

Question 21

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

- (i) *Services provided in connection with the management of an organization by a management consultant having no professional qualification.*
- (ii) *Advance payment received from the service recipient by a person rendering construction services under section 65(105) (zzzh) of the Act.* (4 Marks)(Nov 2008)

Answer

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