SERVICE TAX

1
INTRODUCTION

There is no independent statute on service tax as yet. It was introduced in the year 1994 and is imposed under chapter V and VA of the Finance Act, 1994. It is levied by Central Government by virtue of power given to it under Entry 97 of the Union List of Schedule VII of the Constitution of India.

The Chargeability [Section 66]
There shall be levied service tax at the rate of 10.3% of the value of taxable services provided or to be provided to any person referred in Section 65 (105) and collected in such manner as may be prescribed.

Points to be noted
1. Service Tax is payable on the gross amount and where the amount has been received by the service provider net of TDS then the service tax shall be paid on the gross amount. For instance, a practicing Chartered Accountant raises a bill of Rs. 30,000 but receives Rs. 27,000 from his client after TDS of Rs. 3,000. In this case the service tax shall be paid on Rs. 30,000 and not Rs. 27,000.

2. Service tax is not a tax on Profession but a tax on services rendered by the Professional. Therefore, a Practicing Chartered Accountant or practicing Company Secretary etc. shall be liable to pay professional tax on profession and also service tax on services rendered by them.

3. For levy of service tax, it is necessary that the service provider and service recipient should be two separate persons acting on 'principal-to- principal basis'. Services provided by an employee to his employer does not come under the purview of service tax. ***[S. Maruthappan vs. CCEx. [2007] 8 STR 228 Tri (Che.)]***

2
PAYMENT OF SERVICE TAX

Where service recipient liable to pay service tax (Reverse Charge)

Generally, the service provider is liable to pay service tax. However, in the following five cases the **service receiver is liable to pay service tax -**

(a) In relation to insurance auxiliary service by an insurance agent, the insurance company shall be liable to pay the service tax.

(b) In case of import of service the service receiver is liable to pay service tax.

(c) In relation to any taxable service provided by a goods transport agency where **either** the consignor or the consignee is a specified entity (company etc.), the person paying the freight shall be liable to pay the service tax.

If none of the consignor or consignee is a specified entity, the person liable to pay service tax will be goods transport agency itself.

Specified entity: (a) any factory or (b) any company or (c) any statutory corporation or (d) any registered society or (e) any cooperative society or (f) any dealer registered under Central Excise or (g) anybody corporate or a registered partnership firm.

Example –
(i) Suppose Mr. X(consignor) send goods though Goods Transport Agency to X Ltd.(consignee).

In the given case X Ltd. is a specified entity. Therefore, if X Ltd. pays freight then X Ltd. will pay service tax. If Mr. X pays freight then Mr. X will pay service tax.

(ii) Suppose Mr. X send goods through Goods Transport Agency to Mr. Y

In this case neither consignor nor consignee is a specified entity. Therefore, ST would be paid by the Goods Transport Agency itself.

(d) In relation to business auxiliary service of distribution of mutual fund by a mutual fund distributor or an agent, the mutual fund or asset Management Company receiving such service shall be liable to pay the service tax.

(e) In relation to sponsorship services, the person sponsoring the event if he is located in India.

Due Dates for the payments [Rule 6(1)]

Category of assessee	Periodicity of payment	Period	Due Date
Individuals, proprietary firms or partnership firms	Quarterly	April to June, July to September, October to December	5th (6th, if paid electronically through internet banking) of the month immediately following the quarter in which ***"service is deemed to be provided as per the Point of Taxation Rules, 2011.***
		Service tax on the service deemed to be provided in the quarter ending in March –i.e, Jan to March	31st March
Others	Monthly	All months except March	5th (6th, if paid electronically through internet banking) of the month immediately following the calendar month in which ***"service is deemed to be provided as per the Point of Taxation Rules, 2011.***
		service tax on the service deemed to be provided in the month of March	31st March

Note:

1. It is to be noted that as per CBEC clarification, where the tax is paid electronically, the same should be paid by 8 p.m on the due date. If the same is paid later than 8 p.m on the due date, it shall be deemed to have been paid on the next date.

Interest on delay payment of service tax [Section 75]:

In case of delay in payment of service tax, interest shall be charged @ ~~13%~~ **18%** p.a. after the expiry of the due date till the date of payment of tax. [Such interest will be chargeable whether the person liable to pay service tax is service provider or service receiver]

However, a concessional rate of 15% p.a is available for an assessee whose taxable value of turnover does not exceed ₹60 lakhs during any of the year covered in the notice or the preceding financial year. [Inserted by the Finance Act, 2011 w.e.f 8.4.2011]

Penalty in case of Failure to pay service tax/Delay payment of service Tax

₹ ~~200~~ ₹ ***100*** per day of failure, or ~~2%~~ 1% p.m. of service tax, whichever is higher, starting with the first day after due date till the date of actual payment of outstanding amount of service tax, ~~subject to maximum of tax not paid.~~ ***Subject to, 50% of service tax not paid. [w.e.f8.4.2011]***

3
POINT OF TAXATION RULES, 2011

Point of Taxation: means the point in time when a service shall be deemed to have been provided;

RULE 3: GENERAL RULE FOR DETERMINATION OF POINT OF TAXATION

the point of taxation shall be

If invoice is issued within 14 days from the date of completion of service.
↓
Date of invoice or payment, whichever is earlier

If Invoice is not issued within 14 days from the date of completion of service.
↓
Date of completion of service or payment, whichever is earlier.

Explanation- where any advance is received by whatever name known is received by the service provider towards providing taxable service, the point of taxation shall be the ***date of receipt of each such advance.***

EXAMPLE – CBEC CIRCULARS

S. No.	Date of completion of service	Date of invoice	Date on which payment recd.	Point of Taxation	Remarks
1.	April 10, 2011	April 20, 2011	April 30, 2011	April 20, 2011	Invoice issued in 14 days. Therefore date of invoice or payment received; whichever is earlier shall be considered.
2.	April 10, 2011	April 26, 2011	April 30, 2011	April 10, 2011	Invoice not issued within 14 days. Therefore date of completion of service or payment received; whichever is earlier.
3.	April 10, 2011	April 20, 2011	April 15, 2011	April 15, 2011	Invoice issued in 14 days. Therefore, date of invoice or payment received; whichever is earlier.
4.	April 10, 2011	April 26, 2011	April 5, 2011 (part) and April 25, 2011 (remaining)	April 5, 2011 and April 10, 2011 for respective amounts	Invoice not issued in 14 days. Therefore, service completion date or payment received; whichever is earlier shall be considered. Hence for part payment point of taxation shall be 5/4/2011 and for balance 10/4/2011.

Example1: X Ltd. has agreed to render services to Mr.Y. The following are the chronological events:

	₹
Contract for services entered into on August 31,2011.	
Advance received in 5.09. 2011.	1,00,000
The entire contact was completed on 31.1.2012 and Total value of services, billed	

in 10.2. 2012	11,00,000

Balance amount received in 15th March 2012

What is the point of taxation and due date of payment?

Solution- (1) As per the Explanation to Rule 3 of Point of Taxation Rules, 2011 wherever any advance is received by the service provider towards any taxable services, then the point of taxation shall be ***date of receipt of advance. Accordingly in the given case the Point of Taxation shall be 05.09.2011. However, tax with respect to taxable value of service shall be payable within 5/6th October 2011 as under-***

Service tax @ 10.3% n ₹ 1,00,000= ₹ 10,300.

(2) The contact is completed and invoice is issued within 14 days of completion of service, therefore, as per the Rule 3 of Point of Taxation Rules, 2011, the point of taxation shall be – (a) date of invoice or payment received – whichever is earlier.

In the given case the amount is received in 15.3.2012 and date of invoice is 10.2.2012, therefore the point of taxation shall be 10.2.2012. However, as per Rule 6(1) of Service Tax Rules, 1994 tax is payable within 5th/6th March 2012 as under-

	₹
Total Bill raised	11,00,000
Less: Advance received on which tax already paid	1,00,000
Value of service for tax is payable	10,00,000
Service tax @ 10.3%	1,00,300

(3) It is to be noted on actual received of payment on 15.3.2012, nothing shall be taxable.

Example 2: If in the above example the bill is raised on 20.2.2012 instead of 10.2.2012. Determine the point of taxation.

Solution -

(1) No change. Same as above.

(2) Since the invoice is not issued within 14 days of completion of service, therefore as per Rule 3 the point of taxation shall be – (a) date of completion of service or (b) date of receipt of payment; whichever is earlier

Hence, the point of taxation shall be 31.1.2012 and due date of payment of service tax shall be 5th/6th February 2012, as under-

Total Bill raised	11,00,000
Less: Advance received on which tax already paid	1,00,000
Value of service for tax is payable	10,00,000
Service tax @ 10.3%	1,00,300

(3) It is to be noted on actual received of payment on 15.3.2012, nothing shall be taxable.

RULE 7: POINT OF TAXATION ON RECEIPT BASIS IN CERTAIN CASES

However, in the following cases the point of taxation shall be on receipt basis.

(a) In case of Export of Service. However, this rule is not applicable where payment is not received within the period specified by the RBI.

(b) Cases where recipients are liable to pay service tax. However, this rule is not applicable where the payment is not made within a period of 6 months of the date of invoice.

(c) individuals or proprietary firms or partnership firms providing taxable services in respect to – (i) Architect Service; (ii) Interior decorator service; (iii) Practicing CA/CWA/CS Service; (iv) Scientific or technical consultancy service; v) Legal Consultancy Service; ***vi) Consulting Engineer w.e.f 1.7.2011***

Example 3: Mr. A of India imported certain taxable services from Mr. B of USA on 1.7.2011. Invoice is also issued by Mr.B on the same date. Determine the point of taxation in the following case-

- **(a) If payment is made by Mr. A on 5.8.2011.**
- **(b) If payment is made by Mr. A on 15/2/2012.**

Mr. A being the recipient of service liable to pay service tax.

Answer: (a) Since the payment is made within 6 months from the date of issue of invoice therefore Rule 7 shall be applicable and accordingly the point of taxation shall be the date of payment i.e, 5/8/2011.

(b) Since the payment is not made within 6 months from the date of issue of invoice therefore Rule 7 shall be not be applicable. Therefore, in the given case the point of taxation shall be determined as per Rule 3- i.e., Date of Invoice or date of payment; whichever is earlier- i.e., 1.7.2011.

Example 4: M/s. ABC & Co., a Chartered Firm, provide taxable services on 1.7.2011 and issued invoice on 10.7.2011. However, the payment for the same is received on 30.7.2011. Determine the point of taxation.

Answer: As per Rule 7 the point of taxation shall be the date when the payment is received. Therefore, the point of taxation shall be 30/7/2011.

POINT OF TAXATION IN CASE OF ASSOCIATE ENTERPRISE (PROVISO TO RULE 7)

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.
Note: "associated enterprises" shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961;

Example 5: X Ltd. of India received taxable services from its Associate enterprise X Inc. of USA. X Ltd. credited the account of X Inc. on 15.2.2012 and payment is made on 10.3.2012.
In the given case the point of taxation shall be date of credit or date of payment, whichever is earlier – i.e, 15.2.2012.

RULE 6: POINT OF TAXATION IN CASE OF CONTINUOUS SUPPLY OF SERVICE

(1) The point of taxation shall be same as that of Rule 3.

(2) How to determine the date of completion of service in case of "Continuous Supply of service"?

In case of **"continuous supply of service"** where the provision 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 service.

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. [Example given under CBEC Circular]

"continuous supply of service" means–
(a) Telecommunication service
(b) Commercial or industrial construction
(c) Construction of residential complex
(d) Internet Telecommunication Service
(e) Works contract service
(g) any other service, which is provided, or to be provided continuously, under a contract, for a period exceeding 3 months

Example 7: X Ltd. engaged in construction of residential complex entered into a contract for providing taxable services for a period of 2 months to Y Ltd. from 1.4.2011. As per the contract Y Ltd. is required to pay the amount on end of the each months. Determine the point of taxation.

Answer: Construction of residential complex will constitute "continuous supply of service" irrespective of the period for which they are provided.

The point of taxation shall be date of invoice or payment received whichever is earlier, in case invoice is issued within 14 days of completion of service. As per Rule 6 in case of continuous supply of service the date of completion of each event as specified in the contract shall be deemed to be the date of completion of service. Therefore, the point of taxations shall be 30/4/2011 and 31/5/2011 and the due date of issue of invoice shall be 14/5/2011 and 14/6/2011 respectively. Assuming amount is received in the respective due dates.

Completion of service – [Circular No. 144/13/2011 – ST, dated 18th July, 2011]:

"Completion of service" would include not only the physical part of providing the service but also the completion of all other auxiliary activities that enable the service provider to be in a position to issue the invoice. Such auxiliary activities could include activities like measurement, quality testing etc. which may be essential pre-requisite for identification of completion of service. However, such activities do not include flimsy or irrelevant grounds for delay in issuance of invoice.

RULE 5: PAYMENT OF TAX IN CASES OF NEW SERVICES

Where a service (except services covered under 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.

<u>Example 6</u>: For instance, w.e.f 1/7/2011 certain service has been taxable for the first time

S. No.	Service provided	Issue invoice on	Date on which payment recd.	Taxable or Not Taxable	Remarks
1.	5/5/2011	12/5/2011	15/6/2011	Not taxable	Since invoice and payment is received before new service became taxable. Therefore not taxable as per rule 5(a)
2.	30/6/2011	14/7/2011	30/6/2011	Not taxable.	Since the payment is received before new service became taxable and invoice is issued within 14 days as prescribed under Rule 4A. Therefore not taxable as per Rule 5(b).
3.	1/6/2011	12/6/2011	5/7/2011	Taxable	Since payment is received after 1.7.2011.
4.	1/7/2011	10/7/2011	20/7/2011	Taxable	

RULE 4: POINT OF TAXATION IN CASE OF CHANGE IN EFFECTIVE RATE OF TAX

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 following manner, namely:-

(a) where service has been provided before the change in effective rate of tax,-

Situation	Point of Taxation
1. (Invoice issued + Payment received) after the change in effective rate of tax.	Date of payment or issuing of invoice, whichever is earlier
2. Invoice issued before but payment is received after the change in effective rate of tax.	Date of issuing of invoice
3. Invoice issued after but Payment is received before the change in effective rate of tax.	Date of payment

<u>Note</u>: For practical point of view you may remember point of taxation shall be earlier of the following – whatever may be the situation -

(a) Issue of invoice; or

(b) Date of payment.

<u>Example 8</u>: For instance, w.e.f 10/4/2011 the rate of Service Tax has been changed from 10% to 12%. CBEC circular (modified)

S. No.	Service provided	Issue invoice on	Date on which payment recd.	Point of Taxation	Rate of Duty*	Remarks

1.	5/4/2011	18/4/2011	15/4/2011	15/4/2011	12%	Service provided before 10/4/2011 but Invoice and payment is issued/ received after 10/4/2011. Therefore, issue of invoice or payment received whichever is earlier is considered.
2.	5/4/2011	9/4/2011	20/4/2011	9/4/2011	10%	Service provided and also invoice is issued before 10/4/2011 but payment is received after 10/4/2011. Therefore, date of issue of invoice is considered.
3.	5/4/2011	12/4/2011	8/4/2011	8/4/2011	10%	Service provided and also payment is issued before 10/4/2011 but invoice is issued after 10/4/2011. Therefore, date of received of payment is considered.

* As per Rule 5B of Service Tax Rules, 1994, the applicable rate of duty shall be the rate prevailing at the date of point of taxation.

(b) Where service has been provided after the change in effective rate of tax,-

Situation	Point of Taxation
1. (Invoice issued + Payment received) before the change in effective rate of tax.	Date of receipt of payment or date of issuance of invoice, whichever is earlier
2. Invoice issued before but payment received after change in effective rate of tax.	Date of payment
3. Invoice issued after but Payment is received before the change in effective rate of tax.	Date of issuing of invoice

<u>Example 9</u>: For instance, w.e.f 10/4/2011 the rate of Service Tax has been changed from 10% to 12%. CBEC circular (modified)

S. No.	Service provided	Date of issue of invoice	Date on which payment recd.	Point of Taxation	Rate of Duty*	Remarks
1.	11/4/2011	9/4/2011	20/4/2011	20/4/2011	12%	Service provided and payment received after 10/4/2011 but invoice was issued before 10/4/2011. Hence, date of received of payment shall be taken.
2.	11/4/2011	5/4/2011	9/4/2011	5/4/2011	10%	Service provided after 10/4/2011 but Invoice and payment is issued/ received before 10/4/2011. Therefore, issue of invoice or payment received whichever is earlier is considered.
3.	11/4/2011	15/4/2011	9/4/2011	15/4/2011	12%	Service provided and invoice is issued after 10/4/2011 but payment is issued/ received before 10/4/2011. Therefore, date of issue of invoice is considered.

* As per Rule 5B of Service Tax Rules, 1994, the applicable rate of duty shall be the rate prevailing at the date of point of taxation.

Note: **"change in effective rate of tax"**- shall also include change in that portion of value on which tax is payable in terms of an exemption notification or rules made in this regard.

Therefore it includes-

(1) change in rate of service tax

(2) Change in rate of abatements from the value of service (including grant thereof or wirhdrwal)

(3) change in rate of composition scheme.[i.e, either the values or the rates]

(4) any other notification which is issued, rescinded or amended and has the effect of altering the taxability of any service.

RULE 8: POINT OF TAXATION IN CASE OF COPYRIGHTS, ETC.

In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where 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, the service shall be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect thereof, or an invoice is issued by the provider, whichever earlier.

MISCELLANIOUS POINTS

(1) Applicability : The Point of Taxation Rules, 2011 shall not be applicable-
(a) where the provision of service is completed; or
(b) where invoices are issued, prior to 1.4.2011.

Further, While this rules shall come into force from 01.04.2011. However, there is an option to the assessee under rule 9 to pay tax on payment basis as per old provisions till 30.6.2011, for those services which are provided on or before 30.6.2011 or for those services for which invoices are issued upto 30.6.2011.

(3) "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;

Rule 4A: **Time limit for issue of invoice/bill/challan:** The invoice/bill/challan shall be issued within 14 days from the date of completion of service or payment receipt, whichever is earlier. However, ***in case of continuous supply of service, the invoice/bill/challan shall be issued 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.***

SIMPLE NUMERICAL PROBLEMS

Question 1: A partnership firm gives the following particulars relating to the services provided to various clients by it for the quarter ending September 30,2011-

Total bills raised till 30.9.2011 within 14 days of service rendered for ₹ 875000 out of which bill for ₹75000 was raised on an approved International Organisation and payments of bills for ₹100000 were not, received till September 30,2011.

Amount of ₹50000 was received as an advance from XYZ Ltd. on September 25,2011 to whom the services were to be provided in October 2011.

You are required to compute value of taxable services and service tax thereon and due date of deposit of tax.

Solution: (a) Value of taxable services for the quarter ending 30.9.2011

Total bill raised		8,75,000
Less: bill raised on approved international organization – Exempted	75,000	
Add: advance received – as per explanation to Rule 3 of POT Rules, 2011, any advance received shall be taxable on the date of receipt.		50,000
Value of taxable service		8,50,000
(b) Service tax @10.3% (Assuming excluding Service tax)		87,550

(c) As per Rule 6(1) of Service Tax Rules, 1994 the due date of payment shall be 5^{th}/ 6^{th} (if e payment) of the following quarter ending of point of taxation i.e, 5^{th}/6^{th} October 2011.

Note 1: with respect to payment of ₹ 1,00,000 which is not received shall be taxable – date of invoice or payment received – earlier [as per Rule 3 of Point of Taxation Rules, 2011]. Hence, in the given case Invoice date is earlier, therefore ₹ 1,00,000 is liable to tax in quarter ending 30.9.2011. Since, the maount is already included, therefore no adjustment is required.

Question 2: Compute Service Tax from the following information for half year ended 31/3/2012

Advance Received in March 2012 for service to be provided in April 2012 (net of TDS of ₹20,000). [excluding service tax]	₹1,80,000
Free services to a client who was poor and not able to pay the amount - Market Value	₹ 50,000
Advance received in March 2012 for a service to be provided in September 2012 (Of the above amount, ₹25,000 was refunded in August 2012) [including service tax]	₹1,00,000

Question 3: An unregistered "Service provider" provides following details in respect of taxable services provided during the financial year 2011-12:

Date	Particulars	Amount
	(1) Advance received from a customer for a service to be provided in 12-13	1,00,000
	(2) Part payment received against a bill of ₹ 9,50,000 raised on a customer, invoice is issued within 14days of completion of service. The balance amount is received in 12-13	5,00,000
	(3)Taxable service rendered during January,2012. However, payment is received on April 2012 and bill of ₹ 5,00,000 is raised on April 2012.	NIL

The service tax provider complies with the provisions of registration and collection of service tax as per service tax laws in 11-12. He gets registered during the year. Compute the of service tax liability of service provider for the year 2011-12 considering the rate of service tax @10.3%.

Solution: Computation of Service Tax liability 2011-12

	₹
(1) Advance received is taxable in the year of received, as per explanation to Rule 3	1,00,000
(2) ₹ 5,00,000 is taxable in 11-12. and with respect to balance amount, since invoice is issued within 14 days of completion of service, therefore, the Point of taxation shall be payment date or Invoice date; whichever is earlier. In the given case balance amount is received in 12-13. However, service is provided in 11-12. Therefore, it is taxable in 11-12. (Rule 3 of Point of Taxation Rule, 2011)	9,50,000
(3) Since invoice is issued after 14 days, therefore, the Point of taxation shall be Date of payment or date of completion of service; earlier. Hence, ₹ 5,00,000 is taxable in 11-12 (Rule 3 of Point of Taxation Rule, 2011)	5,00,000
Gross taxable value	15,50,000
Less: Exemption for Small Service Provider	10,00,000
Taxable Value	**5,50,000**
Service Tax @10.3%	**56,650**

Note: It is clear from the question that in P.Y 10-11 the turnover of the assessee is less than 10 lakh, as the assessee is unregistered in 10-11. Therefore the assessee is a Small service provider in 11-12 and accordingly eligible for exemption of ₹ 10 lakh in 11-12.

4
VALUATION OF TAXABLE SERVICES

Section 67 contains comprehensive provisions for valuation of services for the purpose of levy of service tax.
(1) Accordingly, where service tax is chargeable on any taxable service with reference to its value, then, such value shall be computed as follows –

	Case-	Value shall be -
(a)	Where the provision of service is for a consideration in money	The gross amount charged by the service provider for such service provided or to be provided by him
(b)	Where the provision of service is for a consideration not wholly or partly consisting of money	Non monetary consideration should be converted to equivalent monetary value.
(c)	Where the provision of service is for a consideration which is not ascertainable	The amount as may be determined in the manner prescribed by Service Tax (Determination of Value); Rules, 2006.

Explanations -
(a) 'Consideration' includes any amount payable for taxable services provided or to be provided;

(b) 'Money' includes any currency, cheque, promissory note, letter of credit, draft, pay order, travelers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;

(c) **'Gross amount charged' includes -**
(a) 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

(b) 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.
"Associated Enterprise" has same meaning assigned u/s. 92A of the Income tax Act, 1961.

Service Tax (Determination of Value) Rules, 2006

The provisions of the Service Tax (Determination of Value) Rules, 2006 are as follows -

(1) Determination of Value when consideration is wholly or partly not in money [Rule 3]: Where the consideration received is not wholly or partly consisting of money, the value shall be determined by the service provider in the following manner:-

(a) ***When equivalent monetary value cannot be determined*** -the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade;

(b) where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration which shall, in no case, be less than the cost of providing the service.

Class Notes

Example- Mr. X provides certain services to Mr. Y. How shall you determine the value in the following cases-

(i) Mr. Y gives a mobile phone of ₹ 15,000 to Mr. X. The normal rate at which service is provided by X is ₹ 4,600.

Answer: Service tax is charged on ₹ 15,000. i.e, non-monetary consideration converted in to equivalent monetary value.

(ii) Suppose Mr.Y gives a non-monetary consideration to Mr. X but its value cannot be determined.

Answer: Service Tax would be charged on ₹ 4,600. By virtue of Rule 3.

(iii) Mr. X provides certain services to Mr. Y. Mr. Y gives non-monetary consideration, the value of which cannot be determined. Further, X does not provide similar services to any other person. The cost of providing services by X to Y shall be ₹ 8,000.

Answer- Mr. X shall determine the value of services which cannot go below ₹ 8,000 [by virtue of Rule 3(b)]

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(2) <u>Rejection of Value [Rule 4]</u> : The Central Excise Officer has the power to satisfy himself as to the accuracy of any information furnished or document presented for valuation.

Where the Central Excise Officer is satisfied that the value so determined by the service provider is not in accordance with the provisions of the Act or the rules, he shall issue a notice to such service provider to show cause why the value of such taxable service for the purpose of charging service tax should not be fixed at the amount specified in the notice.

After providing a reasonable opportunity of being heard, the Central Excise Officer shall determine the value of such taxable service in accordance with the provisions of the Act and these rules.

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(3) <u>Inclusion in or exclusion from value of certain expenditure or costs [Rule 5]</u> : Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for charging service tax on that service.

<u>Value to include all components even if separately shown :</u> The value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in invoice.

Explanation- For the removal of doubts, it is hereby clarified that for the telecommunication services, 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."[w.e.f 1.3.2011]

<u>Expenditure or costs incurred as 'pure agent' to be excluded:</u> The expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, -

(a) the service provider acts as a pure agent of service receiver;

(b) the recipient of service receives and uses such goods or services;
(c) the recipient of service is liable to make payment to the third party;

(d) the recipient of service authorises the service provider to make payment on his behalf;

(e) 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;

(f) the payment made by the service provider as pure agent has been separately indicated in the invoice issued by the service provider ;

(g) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

(h) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Pure agent: "Pure agent" means a person who -
(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;
(c) does not use such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services.

Question : State on what amount is service tax chargeable in the following cases:

1. An Auditor raises the following bill -

Audit fees	**₹ 30,000**
Hotel Stay Charges	**₹10,000**
Staff Salary	**₹ 5,000**
Stationery usage charges	**₹ 5,000**
Traveling expenses reimbursement	**₹ 10,000**
	₹ 60,000

Answer: Service tax is chargeable on the gross amount charged by the service provider. Therefore, all the expenses incurred in providing the service shall be included in the value of service. Hence service tax is chargeable on ₹60,000.

2. Similarly, if a real estate agent charges brokerage ₹ 5,000, advertisement cost ₹ 1,000 and staff salary ₹ 1,000 then service tax would be charged on the gross amount of ₹ 7,000.

3. A Rent a cab operator or Man power agent recovers the cost of driver or his workers. In this case also service tax is chargeable on gross amount including staff salary.

4. A hotel charges additional service fee from customers which are disbursed to hotel staff as tips. In this case also service tax is chargeable on gross amount including additional service fee.

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

6. X visits a beauty parlor and the total amount billed is ₹ 1,500 inclusive of ₹ 500 for materials sold and ₹200 for materials consumed.

Answer: The exemption under service tax is available only w.r.t. materials sold and not w.r.t. materials consumed. Therefore, service tax is chargeable, in this case, on ₹ (1500 – 500) = ₹ 1,000.

Examples of Pure Agent

7. An Air Travel Agent raises the following bill –

Commission	**₹ 500**
Air- ticket reimbursement	**₹ 10,000**
	₹ 10,500

In this case, service tax will be charged @ 10.3% on ₹ 500.

8. But, if in the above example, the air travel agent incurs ₹ 10,000 for the ticket but recovers ₹ 10,100 for the ticket, then the service tax shall be charged on the entire amount of ₹ 10,600. Once the service provider charges from the customer something more than he has incurred then the service provider cannot be considered as a pure agent.

9. A Custom House Agent raises the following bill –

Service Charges	**₹ 20,000**
Custom Duty	**₹ 5,000**
	₹ 25,000

In this case, service tax is chargeable only on ₹ 20,000 as it is not the responsibility of the custom house agent to pay custom duty of the client. The custom duty is being paid by him only on behalf of the client. Therefore, he is acting as a pure agent.

(4) Rule 6: Specific inclusion/exclusion of certain items from the value of taxable service

Inclusions: Subject to the provisions of the section 67, the value of the taxable services shall include,

(a) the commission or brokerage charged by a broker on the sale or purchase of securities including commission or brokerage paid by the stock-broker to any sub-broker;

(b) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;

(c) the amount of premium charged by the insurer from the policy holder;

(d) the commission received by the air travel agent from the airline;

(e) the commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;

(f) the reimbursement received by the authorized service station, from manufacturer for carrying of any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer;

(g) the commission or any amount received by a rail travel agent from the railways or the customer;

(h) the remuneration or commission, by whatever name called, paid to such agent by the client engaging such agent for the services provided by a clearing and forwarding agent to a client rendering services of clearing and forwarding operations in any manner; and

(i) the commission, fee or any other sum, by whatever name called, paid to such agent by the insurer appointing such agent in relation to such insurance auxiliary services provided by an insurance agent.

Exclusions: Subject to the provisions relating to inclusions listed above, the value of any taxable service, as the case may be, does not include –

(a) initial deposit made by the subscriber at the time of application of the telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;

(b) the airfare collected by air travel agent in respect of service provided by him;

(c) the rail fare collected by rail travel agent in respect of service provided by him; and

(d) interest on loans.

(e) the taxes levied by any Government on any passenger traveling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger. [w.e.f 27-2-2010]

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(5) Rule 7: Valuation in case taxable service provided from outside India: Refer chapter "Import of Service"

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(6) Rule 2A: Valuation of works contact Service: Refer chapter "Composition scheme"

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(7) Rule 2B- valuation in relation to money changing – Refer "Banking and other financial services"

VAT AND SERVICE TAX ARE MUTUALLY EXCLUSIVE

Notification No 12/2003, dated 20-06-2003 provides exemption for the value of goods and material sold by the service provider. Provided that there is documentary proof specifically indicating the value of the said goods and materials. Also no CENVAT credit shall be available in such cases. If already Cenvat credit taken then pay back the amount.

Recent Judicial pronouncements

1. *Imagic Creative Pvt. Ltd v. CCT [2008] 9 STR 337 (SC)*: In this case the assessee was an advertising agency. It used to create concepts and design and then the same was printed on some advertising materials etc. Held, that the payment of service tax and VAT are mutually exclusive. Service tax shall be chargeable only on the service element since the State VAT is being charged on the goods element.

2. CCEx. V. Shilpa Colour Lab [2009] 14 STR J163(SC): The assessee was in the business of developing and printing of colour photographic films. It developes the negatives supplied by the customer and provides positive prints as per the order placed by the customer. Held that the company would be entitled to deduct the value of materials sold by it and which has been subjected to VAT, in computing service tax liability.

(3) M/s. ABC, an outdoor caterer provides in-flight catering. It claimed exemption under Notification No. 12/2003-ST, for the value of food and other articles sold for human consumption in the course of catering service. The Department denied the exemption on the ground that there was no documentary evidence. Discuss with the help decided case law if any.

Held in the case of *Sky Gourmet Pvt. Ltd. v. CST[2009] 14 STR 777 (Tri.Bang.)*, that When an assessee is eligible for two mutually exclusive exemptions i.e. one under Notification No 12 / 2003 –ST and one by way of abatement from gross amount charged, it is open to the assessee to opts for most beneficial to it. Department cannot impose abatement, when assessee opts to avail benefit of Notification No. 12 / 2003-ST.

(4) M/s. ABC engaged in installation of various medical equipments and enter into Annual Maintenance Contract with its customers for maintenance of such equipments. In certain cases, the annual maintenance contract was comprehensive in the sense that the assessee was liable to provide all labour and materials required for such contract. The assessee used to bifurcate its receipts as : Material & 70% & Labour 30%. The assessee claimed abatement of the value of materials/ spare-parts used for the purpose of the contract, as it had paid sales-tax / VAT thereon and service tax was paid under 'Management, Maintenance or repair service' on the balance 30% of gross receipts. Discuss.

Ans: The facts of this case are similar to that in **Modi Xerox Ltd v. State of Karnataka [2005] 5 RC 399 (SC),** wherein it was held that the Annual Maintenance Contract, the replacement of spares ete. would be considered as sale. Hence since 70% of the gross receipt has been charged to sales tax / VAT as the value of materials sold , therefore, such sale shall be outside the scope of levy service tax.

Further, Since the assessee had the documentary evidence as regards the value of materials sold during the course of provision of service (on which sales-tax / VAT has been paid), therefore, such value was admissible as exemption under Notification No. **12 / 2003.**

JUDICIAL PRONOUNCEMENTS

(1) Whether Free after-sales services provided by auto-dealers for which no reimbursement received from manufacturer was liable to service tax? - No

The assessee, an authorized dealers for **"X** Motors", was engaged in selling cars manufactured by "X Motors" and was providing after-sales services, free of cost (only material cost charged; no charges towards labour), for which no reimbursement was received from X Mottors The department sought to impose service tax on the dealer's margin of profit.

The facts of the given case is similar to that of *ASL Motors Ltd. v. CCEx (2008) 9 STR 356 (Tri.-Kol.) wherein it was held that*,

a) In respect of cars sold by assessee, the Excise duty was paid by Manufacturer of Motors (Tata Mototors) on the value of cars less the dealers' discount. The assessee sold the cars at full price to the customers and paid sales tax on such price.

(b) The dominant intention of the assessee was to sell cars/ goods and not to provide free after sales service; the provision of free service was merely incidental and intended to promote sale of car

Though the dealers' margin available to the assessee was adequate to meet the expenses towards free servicing but since the full value including the dealers' margin was recovered from the customer towards sale price of the cars and sales tax was paid thereon, therefore, no service tax could be charged either on the amount representing the dealers' margin or on a part of it. Since no reimbursement was received by the assessee from Tata Motors for free after-sales services, therefore, the provision of Rule 6 of Service Tax (Determination of Value) Rules, 2006 were not attracted.

Hence, according to the above judgments the contention of the department is not correct.

5
RELEVANT TAXABLE SERVICES FOR MAY/NOV- 12 CAFINAL EXAMS

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(1) TECHNICAL TESTING AND ANALYSIS SERVICE [w.e.f. 1.07.2003] [Export/Import category 'B']

1. Definition: "Technical testing and analysis" means any service in relation to physical, chemical, biological or any other scientific testing or analysis of - goods or material or information technology software or any immovable property, **but does not include** any testing or analysis service provided in relation to **human beings or animals.** [Sec. 65(106)]

Explanation: Testing of Drugs covered but testing for diseases not covered -

"Technical testing and analysis" includes testing and analysis undertaken for the purpose of clinical testing of drugs and formulations; but does not include testing or analysis for the purpose of determination of the nature of diseased condition, identification of a disease, prevention of any disease or disorder in human beings or animals.

2. Scope: Any service provided or to be provided to any person by a **technical testing and analysis agency** in relation to technical testing and analysis is taxable.

Technical testing and Analysis Agency: means any agency or person engaged in providing service in relation to technical testing and analysis.

(3) Exemptions:

Exemption (i): Testing of water quality by Govt. Laboratory (Notification No. 6/2006-S.T, dated 1-3-2006): Taxable service provided or to be provided to any person, by a Government owned State or District level laboratory in relation to testing and analysis of water quality, is fully exempt from service tax.

Exemption (ii): Clinical trials of new drugs (Notification No. 11/2007-S.T, dated 1-3-2007): Taxable service provided or to be provided in relation to testing and analysis of newly developed drugs, including vaccines and herbal remedies, on human participants so as to ascertain the safety and efficacy of such drugs on human participants, by a Clinical Research Organisation approved to conduct clinical trials by the Drugs Controller General Of India, also exempt from service tax.

Exemption (iii): Seed Testing Lab or Seed Certification Agency (Notification No. 10/2010-ST, dated 27-2-2010):

The taxable services provided by a Central or State Seed Testing Laboratory and Central or State Seed Certification Agency notified under the Seeds Act, 1966, to any person, in relation to technical testing and analysis is exempted from whole of the service tax leviable thereon.

***Judicial Pronouncements*:**

(1) *Kerela State Electricity Board v. CCEx [2007] 8 STR 403 (Tri. Bang.):-*
Statutory Testing of Energy Meters by State Electricity Boards- Not a service: The State Electricity Board carried out technical testing and certification of energy meters installed at the end of the service lines or at the premises of the customers, which was sought to be taxed as 'technical testing and analysis service'.

Held that, testing activity , carried out in terms of statutory requirement cannot be considered as taxable service. The State Electricity Board have installed energy meters in the premises of the customers after testing the correctness of reading for safe supply of energy. Therefore it is an independent activity of testing and certification. Further, State Electricity Board has not received any separate consideration for the said activity. Therefore, the same is not liable to service tax.

<u>Case study</u>: 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. The assessee received 25% of the price charged by the principal lab as commission for work of collection etc. The revenue wants to charge service tax on such collection service under as it amounts to promotion or marketing of services provided by its principal lab. Mr. Yes seeks your advise in this regard with respect to decided case law, if any. [CA Final (New) June 09, May 10]

Ans: The facts of this case are similar to that in ***CCEx. v. Dr. Lal Path Lab Pvt. Ltd. [2007] 8 STR 337 (P &H),*** wherein it was held that –

i) Service provided in relation to collecting human blood samples and separting serum from it is 'testing or analysis service provided in relation to human beings'. Since the same is specifically excluded from the scope of 'technical testing and analysis service', the same is not liable to service tax.

ii) It could not be said that the assessee was engaged in promotion or marketing of testing and analysis service provided by the principal lab and liable to service tax under "Business Auxiliary Service" merely because any incidental service is rendered by the assessee like putting across or dropping of name of principal company, it would not become part of the definition of "Business Auxiliary Service".

Therefore, such activity cannot be classified under any other head to deny to the exclusion/exemption from service tax. Hence the stand taken by the Dept. is not correct.

(2) PRACTICING CHARTERED ACCOUNTANTS [w.e.f. 16.10.1998]
[Export/Import category 'C']

(1) Definition – "Practicing Chartered Accountant" means a person who is a member of the Institute of Chartered Accountants of India and is holding a certificate of practice granted under the Chartered Accountants Act, 1949 and includes any concern engaged in rendering services in the field of chartered accountancy.

(2) Taxable service means any service provided or to be provided to **any person**, by a Practicing Chartered Accountant in his professional capacity, in any manner.

(3) Exemption (Notification No. 25/2006- ST dated 13.07.2006): Practicing Chartered Accountants are liable to Service Tax in respect of all service rendered by them–**except the representation service 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. [Upto 30.4.2011]**[1]

[1]***However, w.e.f 1.5.2011 the representation service provided by CA is taxable. The exemption notification No. 25/2006 in this regards has been rescinds by the Govt. [*Notification No. 32/2011, dated 25/4/2011]**

(4) <u>Point of Taxation</u>: Receipt basis as per Rule 7 of Point of Taxation Rules, 2011.

<u>Concept Capsule</u>: M/s. X & Y is a chartered accountancy firm. Following services are rendered by it during the month of December 2011:

S. No Particulars	Amount (Rs.)
(a) Preparation and filing of Form 'A' with BIFR	10,000
(b) Preparation and filing of Income tax returns	4,000
(c) Concurrent Audit	2,500
(d) Certification under the provisions of Income tax Act, 1961	4,500
(e) Advice on amalgamations and mergers	15,000
(f) Representing the client before Income-tax Appellate Tribunal	12,000
(g) Audit of Accounts outside India	80,000
(h) Reimbursement of hotel and travelling expenses	20,000
(i) Reimbursement of taxes paid on behalf of client	15,000
(j) Coaching fees collected from students	24,000
(k) Legal and taxation consultancy	18,000
(l) Amount received from CESC meter reading	3,000

The consideration for the service mentioned in clause (b) and (e) has not been received during December but in January. The value of taxable services received by Ms. X & Y during the months of September, October, November and January is Rs.45, 000, Rs.55, 000, Rs.60, 000 and Rs.25, 000 respectively.

M/s. X & Y is not a small service provider for the purpose of Notification No.6/2005 ST dated 01.03.2005. You are required to determine the service tax payable by M/s. X & Y by January 5th.

(3) CUSTOMS HOUSE AGENT'S SERVICE [w.e.f. 15.06.1997] [Export/Import category 'B']

(1) Any service provided or to be provided to any person, by a customs house agent in relation to the entry or departure of conveyances or the import or export of goods shall be taxable under this service.

"Customs house agent means" a person licenced, temporarily or otherwise, under the regulations made u/s 146(2) of the Customs Act, 1962.

(2) ***DHL Lemuir Logistics Pvt. Ltd. vs. CST (2010) 17 TSR 266(Tri -Bang.)-*** The activity of CHA is limited to the Custom Station only; it cannot extend beyond it.

(3) Scope – Service rendered by a CHA in relation to Customs formalities such as documentation etc. for (a) the entry or departure of conveyance or (b) the import or the export of goods shall be taxable.

However, Expenses incurred by the CHA for packing, unpacking, loading, unloading, bringing or removing the goods to or from the customs area, vessels or aircrafts on behalf of client (Importer/Exporter) as well as payment of statutory dues like custom duties, port charges, cesses etc. on behalf of the client shall not be included in the taxable value if the CHA acts as a "pure agent", provided all the condition of Rule 5 in relation to Pure agent must satisfied. (Refer page. NO.4). Further, other miscellaneous and out of pocket expenses charged by CHA would not be excluded.

<u>Illustration</u>: From the Following service provided by a CHA Agent (having license under Customs Act) determine the taxable value of service under" CHA service"-

	Gross Amount (₹)	Solution Note	(₹)
(a) charges for documentation work in relation to import or export of goods within the custom stations	10,00,000		10,00,000
(b) Charges for transportation of goods after getting customs clearance	10,00,000	1	NIL
(c) reimbursement of customs duty paid on behalf of client (cost incurred ₹ 5,00,000)	5,00,000	2	NIL
(d) reimbursement of amount paid for "Cargo Handling Services" on behalf of client (cost-₹ 1,10,300 including 10,300 being service Tax)	2,00,000	3	2,00,000
Taxable value			12,00,000
Service tax @ 10.3%			1,23,600
Less: Cenvat Credit on input service			10,300
Net Service tax payable			**1,13,300**

Notes: (1) Any service provided outside the Customs Station will not be taxable under this service.

(2) custom duty is reimbursed on actual basis and assuming all the conditions with respect to "pure agent" satisfied. Therefore, not include in the value.

(3) Since not collected on actual basis therefore cannot be regarded as a "pure agent". Hence, include in the taxable value. However, can claim Cenvat credit on service tax paid of ₹ 10,300.

(4) TRANSPORT OF GOODS BY ROAD SERVICE [w.e.f. 1.01.2005]
[Export/Import category ~~'B'~~ 'C' - w.e.f 1.4.2011]

(1) Service provider – Goods Transport Agency (GTA)
Service receiver – Any person, in relation to transport of goods by road in a goods carriage

"Goods Transport Agency" means any person, which provides service in relation to transport of goods by road and **issues consignment note,** by whatever name called.

"Goods Carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods or for any motor vehicle not so constructed or adapted when used for carriage of goods.

(2) Person liable to pay service tax: Refer Chapter "payment of service Tax" under the heading "Reverse charge".

(3) 75% Abatement on value of Taxable service. This abatement is available without any condition. This abatement is available to a GTA and also to consignor or consignee who is liable to pay service tax under Reverse charge basis.

(4)

TAXABLE	*EXEMPTED*
(i) Composite service provided by GTA such as - packing/unpacking, loading/unloading, transshipment, temporary warehousing etc. charges. **(ii)** Packing charges**,** if consignment notes is issued. Otherwise under Cargo handling or packing services **(iii)** Charges for Time sensitive transportation of goods by road in a goods carriage by a GTA, if issue consignment Note. Otherwise under "Courier service" **(iv)** Demurrage/ Detention charges.	**100% Exemption on Service provided/output service:** **(i)** Transport of fruits, vegetables, eggs or milk, ***food grains or pulses*** by road in a goods carriage. (ii) Where, Gross amount charged on all consignments transported does not exceed ₹ 1,500/- (iii) Where, gross amount charged on *an individual consignment* does not exceed ₹ 750/-. (Individual Consignment means- all goods transported by a GTA by road in a goods carriage for a consignee). iv) Services provided to any person located in India, when the goods are transported from a place located outside India to a final destination which is also outside India. ***[Notification No.8/2011 – Service Tax, dated 1/3/2011 w.e.f 1.4.2011]*** **100% Exemption on Service received/ Input Service:-** Taxable services such as - **(a)** clearing and forwarding agent; (b) manpower recruitment or supply agency; (c) cargo handling agency; (d) storage or warehousing; (e) business auxiliary service; (f) packaging activity; (g) Business support services; and (h) supply of tangible goods for use service, if provided to a GTA then no service tax is levied. **However,** the invoice should contain the name and

	address of the goods transport agency and also the name and date of the consignment note, by whatever name called, issued in his behalf.

NOTE: GTA DOES NOT GET CENVAT CREDIT AS GTA SERVICES ARE NOT CONSIDERED AS OUTPUT SERVICES.

<u>SOLVED ILLUSTRATION</u>

(1) M/s. ABC Ltd. transport raw material purchased by it though GTA at a freight of ₹ 10,00,000 Determine who is liable to pay service tax and how much, the mode of payment, Cenvat credit availability and its eligibility document?

<u>Solution</u>: M/s ABC Ltd. is liable to pay service tax of ₹ 25,750 (**25% of 10,00,000 x 10.3%). Since, t**he Consignor M/s. ABC Ltd. being a company is a person specified in Rule 2(1)(d)(v) of Service Tax Rules, 1994.

M/s. ABC Ltd. is liable to pay the above service tax amount in cash by filling GAR 7 challan, and cannot utilize the available Cenvat credit since the GTA service availed by it is an input service and not output service.

Further, since GTA service qualifies to be input service for M/s. ABC Ltd. as it amounts to inwards transportation, hence M/s. ABC Ltd. will be eligible for CENVAT Credit of service tax of ₹ 25,750 so paid by it. The GAR 7 challan is the eligible document for availing Cenvat credit.

(2) From the following information compute taxable value under "Transport of Goods by Road Service" of the Service provider or service receiver as the case may be.

	Amount(₹)	**Solution**
(i) Service provided to M/s. G Ltd. in respect of consignments addressed to Mr. G (freight paid by M/s. G Ltd.)	2,00,000	
(ii) Service provided to Mr. G in respect of consignments addressed to M/s. G Ltd.(freight paid by Mr. G)	3,00,000	
(iii) Freight for transport of food grains	2,00,000	
(iv) Freight for transport of flour	2,00,000	
(v) Service provided in relation to transport as well as packing charges. Consignment Note issued to various individuals (including packaging charges ₹ 1,00,000)	5,00,000	
(vi) Transport of 'currencies' in safes	8,00,000	
(vii) Service provided to Govt. Depts.	10,00,000	
(viii) Services provided to Govt. Companies	20,00,000	
(ix) Service provided to an unregistered firm. Freight charges (in addition to that expenses of drivers ₹ 45,000 reimburses from customers)	4,55,000	
(x) Service provided to a customer located in India for transport of goods from its Foreign Brach 1(Bangladesh) to Foreign branch 2 (Singapore)	20,00,000	

Additional Notes:
(a) Excise duty/service tax paid on various inputs/input services used for GTA services ₹ 50,000
(b)Motor vehicle purchased during the year for GTA service ₹ 30 lakhs (Excise Duty 10.3%) --

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(5) TRANSPORT OF GOODS BY RAIL SERVICE [w.e.f. 1.5.2006]
[Export/Import category ~~'B'~~ 'C' w.e.f 1.4.2011]

(1) Service provider:- Any Person
Service Receiver :- Any person, in relation to transport of goods by rail, in any manner.
(2)

TAXABLE	*EXEMPTED*
(i) Service provided by a person other than government railway in relation to transport of goods in containers by rail. **However, abatement of 70% is available**	***Till 31.12.2012*** – **(i)** Any service provided by government railway. **(ii)** Service provided by person other than Govt. railways in relation to transport of non-containerized goods through rail. **Note" By virtue of Recent Notification dated 30/12/2011, the exemption period is further extended to 31.3.2012.** ***(iii) the taxable services provided to any person located in India, when the goods are transported from a place located outside India to a final destination which is also outside India, is exempt from the whole of service tax leviable [Notification No.8/2011 – ST dated 1/3/2011 w.e.f 1.4.2011]***

Illustration: Determine Taxable value of service under "Transport of goods by rail service"

(a) Service provided by Govt. railways in relation to transport of both container as well as non-containerized goods through rail	10,00,000	Exempted
(b) charges for transport of goods in container through private rail	5,00,000	5,00,000
(c) charges for transport of non-containerized goods through private rail	5,00,000	Exempted
Gross value		5,00,000
Less: 70% abatement subject to the condition that Cenvat credit and exemption in relation to value of material sold shall not be available.		3,50,000
Taxable value		1,50,000

(6) TRANSPORT OF GOODS BY AIR SERVICE [w.e.f. 10.09.2004]
[Export/Import category ~~‘B’~~ ‘C’- w.e.f 1.4.2011]

(1) Service provider- Aircraft operator;

Service Receiver – any person, in relation to transport of goods by aircraft

TAXABLE	*EXEMPTED*
(a) Actual freight charges ***(excluding Air freight included in the valuation of custom duty)***	(a) Service provided in relation to transport of export goods by aircraft.
(b) all charges collected towards storing, handling, loading or unloading done in relation to air transportation of cargo. **Therefore, Taxable value = Gross value – (**Actual freight or 20% of FOB value; whichever lower)	(b) the taxable services provided to any person located in India, when the goods are transported from a place located outside India to a final destination which is also outside India, is exempt from the whole of service tax. [Notification No.8/2011 – ST, dated 1/3/2011 w.e.f 1.4.2011]

Illustration - Compute service tax under “Transport of goods by air service” from the following information-

	Amount (₹)	**Solution (₹)**
(a) Airfreight charged on a customer of India for goods transport from Brach A (USA) to Brach B (UK)	15,00,000	Exempted
(b) Airfreight charged on goods transport to India from outside India (FOB value 60,00,000)	13,00,000	1,00,000 (Note 1)
(c) Airfreight charged on goods transport to India from Outside India (FOB value 60,00,000)	11,00,000	NIL (Note 2)
(d) Air-freight charged for goods transport from Kolkata to Mumbai	10,00,000	10,00,000
(e) Airfreight charged for goods transport from India to USA	20,00,000	Export- exempted
Taxable value		11,00,000
Service tax @ 10.3%		1,13,300

Taxable value = Gross freight – (20% of FOB or actual freight; lower)

Note 1: Taxable value = 13,00,000 – 12,00,000 = ₹ 1,00,000

Note 2: Taxable value =11,00,000 – 11,00,000 = Nil

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(7) TRANSPORT OF GOODS OTHER THAN WATER THROUGH PIPELINE OR OTHER CONDUIT [w.e.f. 16-6-2005]
[Export/Import category ‘C’]

1. “Taxable service” means service provided or to be provided to any person, by any other person, in relation to transport of goods other than water, through pipeline or other conduit.

2. Scope: Transportation of goods, other than water, through pipeline or conduit is generally employed to transport petroleum and other petroleum products, natural gas, LPG, chemicals, coal slurry and other similar products. Such transport services are liable to service tax.

Supply of water not taxable: The definition of taxable service specifically excludes supply of water through pipelines or conduit.

3. ***Mere supply of goods through pipeline should not be taxable, when no separate charge for delivery*** – where a service provider supplies goods through pipeline e.g. cooking gas or fuel, there is no separate charge for transport of goods through pipeline. The main contract is for supply of goods and supply through pipeline is only incidental to main contract. Such service cannot be a taxable service, as an individual contract cannot be vivisected.

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(8) MANPOWER RECRUITMENT OR SUPPLY AGENCY'S SERVICE [w.e.f. 07.07.1997] [Export/Import category 'C']

"Manpower recruitment or supply agency" means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any person. [Section 65(68)]

Service provider:- Manpower recruitment or supply agency,
Service Receiver:- any person

TAXABLE/INCLUDES	*EXEMPTED/NOT INCLUDES*
i) Service provided directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, **It includes -** a) Pre-recruitment screening, b) verification of the credentials and antecedents of the candidate c) authenticity of documents submitted by the candidate. d) arranging interview and providing specialists for interview and covers all such services till the end of selection procedure. d) Campus recruitment e.g, IIT, IIM collecting fees from companies for campus recruitment. e) Services to prospective candidates f) Temporary supply of manpower g) Transfer fees received by the agency from client in case of permanent transfer of employees.	i) Service provided to GTA – Refer Heading 'Transport of Goods by Road Service'. ii) Direct hiring of contractual labour not taxable as there is no service. iii) Transfer fees received by the employees directly from the client in case of permanent transfer of such employees. (since no employer and employee relationship exist between supply agencies and employees)

(9) INTELLECTUAL PROPERTY SERVICE OTHER THAN COPYRIGHT [w.e.f. 10.09.2004] [Export/Import category 'C']

Service Provider:- Holder of intellectual property right

Service Receiver:- Any person

"Intellectual property service" means, transferring temporarily; or permitting the use or enjoyment of, any intellectual property right. [Section 65(55b)]

"Intellectual property right" means, any right to intangible property, namely, trademarks, designs, patents or other similar intangible property, under any law for the time being in force, but does not include copyright. [Section 65(55a)]

TAXABLE/INCLUDES	*EXEMPTED/NOT INCLUDES*
(i) Transferring temporarily; or Permitting the use or enjoyment of, any intellectual property right. (ii) Intellectual property right includes - any right to intangible property, namely, trademarks, designs, patents or other similar intangible property, under any law for the time being in force. (iii) Royalty for technical know-how.	**(i)** it does not include **copyright** (ii) **copyright includes- (1)** original literary, dramatic, musical and artistic works; - fully exempted. **(2)** cinematograph films; **(3)** sound recording – Taxable under "Services related to copyrights on cinematographic films & sound recording" (iii) Permanent transfer of Intellectual property right is a sale and hence not liable to service tax. (iv) Intellectual Property Right service not covered by Indian Law such as Integrated circuits or undisclosed information etc. because only Indian IPRs are covered.

3. Exemption in respect of service Tax charged u/s 66= Amount of R&D Cess paid on import of technology u/s. ***3 of the Research and Development Cess Act, 1986.***

The above exemption shall be available subject to the following conditions –w.e.f 12.9.2011

i) The R&D Cess is paid within 6 months from the date of invoice or in case of associate enterprises, the date of credit in books of accounts. It must be paid at the time or before the payment for the service.

ii) record of R&D Cess are maintained for establishing the linkage between the invoice or the credit entry, as the case may be, and the R&D Cess payment challan.

Note- *It is to be noted that the above exemption is from service tax levied u/s.66. It means it will first deduct from service tax @ 10% and thereafter EC and SHEC@3% is charged on balance service tax amount. This treatment is in accordance with CBEC clarification that since EC and SHEC are imposed as a percentage of service tax, therefore any exemption in relation to service tax shall automatically apply to EC and SHEC.*

Concept capsule 1- Compute Service tax payable under Intellectual property rights

		Amount	**Solution**
1)	Royalty received from technical know-how	₹ 6,00,000	
2)	Royalty received from granting copyright	₹ 3,00,000	

3)	Representation of right charges	₹ 1,00,000
4)	Consideration for undisclosed information	₹ 4,00,000
5)	Permanent transfer of patents	₹ 3,00,000
6)	R&D Cess paid for import of technology	₹ 10,000

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(10) FRANCHISE SERVICE [w.e.f. 1.07.2003] *[Export/Import category 'C']*

Service Provider: - Franchisor

Service Receiver:- Franchisee

"Franchise" means an agreement by which the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trademark, service mark, trade name or logo or any such symbol, as the case may be, is involved. [Section 65(47)]

"Franchisor" means any person who enters into franchise, with a franchisee and includes any associate of franchisor or a person designated by franchisor to enter into franchise on his behalf and the term "franchisee" shall be construed accordingly. [Section 65(48)]

TAXABLE/INCLUDES	*EXEMPTED/NOT INCLUDES*
i) Agreement by which the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trademark, service mark, trade name or logo or any such symbol, as the case may be, is involved. ii) License production agreements where principal allows production of goods bearing his brand name by another person. iii) if rights are granted for rendering services identified with the principal on his behalf, such services by the principal to the service recipient would be taxable. Some examples of franchise are – Pepsi, Coca-Cola, McDonald etc.	i) where royalty is paid to used trademark etc for use it independently. (covered under IPR service)

Example: Mailbox India Limited appointed various franchisees in Eastern India who were providing Mailing list compilation services in the name of the first mentioned company. One of the franchisees M/s. Compilers and Mailers provided services valued at ₹ 50 lacs out of which 40% was paid as royalty to Mailbox India Limited. Compute Service tax liability.

Ans: (1) Under Franchise Service in the hands Mailbox India Limited

Service Tax @ 10.3% on Rs. 20,00,000 = Rs. 2,06,000

(2) Under Mailing List compilation in the hands of Compilers and Mailers.

Service tax @ 10.3% on Rs. 50,00,000 = ₹5,15,000
Less: Cenvat Credit on Input service ₹2,06,000
Net Service tax payable **₹ 3,09,000**

Intellectual Property Service vis-à-vis Franchise service
(1) Under Franchise the goods or service produced/provided by the franchisee is identified with the franchisor. i.e, it represents the franchisor. Whereas under IPS service the recipient of Intellectual property produced/provided goods or service independently and it does not represents the provider of Intellectual property.

E.g., where royalty is paid for providing trademark/service mark/brand name for representing the owner of such trademark etc. is covered under "Franchisee service. However, if royalty paid for trademark/service mark/brand name for using it independently without representing or identified with the owner is covered under "Intellectual Property service".

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(11) BANKING AND OTHER FINANCIAL SERVICES [w.e.f. 16.07.2001] [Export/Import category 'C']

(1) Service Provider – (i) Banking company or (ii) a financial institution including a NBFC or (iii) any other body corporate or commercial Concern,

providing service in relation to banking and other financial services.

(i) Banking service provided by Co-operative societies are not covered, since Co-operative societies are not Body corporate. Further, Generally Co-operative societies are 'not for profit' organization, hence they cannot be regarded as commercial concern.

(ii) Banking service provided by Postal Dept. e.g, money order, pension payment, issue of postal order etc. also not covered since Department of posts is not a 'commercial concerns'.

Service Receiver:- any person.

(2) The value of taxable service shall not include interest on loans.

(3) Services Covered

(1) FINANCIAL LEASING, EQUIPMENT LEASING, AND HIRE PURCHASE

INCLUDES/TAXABLE	NOT INCLUDES/EXEMPTED
i) a lease transaction where – (a) contract for lease entered into between two parties for leasing of a specific asset (b) such contact is for use and occupation of the asset by the lessee (c) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and	i) 90 % of Interest portion is not taxable. Mathematically, Exemption = 90% of (Instalment paid -Principal Amount in installment). **Concept Capsule**: Compute Service tax from the following equipment financial leasing. (i) Amount towards installments ₹ 5,00,000 (including principal amount of ₹ 2,00,000). ii) lease processing fees ₹ 20,000.compute service tax

(d) the lessee is entitled to own or has the option to own, the asset at the end of the lease period after making the lease payment. **Taxable Amount =** **i) <u>For Interest portion</u>: - 10% of (Instalment paid -Principal Amount in installment).** **ii) Other charges:** such as Lease management fee, processing fee, documentation charges and administration fee. ***(fully taxable)***	payable ***Answer-*** Total installment ₹ 5,00,000 Less: principal amount <u>₹ 2,00,000</u> Interest element <u>₹ 3,00,000</u> 10% of interest element ₹ 30,000 Add: lease processing fees <u>₹ 20,000</u> Taxable value ₹ 50,000 Service tax @ 10.3% = ₹ 5150/-

(2) MERCHANT BANKING SERVICES;

For your Information:- Merchant banks do not provide regular banking services to the general public, they are engaged in long-term financing for companies such as underwriting of shares, venture capital financing, fixation of price in book building process etc.

(3) ASSET MANAGEMENT SERVICE

INCLUDES/TAXABLE	NOT INCLUDES/EXEMPTED
Charges for - a) portfolio management b) all forms of fund management c) pension fund management d) custodial depository and trust services e) Investment and advisory fee charged by Asset management companies for fund/asset management. f) **<u>Cash management services</u>** such as collection of receivables, execution of payment, management of liquidity and providing customized Management Information System report, g) **Business chit Fund –** Since it represents cash management service and consideration received for providing this service. **h) Collection of telephone bill on behalf of BSNL** It is a form of “Cash Management”. Hence, taxable under Banking and Other Financial Services and not under “Business Auxiliary service”.	i) **<u>Entry load and exit load charges</u>** (since these charges are not towards asset/fund management service but to meet the initial issue expenses and other specified expenses) ii) **<u>Simple Chit Fund</u>** – Since, no consideration is paid or received for providing this Service, therefore, the question of levy of service tax does not arise. **iii) <u>Abatement of 30%</u>: in relation to business chit fund. (Refer heading Abatement at a Glance)**

(4) ADVISORY AND OTHER AUXILIARY FINANCIAL SERVICES

INCLUDING –

(i) Investment and portfolio research and advice,
(ii) Advice on mergers and acquisitions and
(iii) Advice on corporate restructuring and strategy;

(5) PROVISION AND TRANSFER OF INFORMATION AND DATA PROCESSING;

For example - The depository services provided by CDSL including Electronic Access to Securities Information (EASI) for a fee are liable to service tax under this category.

(6) BANKERS TO AN ISSUE SERVICES;

"Banker to an issue" means a bank included in the Second Schedule to Reserve Bank of India Act, 1934, carrying on the activities relating to an issue including acceptance of application, application money, allotment money and call money, refund of application money, payment of dividend and interest warrants.

(7) OTHER FINANCIAL SERVICES

INCLUDES/TAXABLE	NOT INCLUDES/EXEMPTED
Such as- (i) lending; (ii) issue of pay order, demand draft, cheque, letter of credit *and* bill of exchange; (iii) transfer of money including telegraphic transfer, mail transfer and electronic transfer, (iv) providing bank guarantee, (v) overdraft, cash credit, discounting of bills / bills of exchange/ cheque facility ***(excluding interest/discount charged for these facilities, if interest/discount amount is shown separately in invoice/bill/challan)*** (vi) safe deposit locker, safe vaults; (v) operation of bank accounts.	(i) Services provided to Government of India or Government of a State in relation to collection of any duties or taxes levied by such Government. (ii) Credit card, debit card charge card or other payment card charge service:- These are taxable under separate service

(8) SECURITIES & FOREIGN EXCHANGE BROKING

(9) PURCHASE OR SALE OF FOREIGN CURRENCY, INCLUDING MONEY CHANGING (whether or not the consideration for such purchase or sale, is specified separately)

(i) <u>Exempted</u>: Services provided to any bank (including a bank located outside India), or money changer, by any other bank or money changer.

(ii) <u>Computation of Service Tax liability</u>

(A) Where Taxable Service Provided by a (i) Banking company; or (ii) a financial institution including a NBFC; or (iii) any other body corporate or commercial Concern

Pay tax @ 10.3% on taxable value determined as per Rule 2B.

(B) Where Taxable Service provided by (i) a foreign exchange broker or (ii) an authorised dealer in foreign exchange or (iii) an authorised money changer

<u>Option 1</u>: Pay tax @ 10.3% on the taxable value determined under Rule 2B of service tax (Determination of valuation) Rules, 2006.

<u>Option 2</u>: pay tax as per the composition scheme of Rule 6(7B) of ST rules, 1994

<u>Rule 2B: Determination of value of service in relation to money changing</u> w.e.f 1.4.2011

Newly inserted by Notification No. 2/2011-ST dated 1/3/2011, amended by notification No. 24/2011, dated 31/3/2011 **-**Subject to the provisions of section 67, the value of taxable service in relation to purchase or sale of foreign currency, including money changing, shall be determined by the service provider in the following manner:-

(i) **<u>For a currency, when exchanged from, or to, Indian Rupees (INR)</u>**,

Value = Buying rate/Selling rate (-) RBI **reference rate for that currency at that time** x Total units of currency

<u>Example 1</u>: US$1000 are sold by a customer at the rate of ₹45 per US$.
RBI reference rate for US$ is ₹45.50 for that day.

The taxable value = [1000 x (₹45.50 - ₹45.00)] = ₹500.
Service tax = 10.3% of ₹ 500 = ₹51.50

<u>Example 2</u>: INR 70000 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 = [(1000 x (₹ 70 - ₹69)] = ₹1000.
Service Tax = 10.3% of ₹ 1000 = ₹103

→ **<u>Where the RBI reference rate for a currency is not available:</u>**

Value = 1% of the gross amount of Indian Rupees provided or received, by the person changing the money

<u>Example 3</u>: US$1000 are sold by a customer at the rate of ₹45 per US$. No RBI reference rate is available
The taxable value = 1% of ₹ 45,000 = ₹ 450.
Service Tax = 10.3% of ₹ 450 = 46.35

(ii) <u>Where neither of the currencies exchanged is Indian Rupee,</u>

Value = 1% of the lower of the following two amounts –

(a) Foreign Currency sold x RBI Refrence rate of that currency to Indian rupee at that time.
(b) Foreign Currency bought x RBI Refrence rate of that currency to Indian rupee at that time.

Example 4: US$ 10000 is sold to buy 5000 Great Britain Pound (GBP).
RBI reference rate for US$ is ₹50 for that day.
RBI reference rate for that day for GBP is ₹ 60.

(a) US$ 10,000 x ₹50 =	₹5,00,000
(b) GBP 5000 x ₹60 =	₹3,00,000
which ever is lower	₹3,00,000

Taxable value = 1% of ₹ 3,00000= ₹ 3,000. Service Tax 10.3% x 3000 = ₹ 309

Composition Scheme (Rule 6(7B) of ST Rule 1994) [W.e.f 1.4.2011]

(a) 0.1 % of the gross amount of currency exchanged for an amount upto rupees 100,000, subject to the minimum amount of ₹ 25; and

(b) ₹ 100 and 0.05% of the gross amount of currency exchanged for an amount of rupees exceeding rupees 100,000 and upto rupees 10,00,000; and

(c) ₹ 550 and 0.01 % of the gross amount of currency exchanged for an amount of rupees exceeding 10,00,000, subject to maximum amount of rupees 5000:

Provided that 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."

For example – Suppose Gross amount of currency exchanged ₹ 70,00,000

First ₹ 1,00,000 of currency exchanged @ 0.1% =	₹ 100
Next ₹ 9,00,000 of currency exchanged @ 0.05% =	₹ 450
Balance of ₹ 60,00,000 @ 0.01% =	₹ 600
	1150
Add: EC and SHEC @ 3%	**35**
	1185

CENVAT Credit: Summary

(i) Input, input service and capital goods exclusively used for providing taxable service – Full cenvat allowed.

(ii) Input, input service and capital goods exclusively used for providing Exempted service – No Cenvat

(iii) Input and input service are commonly used for taxable as well as exempted service- 50% of Cenvat allowed

(iv) Capital goods are commonly used for taxable as well as exempted service- Full cenvat allowed.

Illustration: Compute Service tax liability under 'Banking & Other Financial Service' of from the following information –

	Gross Amount (₹)	Solution (₹)
(i) Interest and processing fees charged on loan transaction (interest being ₹ 1,00,000)	3,00,000	2,00,000
(ii) Discount and proceeding fees on bill discounted (₹ 2,00,000 being Discount charged separately shown in invoice)	5,00,000	3,00,000
(iii) commission towards collection of Taxes on behalf of Govt.	2,00,000	Exempted
(iv) fees charged by CDSL for Depositary service provided by it	1,00,000	1,00,000
(v) Fees charged for managing portfolio of customers	2,00,000	2,00,000
(vi) Commission received on issuing DD to customers	1,00,000	1,00,000
(vii) commission received on bank guarantee	2,00,000	2,00,000
(viii) charges in relation to Credit card and Debit card	2,00,000	Not covered
(ix) Amount received towards Locker rent	1,00,000	1,00,000
(x) Cenvat Credit balance in relation to above taxable as well as exempted service-	**Taxable value**	**12,00,000**
(i) on Input and Input service ₹ 1,00,000 (ii) on capital goods ₹ 30,000	***Service tax @ 10.3%***	**1,23,600**

Less: Cenvat Credit		
i) Input& Input service 100%	1,00,000	
Less: Reversal 50% as per rule 6(3B)	50,000	50,000
(ii) Capital Goods 50% for 1st year Balance 50% next year		15,000
Net service tax payable		**58,600**

(12) CONSTRUCTION OF RESIDENTIAL COMPLEX SERVICE [w.e.f. 16.06.2005] [Export/Import category 'A']

(1) Service Provider: - Any person e,g, construction companies, builders, real estate developer etc.

Service receiver: Any person

Taxable	Exempted
(1) **Construction of a new residential complex or a part thereof; or** **"Residential complex" means any complex comprising of —** (a) a building or buildings, having more than 12 **residential units**; (Residential unit means a single house or a single apartment intended for use as a place of residence) (b) **a common area**; and (c) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and (d) the layout of such premises is approved by an authority under any law for the time being in force. **(2) Completion and finishing services in relation to residential complex such as -** glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or **(3) repair, alteration, renovation or restoration of**, or similar services in relation to, residential complex.	**(1)** Residential complex constructed for **personal use** as residence by a person directly engaging any other person for designing or planning of the layout. **Personal use** includes permitting the complex for use as residence by another person on rent or without consideration; **(2)** W.e.f 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. **(3) Abatements/Partial Exemption:** → **75% of the Gross amount charged, where gross amount charged includes both value materials and cost of land.** → **67% of the Gross amount charged, where gross amount charged includes value of materials, but not Land.** **However, the above abatements shall not be available –** (i) where only completion and finishing services in relation to building or civil structure are provided **(ii)** The CENVAT credit of duty on inputs or capital goods or input services, used for providing such taxable service, has been taken under the provisions of the CENVAT Credit Rules, 2004; or (iii) The service provider has availed the benefit of exemption in respect of value goods and materials sold by him to the recipient of service under Notification No. 12/2003-ST.

Deemed service: -

Explanation -Any sum received with respect to construction of a complex which is intended for sale, wholly or partly before, during or after construction by the builder/authorized person of builder from or on behalf of the prospective buyer before the grant of completion certificate by the competent authority shall be deemed to be service provided by the builder to the buyer and therefore taxable. [w.e.f. 1.7.2010]

Competent authority: For the said purpose, w.e.f 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.

Effect of above amendments:

(1) Payment received from the prospective buyer before completion of construction of a new building shall be regarded as deemed service and hence taxable under this service.

(2) However, if the entire consideration is received after the completion of the construction then there shall be no levy of service tax as it is in the nature of outright sale.

CBEC clarifications: Where a works contract has been charged to sale-tax/VAT, the service element therein shall be charged to service tax under 'Works Contract Service' only and not under 'Commercial or Industrial Construction Service' or Construction of Residential Complex Service.

Concept Capsule- Mr. X, a builder constructed various complex during 2011-12. He has decided to claim abatement. Compute Service tax liability.

		₹ in lakhs
a)	Residential complex constructed where all the flats were sold after completion certificate granted.	600
b)	Amount charged in respect of Residential complex where consideration was received Before completion certificate	300
c)	Cost of building constructed for self residence and for letting out	50
d)	Completion of finishing service in respect of particular building	150

Cenvat credit in respect to point 'a', 'b' & 'c'

Inputs	₹2 lakhs
Capital goods	₹3 lakhs
Input service	₹1lakhs

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(13) COMMERCIAL OR INDUSTRIAL CONSTRUCTION SERVICE [w.e.f. 10.09.2004] [Export/Import category 'A']

(1) Service Provider:- Any person, in relation to in relation to commercial or industrial construction
Service Receiver: Any person

Taxable	Exempted
(1) construction of a new building or a civil structure or a part thereof; or **(2) construction of pipeline or conduit; or** (3) **completion and finishing services** such as- glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic	(1) Construction service related to road, airport, railway, transport terminal, bridge, tunnel, pipeline and dams. (2) **Construction of new port or other port is wholly exempt**. However, exemption shall not be available for services of completion or finishing, repair, alteration, renovation, restoration, maintenance or repair provided in relation to

applications or fittings and other similar services, in relation to building or civil structure; or

(4) **repair, alteration, renovation or restoration** of, or similar services in relation to, building or civil structure, pipeline or conduit,
which is, -
(i) Used or to be used, primarily for, or

(ii) Occupied or to be occupied, primarily with, or

(iii) Engaged or to be engaged, primarily in,

commerce or industry, or work intended for commerce or industry,

existing port or other port.

(3) Construction, which are for use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purpose and not for the purpose of profit are not taxable being non-commercial in nature.

(4) Abatements/Partial Exemption:

→ 75% of the Gross amount charged, where gross amount charged includes both value material and cost of land.

→ 67% of the Gross amount charged, where gross amount charged includes value of material, but not Land.

However, the above abatements shall not be available –
(i) where only completion and finishing services in relation to building or civil structure are provided

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

(iii) The service provider has availed the benefit of exemption in respect of value goods and materials sold by him to the recipient of service under Notification No. 12/2003-ST.

(2) Deemed service – Same as that under "Residential complex service"

(3) CBEC Clarifications -

(a) Though construction of road is not liable to service tax, however, if a commercial complex is constructed which also contains roads, then, if the contract for construction of commercial complex is a single contract and the construction of road is not recognised as a separate activity as per the contract, then the service tax would be leviable on the gross amount charged for construction including the value of construction of road.

(b) Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities, hence such government constructions will not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shop constructed for letting the out, such activity would be commercial and liable to tax.

(c) In case of multipurpose buildings such as residential cum commercial construction, tax would be leviable as it such property considered under the local/ municipal laws.

(d) Any pipeline running within an industrial/commercial establishment such as factory, refinery and similar industrial establishments, etc. is within the scope of the levy.

(e) ***Whether service tax is leviable on construction of canals for Government projects?***

Clarification: "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, is not falling under commercial activity, the canal system built by the Government will 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 should be charged to service tax.

(f) ***Whether service tax is leviable on construction activity of dams, buildings or infrastructure construction etc., taken up by the Government through EPC (Engineering Procurement & Construction) mode?***

Answer: The above mentioned activities are covered under "Works contract service". However, these activities are specifically excluded under "Works contract Service". Hence, works contract in respect of the above works even if done through EPC mode are exempt from payment of service tax.

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(14) ARCHITECT'S SERVICES [w.e.f. 16.10.1998]
[Export/Import category 'A']

Service provider:- (i) An architect in his professional capacity (person whose name is for the time being, is entered in the register of architects maintained u/s. 23 of Architects Act, 1972) ; or (ii) any commercial concern engaged in any manner, whether directly or indirectly, in rendering services in the field of architecture.

Service Receiver:- Any person

Includes:

(i) appropriate advice to client starting from the preliminary stage of initial sketches, specification and drawing of plans; and

(ii) consists of providing detailed drawings, approval of the drawings from the concerned authorities, supervision at each stage of construction, and till the point when the completion certificate is obtained from the authorities.

Point of Taxation:
i) If service is provided by Individual and Firms, then POT shall be on received basis as per Rule 7 of Point of Taxation Rules, 2011.

ii) If service is provided by any other person, then Rule 3 of POT Rules, 2011 shall be followed.

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(15) INTERIOR DECORATOR [w.e.f. 16.10.1998]
[Export/Import category 'A']

Service Provider:- (i) Interior Decorator or (ii) a landscape designer or (iii) Vaastu /Feng Shui Consultants or (iv) Space Management consultant.

Service Receiver:- Any person

INCLUDES/TAXABLE	NOT INCLUDES/EXEMPTED
Any person engaged, whether directly or indirectly, in the business of,- Advice, consulting, technical assistance or in any other manner, services related to – planning, design or beautification of space, whether man-made or otherwise.	Temporary interior designing such as services rendered by Art Directors of films for shooting etc.

Point of Taxation:

i) If service is provided by Individual and Firms, then POT shall be on received basis as per Rule 7 of Point of Taxation Rules, 2011.

ii) If service is provided by any other person, then Rule 3 of POT Rules, 2011 shall be followed.

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(16) REAL ESTATE AGENT/CONSULTANT SERVICE [w.e.f. 16.10.1998]
[Export/Import category 'A']

Service Provider:- (i) real estate agents; or (ii) real estate consultants

Service Receiver:- Any person e.g., real estate developers and promoters.

INCLUDES:

(i) Service in relation to sale, purchase, leasing or renting of real estate (work of Real Estate Agents)

(ii) Services in any manner either directly or indirectly- advice, consultancy or technical assistance, in relation to evaluation, conception, design, development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate. (work of Real Estate Consultant)

(iii) Services in respect of evaluation of a proposed real estate scheme or project by conducting techno-economic studies, providing feasibility reports and helping in marketing real estate projects.

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(17) SITE FORMATION AND CLEARANCE, EXCAVATION, AND EARTHMOVING AND DEMOLITION SERVICE [w.e.f. 16.06.2005]
[Export/Import category 'A']

(1) **Service Provider**:- Any person, in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities

Service Receiver:- Any person

INCLUDES	NOT INCLUDES
a) drilling, boring and core extraction services for construction, geophysical, geological or similar purposes; or b) soil stabilization; or c) horizontal drilling for the passage of cables or drain pipes; or d) land reclamation work; or e) contaminated top soil stripping work; or f) demolition and wrecking of building, structure or road,	1) Services provided in relation to- i) agricultural, irrigation, watershed development and ii) drilling, digging, repairing, renovation or restoring of water sources or eater bodies. 2) Taxable service provided in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, and dams, major and minor ports are exempt from service tax.

Illustration: Determine the taxability of the following transaction under this service-

	Gross Amount (₹)	Solution (₹)
(a) Demolition and wrecking of building in the course of construction of bridges	5,00,000	Exempted
(b) contaminated top soil stripping work	2,00,000	2,00,000
(c) drilling and boring works in relation to irrigation	5,00,000	not covered
(d) Soil stabilization for agricultural purpose	2,00,000	not covered
(e) horizontal drilling for the passage of cables or drain pipes required for watershed development	3,00,000	not covered
(f) horizontal drilling for the passage of cables or drain pipes required for telephone cables.	5,00,000	5,00,000
	Taxable Value	**7,00,000**
	Service Tax @10.3%	**72,100**

Illustration :- Examine the taxable status of the following activities –

a. Shifting of overhead cables/wires for any reasons such as widening/renovation of roads
b. Laying of cables under or alongside roads
c. Laying of electric cables between grids/sub-stations/transformer stations en route.
d. Laying of electric cables up to distribution point of residential or commercial localities/complexes.
e. Laying of electric cables beyond the distribution point of residential or commercial localities/complexes
f. Installation of transformer/ sub-stations undertaken independently.
g. Installation of street lights, traffic lights flood lights, or other electrical and electronic appliances/devices or providing electric connections to them.
h. Railway electrification, electrification along the railway track

Answer:
(a) Non-taxable service.

(b) Non-taxable service.

Reason for answer to point (a) & (b):

i) **Examine under 'Commercial or Industrial Construction'/ Works Contract service -** Services in relation to roads are outside the scope of 'Commercial or Industrial Construction' and also of "Works contract service". Therefore, the given activity is not taxable under these services.

ii) Further, "Site formation and clearance, excavation, earthmoving and demolition services" are attracted only if 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.

(c) Non-taxable service:

(d) Non-taxable service:

Reason for answer to point (c) & (d):

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 "Commercial or Industrial Construction"/ Construction of Residential complex". In the given case since the electrical works are not part of the building or other civil structure therefore not taxable under these service.

(e) Taxable under "Commercial or industrial construction" or "Construction of Residential complex' service" as the case may be.

Reason: Since the electrical works are parts of or result in emergence of a fixture of buildings, civil structures, therefore taxable under "Commercial or industrial construction" or "Construction of Residential complex' service" as the case may be.

(f) Taxable under "Erection, commissioning or installation services".

(g) Taxable under "Erection, commissioning or installation services".

(h) Non-taxable.

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(18) MANAGEMENT, MAINTENANCE OR REPAIR SERVICE [w.e.f. 1.07.2003] [Export/Import Category 'B']

(1) <u>Service provider</u>:- (i) any person under a contract or an agreement; or (ii) a manufacturer or any person authorized by him, in relation to management, maintenance or repair

<u>**Service Receiver**</u>:- Any person

INCLUDES /TAXABLE	NOT INCLUDES/EXEMPTED
(1) Management, maintenance or repair of – i) Movable or Immovable properties (including including Information Technology software) (2) Maintenance, repair, reconditioning, restoration, servicing of – i) any goods (including Computer Software) (2) Service provided during the guarantee period to the buyer of the goods by a authorized service centre and reimburses the amount from manufacturer/supplier of goods are taxable under this service in the hands of service centre, irrespective of the fact that the receiver of the service is different from the person making payments for such services	(1) Management, maintenance or repair of – i) Motor vehicle; ii) roads, bridges, tunnels, dams, airport, railways and transport terminals

<u>Illustration</u> : Compute taxable value of service from the following information under this service-

	Gross amount (₹)	Solution (₹)
(i) Amount charged for AMC works of computer and IT software (5,00,000 + 3,00,000)	8,00,000	8,00,000
(ii) Repair service provided to buyer of "Samsung Computer" within guarantee period and payment received from "Samsung Company". The assessee is an authorized service centre of "Samsung".	10,00,000	10,00,000
(iii) Repair service provided to buyer of " Hero Motor cycle" within guarantee period and payment received from "Hero Company". The assessee is an authorized service centre of " Hero Motor cycle".	10,00,000	NIL
(iv) repair and maintenance work of transport terminal	5,00,000	NIL
	Taxable value	**18,00,000**
	Service Tax @ 10.3%	**1,85,400**

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(19) RENTING OF IMMOVABLE PROPERTY (w.e.f. 1-6-2007] [Export/Import Category 'A']

(1) Service provider:- any person, in relation to renting of immovable property or any other service in relation to such renting, for use wholly or partly in the course of or, for furtherance of business or commerce.

<u>"for use in the course or furtherance of business or commerce</u>" includes use of immovable property as factories, office buildings, ware- houses, theatres, exhibition halls and multiple-use buildings.

<u>Service receiver</u>:- any person

INCLUDES /TAXABLE	NOT INCLUDES/EXEMPTED
(1) (i) Renting, letting, leasing, licensing or other similar arrangements; or (ii) allowing or permitting the use of space (irrespect -ve of the transfer of possession or control); of the of following immovable property for use in the course or furtherance of business or commence- (a) building and part of a building, and the land appurtenant thereto; (b) land incidental to the use of such building or part of a building ; (c) the common or shared areas and facilities relating thereto;	**(1)** Renting of immovable property service in relation to - i) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes; ii) vacant land, whether or not having facilities clearly incidental to the use of such vacant land; iii) land used for educational, sports, circus, entertainment and parking purposes : and iv) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities. **(2)** renting of immovable property by a religious body or to a religious body ; or

(d) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate, and (e) vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce;	**(3)** renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre;

(2) <u>Taxable value</u>: Generally, service tax is payable on gross amount of service tax charged. However, in case of 'renting of immovable property service' property taxes paid in respect of the immovable property shall be deductible from the gross amount by virtue of specific exemption provided by Govt.

<u>Example</u>- Rent Received ₹1,00,000 [exclusive of service tax]
Property tax paid ₹ 5,000.
Service tax payable = 1,00,000 – 5000= 95,000 x 10.3% = ₹9785

Further, If the period for which property tax paid is different from the period for which service tax is paid, only the property tax proportionate to the period for which service tax is paid shall be excluded from the gross amount charged for renting of the immovable property for the said period.
Example:
Property tax paid for July to September = ₹ 15,000/-
Rent received for July = ₹ 1,50,000/-
Service tax payable for July = ₹ 1,45,000 (1,50,000 – 5,000) X 10.3% = ₹ 14935.

Adjustment of excess service tax paid due to non-claiming of exemption: If the assessee pay excess amount of service tax on account of non-availment of the above exemption, then the assessee may adjust such excess amount paid against his service tax liability within 1 year from the date of payment of such property tax. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of 15 days from the date of such adjustment. [**Rule 6(4C) of Service Tax Rules, 1994]**

(3) <u>CBEC clarifications</u>:

Issue 1: Whether the activity of screening of film supplied by a distributor would fall under any of the taxable services and accordingly, whether the theater owners are required to pay service tax on amount received by them from distributors?

Taxable: Where theater owner leases out the entire theater to distributor and the theater owner get a fixed rent from distributor and the profit or loss from exhibiting the film is borne by the distributor. In other cases, it is not taxable.

<u>Issue 2</u>: The arrangement most commonly entered into between a theater owner and a distributor is that the theater owner screens the movie for fixed number of day under a contract. The proceeds earned through sale of tickets go to the distributor but the theater owner receives a fixed sum depending upon the number of days of screening. In this arrangement, the advertisement and display of posters etc., is done by the distributor. Under this arrangement, the fixed amount contracted is given to the theater owner by the distributor irrespective of the fact whether the movies run well or not. However, there is no rental arrangement between the theater owner and the distributor.
Whether in this arrangement, the theater owner provides 'Business Support Service' to the distributor and hence is liable to pay service tax on the fixed amount received by the theater owner?

Answer: By definition 'Business support service' is a generic service of providing 'support to the business or commerce of the service receiver'. In other words the principal activity is to be undertaken by the client while assistance or support is provided by the taxable service provider. In the instant case the theater owner screens/exhibits a movie that has been provided by the distributor. Such an exhibition is not a support or assistance activity but an activity on its own accord. Therefore such an activity can not fall under "Business support service"

Illustration: Compute Service tax payable under this service for the quarter ending 31.3.2012

	Gross Amount (₹)	Solution (₹)
(a) leasing of vacant land with an explicit understanding that lessee would construct a commercial building that land.	20,00,000	20,00,000
(b) renting of building for the purpose of holiday accommodation	1,00,000	not covered
(c) renting of building to a commercial coaching or training centre.	5,00,000	5,00,000
(d) renting of building to Govt. School.	3,00,000	not covered
(e) renting of vacant land for parking purposes	1,00,000	not covered
(f) renting of building to a Gurudwar	2,00,000	not covered
(g) renting of vacant land to a club for cricket match.	1,00,000	not covered
(h) charges received for erection mobile tower on building	2,00,000	2,00,000
(i) charges for placing vending/ dispensing machines in malls	1,00,000	1,00,000

(j) property tax paid to local authority in relation to property mentioned in point (a), (c), (h) and (i) ₹ 2,00,000 for the quarter ending 31.3.2012. Further, property tax of ₹ 1,00,000 paid on 15.12.2011 for which no exemption is claimed

(h) property tax paid to local authority in relation to property Mentioned in point (b), (d), (e), (f),(g) ₹ 3,00,000 paid for the quarter ending 31.3.2012.

Gross Taxable value		**28,00,000**
Less: Property tax paid in point (j) for 31.3.12.	2,00,000	
Since property (b),(d),(e) (f),(g) are not taxable. Therefore corresponding property tax paid in point (h) shall not be deductible.		
Taxable Value		26,00,000
Service tax @10.3%		**2,67,800**
Less: Adjustment of excess service tax paid As per Rule 6(4C)- 1,00,000 @ 10.3%		10,300
Net service tax payable		**2,57,500**

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(20) CARGO HANDLING SERVICE [w.e.f. 16.08.2002] [Export/Import category 'B']

(1) Service Provider : Cargo handling Agency e.g, Container Corporation of India, ICD, CFS, etc.

Service Receiver: Any person, in relation to cargo handling services.

Section 65(23) -"cargo handling service" means loading, unloading, packing or unpacking of cargo and includes,
(i) cargo handling services provided for freight in special containers or for non-containerized freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport and any other service incidental to freight; and
(ii) services of packing together with transportation of cargo/ goods, with or without one or more of other services like loading, unloading, unpacking,
but does not include handling of export cargo or passenger baggage or mere transportation of goods..

(2) <u>Exemption</u>:

(a) Cargo handling services provided in relation to storage of agricultural produce or for goods meant to be stored in cold storage. **For definition of 'Agricultural Produce" refer "Storage & Warehousing Service"**

(b) Cargo handling services provided **to GTA – Refer Heading 'Transport of Goods by Road Service'**

(3) Scope:

INCLUDES	***NOT INCLUDES***
(i) loading, unloading, packing or unpacking of cargo.	(i) Handling of export cargo or passenger baggage or mere transportation of goods.
(ii) services of packing together with transportation of cargo/ goods, with or without one or more of other services like loading, unloading, unpacking	(ii) Loading/unloading of cargo on individual capacity: (ii) Unaccompanied baggage
(iii) cargo handling services provided for freight in special containers or for non-containerized freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport and any other service incidental to freight;	(iii) Auction of abandoned cargo (iv) Handling of empty containers (Empty containers cannot be treated as cargo. Therefore, the said activities do not fall under this service)
(iii) **Rake handling charges**	(v) Marketing or canvassing for cargo for airlines.
(iv) Charges received for handling import cargo. (v) Loading/unloading of cargo by sole proprietorship firm	(vi) Transshipment service provides in relation to goods which are exported. (Since provided in relation to export cargo)
	(vii) Loading and unloading in a mine (because the iron ore which was being carried could not be commercially called 'cargo')
	(viii) ***Handling of goods within the factory premises*** **–**As per the dictionary meaning of the word "Cargo", it means 'loaded or unloaded on a truck, aircraft and shift'. Since in the given case the goods are handled within the factory without the use of truck etc. hence not taxable. [***Modi Construction Co. (2011)]***
	(ix) Cargo Handling activity undertaken in 'port or other port or airport (taxable under respective category).

<u>Cargo Hadling service vs. GTA Service vs. Packing Activity service</u>

(a) Mere transportation of goods is not taxable under Cargo handling service but under GTA service.

(b) If the essential/ predominant character of services provided is transportation of goods by road in a goods carriage and packing is an integral part of service provided, then such service provided by the registered GTA who issues consignment note shall be taxable under GTA service. The charges inclusive of packing/unpacking etc. shall be taxable.

(c) While mere transportation of goods is not covered, but, transportation along with packing/ unpacking and / or loading/ unloading of goods is covered. Therefore, mere packing of goods without any transportation would not amount to 'cargo handling service'. Merely packing of goods is covered under 'Packing Activity' Service.

Note: Motor vehicles registered in the name of Cargo Handling agency are capital goods for them and eligible for CENVAT Credit. [Refer CENVAT Credit]

Illustration: **compute service tax under "Cargo Handling" from the following information-**

	Gross Amount (₹)	Solution
a) Cargo handling service provided by a Individual on his own capacity	2,00,000	**NIL**
b) Handling of goods not meant for transportation	1,00,000	NIL
c) Packing along with mere transportation	15,00,000	15,00,000
d) Transportation and mere packing activity (consignment note issued)	3,00,000	NIL
e) Rake handling charges	1,00,000	1,00,000
f) cargo handling service provided to a GTA service provider	3,00,000	NIL
g) handling services provided for cold storage of agricultural produce	5,00,000	NIL
h) handling of passenger baggage	1,00,000	NIL
i) handling of unaccompanied baggage	1,50,000	**NIL**
Additional Notes:	**Taxable value**	16,00,000
(a) Excise duty/service tax paid on various inputs/input services used	Service tax @ 10.3%	1,64,800
for Cargo Handling service ₹ 50,000	Less: Cenvat Credit	
	(a) Input/Input service 50,000	
(b)Motor vehicle purchased during the year for use in Cargo Handling service	(b) Capital Goods	
₹ 10 lakhs (Excise Duty 10.3%)	50% of 1,03,000	51,500
	Taxable Service	**63,300**

Case study: 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 be 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. 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 is correct in law. [CA Final (New) Nov-2008]

Answer : On similar facts, it was held in **S.B.Construction Company v. UOI [2006] 4 STR 545 (Raj.)** that service tax has been levied under the 'Cargo handling', on such services which undertakes the activity of packing, unpacking, loading, unloading of goods to be transported by any means of transportation namely truck, rail, ship or aircraft.

In the instant case, however, the coal is handled / moved from railway wagons to the side of Thermal power Station with the aid of wagon tippling system to be fed in the boiler bunkers through conveyer system. It is evident that handling of the coal is done through wagon tippling system or conveyer system, they are mechanical devices and no motor vehicle or any other means of transportation is involved in the said handling.

Thus, the service rendered by the assessee does not fall under the ambit of Cargo Handling Services and as such it is not liable to pay service tax.

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(21) MAILING LIST COMPILATION AND MAILING SERVICE [w.e.f. 16.06.2005] [Export/Import category 'C']

Service provider:- Any person, in relation to 'mailing list compilation and mailing' – it means

(a) compiling and providing list of name, address and any other information from any source; or

(b) sending document, information, goods or any other material in a packet, by whatever name called, by addressing, stuffing, sealing, metering or mailing, for, or on behalf of, the client.

Service receiver:- Any person e.g., banks, insurance companies, companies listed on stock exchanges, real estate agents and other similar commercial entities, Mail order business companies etc.

Illustration*: Compute Service Tax from the following under "Mailing List compilation and mailing" service*

	Gross Amount (₹)	Solution (₹)
(a) charges for Compiling and providing name, addresses and contact No. of various persons to a Insurance company. Internet expenses incurred for providing service ₹ 11,030 (₹ 1030 being service tax)	2,00,000	2,00,000
(b) charges for mailing documents along with addressing, sealing etc to various person on behalf of the client (including postage stamps called Franking charges collected from client on actual basis ₹ 1,00,000)	5,00,000	4,00,000
		6,00,000
	Service tax @10.3%	***61,800***
	Less: Cenvat Credit on Input service	***1,030***
		60,770

Note: (1) Internet expense is incidental to provision of service therefore from part of taxable service. However, service tax of 1030 paid shall be eligible for Cenvat credit.

(2) Franking Charges since collected as pure agent should not be included in taxable value.

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(22) CLEARING AND FORWARDING AGENTS' SERVICE [w.e.f. 16.07.1997] [Export/Import category 'B']

(1) **Service Provider: -** Clearing and forwarding agent (including a Consignment agent)

Service Receiver: Any person, in relation to clearing and forwarding operations, in any manner,

"Cleaning and forwarding agent" means any person, who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent. [Section 65(25)]

INCLUDES	NOT INCLUDES
i) Remuneration/commission received from client for rendering services of clearing and forwarding operations. ii) **Coal Merchants providing services** such as- obtaining consent from coal companies, sanction from railway authorities, supervising loading of wagons, sending samples and assuring proper quality and quantities, formalities for freight payment etc., are covered within definition of C & F agent. iii) Authorised to appoint stockists, dealers, agents and also fix price with them on the behalf of principal. (Considered as Consignment Agent, a price fixation is not the job of commission on agent)	i) Service provided to GTA – Refer Heading 'Transport of Goods by Road Service' [Exempted] ii) **Commission agents** - A consignment agent receives the goods from the principal and dispatch them on the direction of the principal, where as a commission agent causes sale/purchase on behalf of the nother person/principal. Hence, Consignment agents are covered under C& F where as Commission agents are not covered under this service rather they fall under 'Business Auxiliary service' **Some Example of commission agent**- a)Activity of mere procurement of purchase order of

	principal on commission basis; b) the del credere agency c) only forwarding or only clearing activity (if both clearing and forwarding activity then fall under consignment agent) d) mere receiving and storing goods for auctioning them iii) **<u>ICD and CFS</u> -** ICD & CFS are not C&F agent, as they do not act as agent of service receiver (importer/exporter). There is no contract agreement between them. In fact they are liable to service tax under 'Cargo handling Services' iv) **<u>Storage Houses</u> -** Service of storage facility and charging rent for storage of liquid cargo in tanks is not covered by C& F agent, as storage houses are not agent of the service receiver. In fact they are liable to service tax under ' Storage & Warehousing Services'

<u>Illustration</u>: Compute Taxable value of services from the following information under "C&F agent service"

	Gross Amount (₹)	Solution
a) Commission charged for procuring purchase order on behalf of principal	2,00,000	NIL
b) Commission charged for procuring purchase order and fixing price on behalf of the principal with the dealer/stockist etc.	4,00,000	4,00,000
c) Commission charged for receiving Coal from principal and dispatch it as per the direction of the principal to railways wagons	5,00,000	5,00,000
d) commission charged for mere distribution of goods received from principal without any clearing activity from principal premises.	1,00,000	NIL
e) commission charged for sale of goods on behalf of principal	2,00,000	NIL
Taxable value		**9,00,000**
Service Tax @10.3%		**92,700**

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(23) COURIER AGENCY'S SERVICE [w.e.f. 01.11.1996] [Export/Import category 'B']

(1) Service provider:- Courier Agency e.g., Blue Dart, First Flight couriers, etc.

Service Receiver:- Any person, in relation to door-to-door transportation of time-sensitive documents, goods or articles.

"Courier agency" means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilizing the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles.

TAXABLE	***EXEMPTED***
(i) warehousing, packing and inventory management if they are relatable to door-to-door transportation and provided by the courier agency. (ii) **Express Cargo Service.** However, if provides by a GTA and issued Consignment note then under "transport of Goods by Road service' (iii) Angadias liable to Service tax as they also undertake transfer of documents from oner person to another. **(iv)** Amount received from customer who comes to the door of the Courier agency to send his document. (v) Speed post service provided by Postal department also taxable under this service. (v) service provided by Co-loaders to courier agencies are also covered under this service. However, courier agencies can claim cenvat credit on service tax paid on input service received form co-loaders.	(i) General Post service such as- post card, inland letter, book post, registered post etc**.,** provided by Postal Department are exempted from service tax, as the same is a sovereign/public function

__Note__: Motor vehicles registered in the name of courier agency are capital goods for them and eligible for CENVAT Credit. [Refer CENVAT Credit]

__Illustration__**: *Compute service tax under "Courier Agency Service" from the following events-***

	Gross Amount charged (₹)	**Solution (₹)**
(i) courier service along with packing and other ancillary activities (including for packing etc activities ₹ 1,00,000)	5,00,000	5,00,000
(ii) Door-to –Door transport service provided for which consignment note was issued.	8,00,000	NIL
(iii) Time sensitive transportation (consignment note is not issued)	5,00,000	5,00,000
(iv) Charges for services where customers came to the office. (Amount paid to co-loader for proving service ₹ 2,00,000)	12,00,000	12,00,000
Taxable value		**22,00,000**
Service Tax @10.3%		**2,26,600**
Less: Cenvat on Input service received from co-loaders (2,00,000 x 10.3%)		**20,600**
		2,06,000

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(24) STORAGE AND WAREHOUSING SERVICE [w.e.f. 16.08.2002] [Export/Import category 'B']

(1) Service provider - storage or warehouse keeper **(excluding cold storage)**
Service Receiver – any person

"Storage and warehousing" includes storage and warehousing services for goods including liquids and gases but does not include any service provided for storage of agricultural produce or any service provided by a Cold storage.; [Section 65(102)]

INCLUDES	NOT INCLUDES
(i) "storage and warehousing" of goods, including liquids and gases. **(ii)** Storage and warehousing of empty containers (as empty containers are goods) (iii) Storage and warehousing of **manufactured product such as sugar, edible oils, processed food, processed tobacco (since Not agricultural produce)** **(iv)** Goods Demurrage and wharfage charges for delay removal of goods.	**(i)** Storage and warehousing of ***agricultural produce*** **(ii)** Service provided to a GTA. **(iii) Agricultural produce** – → any produce resulting in cultivation or plantation,- (a) on which either no further processing is done; or b) such processing by the cultivator like tending, pruning, cutting, harvesting, drying which does not alter its essential characteristics but make it only marketable. → includes, all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice , coffee and tea. **(iv) Mere renting of warehouse -** Mere renting is not covered. Essential test is whether the storage keeper provides for security of goods, stacking, loading/unloading of goods in the storage area. **(v)** Cloak room services provided at the railway stations or bus stations etc. for passenger's luggage. (vi) Sold of abandoned goods by the Storage or warehouse keeper.

Illustration: Compute service tax payable under "Storage and Warehousing" service

	₹	**Solution**
(i) Storage and warehousing of manufactured tobacco	1,00,000	1,00,000
(ii) Storage and warehousing of sugarcane at a cold storage	2,00,000	exempted
(iii) after deposit the goods in warehouse no one comes for take the delivery of goods for long time and finally these goods are declared as abandoned and sold	5,00,000	NIL
(iv) Goods demurrage charges	2,00,000	2,00,000

(v) Storage and warehousing of goods meant for export	1,00,000	1,00,000
(vi) storage and warehousing of tendu leaves	2,00,000	exempted
		4,00,000
Service Tax @ 10.3%		**41,200**

Notes- with respect to point (v) above the exporter can claim refund of service tax of ₹ 10,300.

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(25) BUSINESS AUXILIARY SERVICE [w.e.f. 01.07.2003]
[Export/Import category 'C']

(1) Service provider – any person, in relation to business auxiliary service

Service Receiver – a client

Note:
(1) Business Auxiliary service provided to a GTA shall not be taxable. (Refer GTA service)

(2) Business Auxiliary Service provided by an Indian News Agency eligible for Income Tax exemption shall not be taxable, if such news agency applies its income or accumulates it for collection and distribution of news and does not distribute its income in any manner to its members

Section 65(19) -"Business Auxiliary Service" means any service in relation to –

(i) promotion or marketing or sale of goods produced or provided by or belonging to client; or
ii) promotion or marketing of service provided by the client; or
iii) any customer care service provided on behalf of the client; or
iv) procurement of goods or services, which are intended for use by the client. (i.e, inputs for the client); or
v) production or processing of goods for, or on behalf of, the client;
vi) provision of service on behalf of the client; or
vii) any service incidental or auxiliary to any activity specified in sub-clause (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,

and includes services as a commission agent, but does not include any activity that amounts manufacture of excisable goods.

Explanation –
"Commission agent" means any person who, while acting on behalf of another person and causes sale or purchase of goods, or provisions of services, for a consideration, and includes any person who, while acting on behalf of another person - (a) deals with goods or services or documents of title to such goods or services; or
(b) collects payment of sale price of such goods or services; or
(c) guarantees for collection or payment for such goods or services; or
(d) undertakes any activities relating to such sale or purchase of such goods or services.

(2) Service Covered:

(A) COMMISSION AGENT:-

INCLUDES	NOT INCLUDES

i) Selling Agent – Promotion or marketing or sale a) of goods produced or provided by or belonging to client, b) of service provided by the client. Note: Promotion or marketing of any service on commission basis is taxable it is immaterial whether such service is taxable or not. **ii) Buying Agent:-** Procurement of all goods or services, which are intended for use by the client. (i.e, inputs for the client) **iii)** any person who, while acting on behalf of another person — (a) deals with goods or services or documents of title to such goods or services; or (b) collects payment of sale price of such goods or services; or (c) guarantees for collection or payment for such goods or services; or (d) undertakes any activities relating to such sale or purchase of such goods or services. (iv) Commission received by distributors/Agents for distribution of mutual fund unit – Taxable. However, the person liable to pay service tax is the mutual fund company and not the distributor or agent. v) Commission received by Air Cargo Agents from the airlines for providing services to airlines – taxable. vi) Only Canvassing of Advertisements for publishing on commission basis without making, preparation, display or exhibition of advertisement falls under this service and not under Advertisement service. vii) Commission received by auto dealers from banks for recommending the banks to customers for arranging the finances for vehicle:- Taxable as it amounts to 'promote or market the services. (Tax is payable on full amount of commission even if part of the commission is passed on to customers)	i) Consignment agents are not covered under this service. They are taxable under "C&F Agent" service. ii) Commission received on Purchase and sale of lottery, lotto, bingo etc. conducted or promoted by the client covered under 'Games of chance service' and not under this service. iii) Commission Agent in relation to "sale or purchase of **agricultural produce**" have been exempted from service tax. However, exemption shall not be allowed on manufactured product such as sugar, edible oils, processed food, processed tobacco. iv) Threshing and dying of tobacco leaves or roasting/drying, shelling and peeling of raw cashew, known as 'client processing' are regarded as Agricultural produce since the processing does not alter the essential character. Hence exemption shall be available. v) **Buying agent service** in relation to "Agriculture, Printing, Textile processing, Education" are exempt from service tax. vi) Purchase or sale of Securities listed in a recognized stock exchange by (i) sub-brokers or (ii) ***authorized person*** **(w.e.f, 9.9.2011)** to stock-brokers are exempt from service tax. vii) Agency or intermediary services on commission basis such as- distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills etc. provided by the Postal Department shall not be taxable under this service rather they are taxable under respective service. However, these service provided by other commercial organizations on commission basis liable to service tax under this service viii) Insurance agent, C& F agent, travel agent (rail, air, other), Custom House Agent, Real Estate Agent, share transfer Agent, steamer Agent etc. working on commission basis – Taxable under their respective service. ix) Re-Insurance commission – covered under Insurance service. x) Amount paid to MD/Whole Time Director known as commission does not fall under here. Not taxable

(B) <u>PRODUCTION / PROCESSING OF GOODS FOR/ ON BEHALF OF THE, CLIENT</u> (JOB WORKER)

<u>100% Exemption</u>

(1) Job work in relation to "Agriculture, Printing, Textile processing, Education".

(2) Service in relation to manufacture of medicines cum Cosmetics.

(3) Job work service in relation to of gem and Jewellery.
<u>Abatement/Partial Exemption</u>:

(1) Exemption – (upto aggregate value of ₹ 150 lakhs in a financial year) provided to specified processes in relation to <u>manufacture</u> of parts of cycles and sewing machines. Subject to the following conditions –

i) the aggregate value of taxable service in relation to one or more specified service provided by service provider in the preceding financial year does not exceed ₹ 150 lakhs.

ii) In the current financial year ₹ 150 lakh exemption shall be on the first clearance

iii) where the service provider also undertakes one or more of the specified process in relation to manufacture of parts or whole of goods leviable to central Exise duty, such service provider shall maintain separate accounts of receipts, production and clearance of exempted and dutiable goods and services.

<u>Specified process</u> – means electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black.

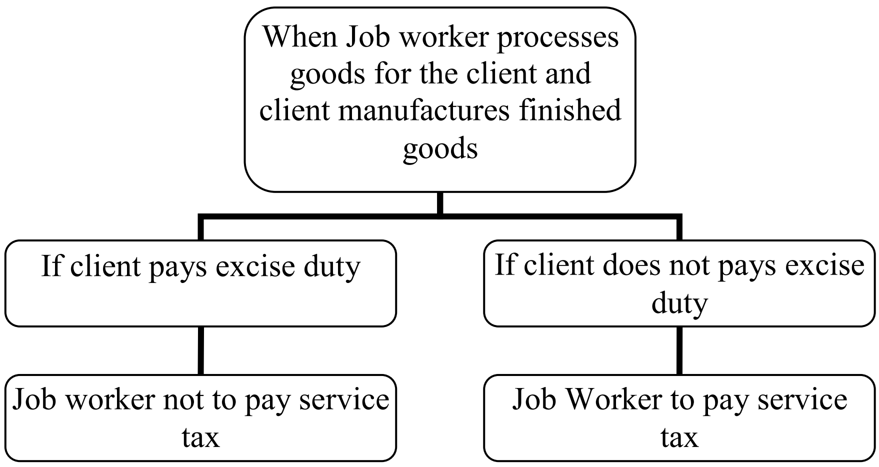
(2) 30% Abatement on value including of inputs (whether supplied by client or otherwise) for production or processing of **<u>parts used</u> in cycles, cycle rickshaws, hand operated sewing machine.**

<u>INCLUDES/ NOT INCLUDES</u>

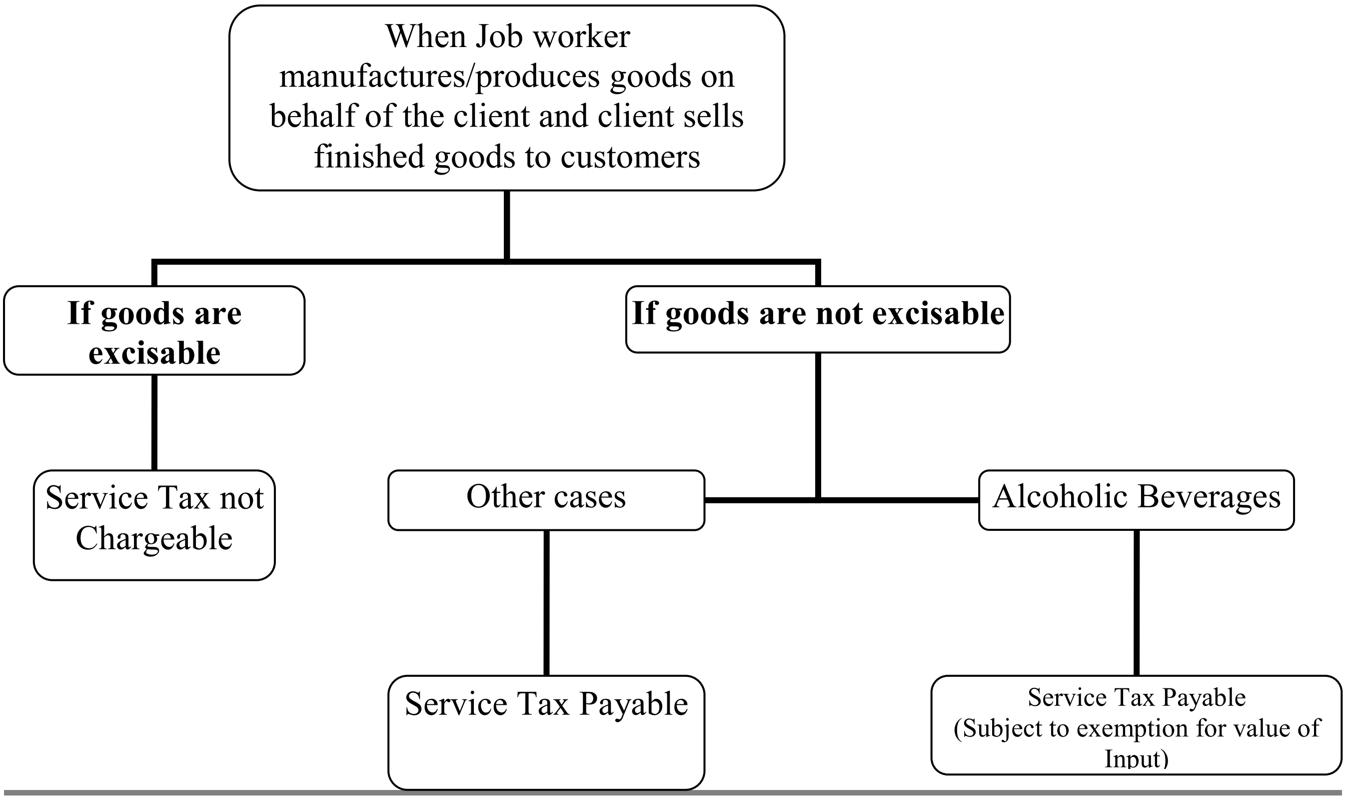
<u>SITUATION 1</u>:- M/S ABC manufactures certain goods, processes certain goods (whether excisable or not) and sells it in market.

<u>Answer</u>: In this case goods have not been processed on behalf of client but sold directly in market. There is no service element and therefore the question of service tax does not arise.

<u>Situation 2</u>: **(Job worker not manufactur but only process goods) -(Check- Excise duty paid or not)**



<u>**Situation 3**</u>: **(Job worker- manufacturer)- (Check- goods excisable or not)**



<u>**Example 1**</u>**:** X Ltd. sells exempted goods. These goods are manufactured by Job worker & supplied to X ltd.

<u>**Answer**</u>: These are excisable goods. Hence, Job worker not to pay service tax.

<u>**Example 2**</u>**:** What if in example 1, job worker produces non-excisable goods

<u>**Answer**</u>: Service tax shall be payable by Job- worker.

<u>**Example 3**</u>**:** X Ltd. sells <u>**ALCOHOLIC BEVERAGES**</u>. These are manufactured by Job worker 'ABC'.

<u>**Answer**</u>: Job worker will pay Service Tax as "Alcoholic beverages" are 'non- excisable' goods under Central Excise Act. However, following two options are available to the Job-worker in order to pay service Tax

Option 1: Pay service tax on entire amount including inputs *and* claim Cenvat Credit of excise duty paid on inputs

Or

Option 2: Pay service tax on value excluding inputs and don't claim Cenvat Credit on inputs

Example: Suppose inputs included – 20 Lacs
Value of alcoholic beverages – 50 Lacs
Excise Duty - 10.3%

Solution: <u>Tax planning</u>*: Check rate of excise duty on inputs*

- <u>In case of Excise duty on input is 8.24%</u> - then it is better to claim exemption on 20 Lacs and pay Service tax on 30 Lacs @ 10.3%.

- If Excise duty is 12.36% on input is - then it is better to pay service tax on 50 Lacs @10.3% and claim Cenvat Credit on ₹ 20 lakhs @ 12.36%.

Determine the taxability of the following cases-	**Taxable Service**
(1) Allow to use the Brand of alcoholic beverages to other manufacturers for manufacturer of alcoholic beverages.	under 'Intellectual Property Service
(2) Leasing of Bottling plant to other for manufacture of liquor	under 'renting of Immovable property'
(3) Production or processing of liquor by Job worker on behalf of brand owner.	Taxable in the hands of Job worker under 'Business Auxiliary Service'
(4) only Bottling of liquor	under 'Packing activity service'

(C) PROVIDING SERVICE ON BEHALF OF CLIENT

Exemption:- Providing Service in relation to "Agriculture, Printing, Textile processing, Education".

(D) ANY CUSTOMER CARE SERVICE PROVIDED ON BEHALF OF THE CLIENT,

(E) INCIDENTAL OR AUXILIARY SERVICE TO ANY ACTIVITY SPECIFIED IN ABOVE POINT (A) TO (D):

Includes :- such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision.

Excludes:- (i) But does not include any activity that amounts to manufacture of excisable goods e.g, Activity of powder coating on furniture supplied by the customer.

(ii) Container Detention charges

(iii) Weighment Services

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(26) BUSINESS SUPPORT SERVICES [w.e.f. 1.5.2006] [Export/Import category 'C']

Service provider:- Any person, in relation to support services of business or commerce, in any manner

Service Receiver:- Any person

"Business Support Service" –any service provided or to be provided to any person, by any other person in relation to support service of business or commerce, in any manner. [Section 65(105)(zzzq)]

"Support services of business or commerce" means services provided in relation to business or Commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, ~~operational assistance for marketing~~, ***operational or administrative assistance in any manner,*** formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation: "Infrastructure support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security.

INCLUDES	NOT INCLUDES
i) services provided in relation to business or Commerce and includes -	i) Service provided to GTA fully exempted – Refer GTA Service.
ii) Evaluation of prospective customers	ii) outsourcing work carried on behalf of another person covered under 'Business Auxiliary Service'
iii) telemarketing,	iii) Contract for hatching of eggs would not fall in any of the taxable services.
iv) processing of purchase orders and fulfillment services,	iv) Service in relation to VISA facilities provided by the VISA facilitator directly to any Individuals and collects fess directly from such Individuals shall not be taxable under service tax.
v) information and tracking of delivery schedules,	
vi) managing distribution and logistics,	
vii) customer relationship management services,	
viii) accounting and processing of transactions,	
ix) ~~operational assistance for marketing~~, ***operational or administrative assistance in any manner (w.e.f 1.5.2011 by the Finance Act, 2011)***	
x) formulation of customer service and pricing policies,	
xi) infrastructural support services such as-	
a) Providing office along with office utilities, lounge, reception with competent personnel to	

handle messages, secretarial services, internet and telecom facilities, pantry and security. xii) other transaction processing. xii) outsourcing work carried on directly xiii) VISA facilities provided to individuals but fess received from business entity.	

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(27) LEGAL CONSULTANCY SERVICES: [W.E.F 1-9-2009] [EXPORT/IMPORT CATEGORY – "A" AND "C"]

Applicable till 30.4.2011:- Service provided by business entity to other business entity, in relation to advice, consultancy or assistance in any branch of law are taxable under this service. However, any service provided by way of appearance before any court, tribunal or authority shall not be taxable. [Section 65(105)(zzzzm)]

Note: (a) It should be provided by business entity AND
(b) It should be provided also to business entity.

Hence, Legal consultancy services provided BY/TO individual are not taxable. Only services provided BY/TO business entity i.e., firm, company,BOI or AOP are taxable.

Amendments w.e.f 1.5.2011: Services

Taxable/INCLUDES	NOT INCLUDES
i) in relation to advice, consultancy or assistance in any branch of law, in any manner; Service provider – Business entity (other than Individual) Service Receiver – any person	i) Advice, Consultancy or Assistance in any branch of law provided by an Individual to any other person not taxable.
ii) in relation to representational services before any court, Tribunal or authority; Service provider – any person Service Receiver – any business entity (other than Individual)	ii) Representational Service provided by an Individual to another Individual not taxable.
iii) in respect of arbitration (from 1.5.2011 to 12.9.2011) Service provider – an arbitral Tribunal (means a sole arbitrator or panel of arbitrators) Service Receiver – any business entity (other than Individual) Arbitration – means any arbitration whether or not administered by permanent arbitral Institution.	(iii) w.e.f 12.9.2011, service provided by an arbitral tribunal in relation to arbitration any business entity shall be fully exempted from service tax. **[Notification No. 45/2011 ST]**

Point of Taxation:

i) If service is provided by Individual and Firms, then POT shall be on received basis as per Rule 7 of Point of Taxation Rules, 2011.

ii) If service is provided by any other person, then Rule 3 of POT Rules, 2011 shall be followed.

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(28) MANAGEMENT OR BUSINESS CONSULTANT'S SERVICES [w.e.f. 16.10.1998] [Export/Import category 'C']

Service Provider:- **a management or business consultants** (i.e, any person may or may not have any academic or professional qualification, rendering services in connection with the management of any organization or business, - in any manner)
Service Receiver:- Any person

Taxable service any service provided or to be provided to any person, by a management or business consultants in connection with the management of any organization or business, in any manner [Section 65(105)(r)]

"management or business consultants" means any person who is engaged any providing any service, either directly or indirectly, in connection with the management of any organization or business in any manner and includes any person who renders any advice, consultancy or technical assistance in relation to financial management; human resources management, marketing management, production management, logistics management and procurement and management of information technology resources or other similar areas of management. [Section 65(65)]

Taxable/INCLUDES	NOT INCLUDES
i) any advice, consultancy or technical assistance in relation to –	i) Any services related to Merger & Acquisition provided by Certain organization (such as Merchant banker) as per the requirement of any statute such as Takeover Regulation of SEBI.- covered under 'Banking & other Financial Services
a) Financial management; human resources management, marketing management, production management, logistics management,	ii) General services provided in areas of general awakening, conducting seminars, delivering lectures etc.- Since these are not 'consultancy'. 'Consultancy' has connotation relating to specific problems of particular client.
b) Procurement and management of information technology resources or other similar areas of management.	iii) Marketing Know-how does not fall under this services.
ii) Advisory services related to Merger and Acquisition and other forms of restructuring, right from feasibility study to post –acquisition integration.	iv) Amount received by MD/Whole-time director/ Independent Director for managing normal day to affairs of the company does not fall under this service.
iii) Law firms or legal consultants providing advise in relation to this service such as Merger & Acquisition etc. taxable under this service.	
iv) Where MD/WTD/ID provide any advice or consultancy to the company, for which they are being compensated separately.	

(29) CREDIT RATING AGENCY'S SERVICE [w.e.f. 16.10.1998] [Export/Import category 'C']

Service Provider:- Credit Rating Agency e.g, CRISIL, CARE,ICRA ,Duffs and Phelps etc. ,

Service Receiver:- Any person

Service Receiver:- Any person

Taxable/INCLUDES	NOT INCLUDES
i) Services in relation to credit rating of- a) any debt obligation or of any project or programme requiring finance, whether in the form of debt or otherwise, b) any financial obligation, instrument or security, (which has the purpose of providing a potential investor or any other person any information pertaining to the relative safety of timely payment of interest or principal) For example - Credit rating in respect of corporate bonds, commercial paper, fixed deposits, municipal debt, infrastructure bonds, utilities, asset backed securities, structured obligation, toll road bonds, mutual funds etc. ii) Surveillance fees received for regular surveillance/review of existing rate until the entire debt is repaid also taxable.	i) Research and information services such as- Analysis of industries in specific sector, of financial and business outlook of the company, financial modeling, bid evaluation, power purchase agreement, indexing services etc. shall not fall under this service.

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(30) STOCK BROKING SERVICES [w.e.f. 01.07.1994] [Export/Import category 'B']

Service provider:- Stockbrokers (sub-brokers not covered)
Service Receiver:- any person
"Stock broking service" means, any service provided or to be provided to any person, by a stock broker in connection with the sale or purchase of securities listed on recognized stock exchange [Section 65(105)(a)]

"Stockbroker" means a person who has either made an application for registration or is registered as a stockbroker, in accordance with the rules and regulations made under the SEBI ACT, 1992. [Section 65(101)]

INCLUDES	NOT INCLUDES
i) Commission or brokerage charged by a Stock broker on the sale or purchase of securities listed on recognized stock exchange,	i) Delay payment charges collected from customers (if shown separately on Invoice) ii) Delivery charges, handling charges, underwriting

ii) Commission or brokerage paid by one stock-broker to another sub-broker. iii) Commission or brokerage on Jobbing, Arbitrage, own trading transactions.	commission, badla charges. iii) sale or purchase of unlisted shares and listed shares on non-recognized stock exchange.

(iv) Discuss the tax implication where the commission or brokerage charged by two broker operating in two different stock exchange in respect of same transaction.

E.g, a broker of Gujurat provide services through Mumbai based broker to a client.

In the given case Mumbai base broker liable to pay service tax on commission charged by him on Kolkata based stockbroker.

The Kolkata based stockbroker liable to pay service tax on commission charged by him and also on commission charged by Mumbai based stockbrokers.
However, he can claim Cenvat Credit on Input service.

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(31) MARKET RESEARCH AGENCY'S SERVICE [w.e.f. 16.10.1998] [Export/Import category 'C']

Service provider:- Market Research Agency (any person)

Service Receiver: - Any person

<u>INCLUDES</u>

i) Conducting market research in any manner, in relation to any product, service or utility, including

ii) all types of customised and syndicated research services.

iii) Research in respect of Consumer markets, industrial marketing, business to business marketing, social and rural marketing etc. and is based on the requirements of client such as-

Strategic research and brand positioning development; New product development research; Creative development research; brand, logo, advertising research, pack level research ; diagnostic market research ; studies about corporate image ; customer research etc.

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(32) PUBLIC RELATIONS SERVICE [w.e.f. 1.05.2006] [Export/Import category 'C']

1. **"Public relations"** includes strategic counselling based on industry, media and perception research, corporate image management, media relations, media training, press release, press conference, financial public relations, brand support, brand launch, retail support and promotions, events and communications and crisis communications. [Sec. 65(86c)]

2. Any service provided or to be provided to any person, by any other person, in relation to managing the public relations of such person, in any manner, is a 'taxable service'.

ABATEMENTS GRANTED TO VARIOUS SERVICES

	Description of exempted service	Conditions	% of abatement
1.	Transport of goods by road in a goods carriage.	------	75
2.	Commercial or industrial construction service.	→ where gross amount charged includes of goods and materials supplied/provided/used for providing the taxable service, but not Land. → where the gross amount charged includes the value of goods and materials supplied/provided/used for providing the taxable service and the cost of land. However, the above abatements shall not be available if only completion and finishing services are provided in relation to building or civil structure.	67% 75%
3.	Construction of residential complex.	This exemption shall not apply in cases where the taxable services provided are only completion and finishing services in relation to residential complex. **Note -** The gross amount charged shall include the value of goods and materials supplied or provided or used for providing the taxable service by the service provider.	67
4.	Transport of goods in containers by rail by person other than Govt. Railway.	---	70%
5.	***Transport of coastal goods, goods through Inland water/ national waterway w.e.f 1.3.2011***	--	***25%***
5.	Business auxiliary service : Services in relation to production or processing of parts and accessories used in the manufacture of cycles, cycle rickshaws and hand-operated sewing machines, for, or on behalf of, client	This exemption shall apply in case where the gross amount charged from the client is inclusive of the cost of inputs and input services, whether or not supplied y the client.	30
6	**Banking and other financial service**:	service provided in relation to business chit Fund	30

The aforesaid abatements ***except Item (1)*** shall not apply where
(A) The CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of the CENVAT Credit Rules, 2004; or

(B) The service provider has availed the benefit of exemption in respect of value goods and materials sold by him to the recipient of service under Notification No. 12/2003-ST.

REFUND TO EXPORTER IN RESEPCT OF SERVCIE TAX PAID

(1) Exporter can claim refund of service tax paid in relation to the following services received for exported goods

1. Technical testing and analysis service;

2. Transport of goods by road;

3. Transport of goods in container by rail:

4. Storage and warehousing service:

5. Courier Agency's Service:

6. Customs House Agent's service:

7. Banking and other Financial Services:

8. Clearing and forwarding agent: .

9. Transport of coastal goods or goods through national/inland waterway:

Condition:-
1. The exporter claiming the exemption should have actually paid the service tax on the specified service to its provider.

2. No CENVAT credit of service tax paid shall be taken under the CENVAT Credit Rules, 2004.

3. The claim for refund shall be filed within one year from **the date of export** of the said goods.

Explanation.- For the purposes of this clause, **the date of export** shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962 ;

6
SPECIAL RATES OF SERVICE TAX (COMPOSITION SCHEME)

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(1) <u>Option to air Travel Agent</u>

In this case service tax is payable by the assessee as per the following option-

i) 10.3% on commission ; or
ii) 0.6% of the basic fare in the case of domestic bookings, and
iii) 1.2% of the basic fare in the case of international bookings,

(2) <u>Life insurance business –[w.ef- 1/5/2011]</u>

An insurer carrying on life insurance business shall have the following option to pay Service tax –

(i) @ 10.3% on the risk premium i.e,(Gross premium charged from a policy holder (-)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);

(ii) 1.5% (+EC+SHEC) of the gross amount of premium charged from a policy holder in all other cases; Provided that this option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance."

Example: A life insurance company collected premium of 140 lacs. Of the total premium collected ₹ 30 lacs pertained to policies where the amount were collected only towards life risk. In the case of balance policies, no break up was given and the premium was towards risk as well as towards investments. Compute service tax payable.

Solution –

(1) Service tax @ 10.3% on ₹ 30 lakhs = ₹ 3,09,000
Since the whole premium amount is for risk cover, therefore the composition scheme is not available.

(2) since the break up is not shown, therefore it falls under 'any other case'. Hence Service tax @ 1.545% on ₹ 110 lakhs = ₹ 1,69,950

(3) <u>Rule 6(7C): Optional composition scheme for Distributor or Selling agent of lotteries.</u>

→ **Taxable service: Games of chance service**
→ **Who can take the benefit:** The distributor or selling agents rendering the taxable service of promotion, marketing or organizing/ assisting in organizing lottery.
→ **<u>Effective rate</u>**

Where the guaranteed lottery prize pay out is > 80% - **₹ 6000/- on** every or part of Rs. 10 lakh of aggregate face value of lottery tickets printed by the organizing state for a draw. [+EC+SHEC]

Where the guaranteed lottery prize pay out is < 80% - **₹ 9000/- on** every or part of Rs. 10 lakh of aggregate face value of lottery tickets printed by the organising state for a draw. [+EC+SHEC]

(4) TAX PAYABLE UNDER WORKS CONTACT SERVICE-

Assessee has following two options –

Option 1

Option 1: pay tax @10.3% on the taxable value determined under Rule 2A of service tax (Determination of valuation) Rules, 2006.

Value of works contract service =
Gross amount charged for the works contract (-) Value of transfer of property in goods involved in the execution of the said works contract on which VAT has been paid.

Notes:
(a) Exclusions: Gross amount charged for the works contract shall not include VAT or sales tax

(b) Inclusions: Value of work contract service shall include,-
(a) labour charges ; (b) Payment to sub-contractor; (c) Planning and Designing charges; (d) machinery and tools hire charges; (e) architect's fees; (f) cost of consumables such as water, electricity, fuel; (g) establishment charges; (g) charges relating to supply of labour and services ; (h) profit earned by the service provider relatable to supply of labour and services.

(c) No CENVAT credit of duty paid on goods shall be allowed.

Option 2

Option 2: Pay tax as per the composition scheme.

Composition Scheme: Under this option the assessee may pay 4% of Gross amount charged for the works contract. [to be exercised before the payment of service tax for each works contract]

Gross Amount Charged =
Value of all goods and services used in or in relation to the execution of the works contract (whether supplied under any other contract for a consideration or otherwise – VAT/Sales tax paid – Cost of machinery and tools used in the execution of the said works contract (however, hire charges of such machinery and tools is not deductible)

Note: (1) No Cenvat Credit on input shall be available.

Rule 3 (2A): The CENVAT credit of tax paid on taxable services under "Erection, commissioning or installation", "Commercial or Industrial construction service", "Construction of residential complex service", 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."

Rule 4: This option shall be permissible only where the declared value of the works contract is not less than the gross amount charged for such works contract.

[1]**Prior to amendments:** Earlier if an assessee opts for composition scheme then no cenvat credit on input shall be available to him but there is no such resections on claiming Cenvat credit on capital goods and on input service.

Now, after amendments there is a restriction that Cenvat credit on input service in relation to following <u>specified service</u> shall be available only to the extent of 40% subject to the condition that the service provider paid tax without availing the benefit of abatements.

<u>Specified service-</u> (a) "Erection, commissioning or installation", (b)"Commercial or Industrial construction service", (c) "Construction of residential complex service"

However, it is to be noted that there is no restriction to claim Cenvat credit on capital goods and Cenvat credit on input service in relation to any other service other than the above specified service.

For instance: Suppose, Gross amount for the works contract (excluding VAT) is ₹ 2,00,000 and Value of goods and materials sold in the execution of works contract is ₹ 1,40,000.

The value of taxable service and service tax payable thereon is computed as follows –

Option 1:
Gross amount for the works contract (excluding VAT) ₹ 2,00,000
Less : Value of goods and materials sold in the execution of works contract ₹ 1,40,000
Value of works contract service as per Rule 2A ₹ 60,000
Service tax @ 10.3 % on ₹ 60,000 ₹ 6180

Option 2: Composition Scheme : Service Tax = 4.12% on ₹ 2,00,000 = ₹ 8240. **Hence, the assessee should opt for option 1.**

For example-

(1) Mr A has provided taxable services in relation construction of residential complex service to Mr.B, who is engaged in works contract service. The service tax charged by Mr.A on Mr. B are as under-

	₹
Gross taxable value	20,00,000
Less: 67% abatement	<u>13,40,000</u>
Net taxable value	6,60,000
Service tax payable @ 10.3%	67,980

The Gross taxable value of service in relation to works contract of Mr. B is ₹ 60,00,000.

Cenvat credit balance of Mr. B are as under –
On Input - ₹ 1,00,000
On capital goods - ₹ 2,00,000
On input service - ₹ 67,980
Mr. B opt for composition scheme. Determine his service tax liability.

<u>Answer</u>: Gross value of taxable service of Mr. B	<u>60,00,000</u>
Service tax @ 4.12%	2,47,200
Less: Cenvat credit	
Input- not available – NIL	
Capital goods- no bar in respect of credit eligibility, however only 50% credit allowed in current financial year.	1,00,000
Input service- not available since the service provider Mr. A has not paid service tax on gross amount of Rs. 20 lacs but has paid service tax only on Rs. 6,60,000	NIL

Service tax payable	1,47,200

(2) If in the example 1. Mr. A charges service tax on Mr. B as under-

Taxable value	20,00,000
Service tax payable @ 10.3%	2,06,000

Cenvat credit balance of Mr. B are as under –
On Input - ₹ 1,00,000
On capital goods - ₹ 2,00,000
On input service - ₹ 2,06,000

Answer: Gross value of taxable service	60,00,000
Service tax @ 4.12%	2,47,200
Less: Cenvat credit	
Input- not available – NIL	
Capital goods- no bar in respect of credit eligibility, however only 50% credit allowed in current financial year	1,00,000
Input service- only 40% available	82,400
Service tax payable	64,800

Note: Since Mr. A has paid service tax on gross amount of Rs. 20,00,000 therefore Mr. B can claim CENVAT credit on input service but only to the extent of 40%.

Illustration 11: Works contract service vs. Residential complex service

Ramakrishna Development Corporation (RDC) – a real estate developer – is engaged in construction of a residential complex (consisting of more than 20 houses) named Apple County for Almeco Builders

The particulars are as follows:-

Contracted Price (excluding VAT, if leviable)	₹ 22,00,000
Steel supplied by Almeco Builders to RDC	₹4,00,000
Excise duty paid on :-	
(a) capital goods used in providing construction service	₹ 60,000
(b) inputs used in relation to construction service	₹ 30,000
(c) Service tax paid on input services used in construction service	₹ 40,000

You are required to calculate the net service tax payable by Ramakrishna Development Corporation in the following two cases:-
(a) The aforesaid contract for construction of residential complex involves the transfer of property in goods and materials involved in the construction of residential complex of worth ₹ 2,00,000. VAT of ₹ 10,000 has been paid on the said goods and materials. RDC has opted to pay service tax under Composition Scheme.

(b) The aforesaid contract for construction of residential complex does not involve any transfer of property in goods and materials used in the construction of residential complex. It is to be noted that RDC has opted to avail the abatement of service tax equal to 67% under notification no. 1/2003 dated 1.03.2006. [ICAI RTP June 2009 modified]

Solution:-

(a) A contract can be classified as a work contract if following two conditions are cumulatively satisfied:-

(i) There is a transfer of property in goods involved in the execution of specified contract, and

(ii) Such transfer is leviable to tax as sale of goods.
Thus, the contract in the instant case is a works contract. Now, since, the assessee has opted for Composition Scheme; valuation shall be made as per the provisions of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007.

Calculation of net service tax payable by RDC under Composition Scheme:

Gross amount charged (excluding VAT) –**Note 1**	22,00,000
Add: value of steel supplied by ***M/s. Almeco Bilders*** – **Note 2**	4,00,000
Total gross amount charged	**26,00,000**
Service tax @ 4.12% (including SC+ EC)	**1,07,120**
Less: Cenvat credit of excise duty/ service tax paid on –	
(i) Inputs –30,000	NIL
(ii) Capital goods – no bar in respect of credit eligibility , however only 50% credit allowed in current financial year, balance in next financial year	30,000
(iii) input services (no bar in respect of eligibility of credit)- assume not in relation to specified service for which only 40% CC is available.	40,000
Net service tax payable	**37,120**

Note 1: Under composition scheme, the value of transfer of property in goods and material involved in execution is not deducted from gross amount charged; it forms part of gross amount charged. However, VAT paid of ₹ 10000 is deductible from gross amount charged; since the gross amount charged is exclusive of VAT, no adjustment is required.

Note 2: After amendment of Works contract Rule, the gross amount charged is to include the value of material 'supplied' for taxable service.

(b) Since there is no levy of sale-tax/ VAT, the contract cannot be termed as a works contract. The services provided by RDC are taxable under the category of 'construction of complex service'. It is assumed that RDC is eligible for abatement, as the service provided by RDC are not merely completion and finishing service. Since the RDC opted for abatement @ 67%, therefore the value of taxable service and service tax thereon shall be calculated as follows –

Gross amount charged by RDC	22,00,000
Add: value of steel supplied by M/s. Almeco Bilders – **Note 2**	4,00,000
Total gross amount charged	**26,00,000**
Less: Abatements 67%	17,42,000
Taxable value	8,58,000
Service Tax @ 10.3%	88,374
Less: CENVAT credit on input/capital goods/ input service – not allowed	NIL
Net service tax payable	88,374

Note: The exemption under Notin. No 12/2003-ST for good and materials has been ignored.

7
CENVAT CREDIT IN RELATION TO SERVICES

RULE 2(l) of Cenvat Credit Rules, 2004: INPUT SERVICE

The earlier rule has been substituted vide Notification No. 3/2011, dated 1/3/2011: w.e.f 1.4.2011

"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 includes services used in relation to (1) modernisation, renovation or repairs of a factory, (2) premises of provider of output service or an office relating to such factory or premises, (3) advertisement or sales promotion, (4) market research, (5) storage upto the place of removal, (6) procurement of inputs, (7) accounting, (8) auditing, (9) financing, (10) recruitment and quality control, (11) coaching and training, (12) computer networking, (13) credit rating, (14) share registry, (15) security, (16) business exhibition, (17) legal services, (18) inward transportation of inputs or capital goods and (19) outward transportation upto the place of removal;

but excludes the following specified services,-

(A) (1) Architect service, (2) Port service, (3) other port service, (4) Airport service, (5) commercial construction service,(6) residential construction service and (7) works contract service, in so far as 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,

except for the provision of one or more of the specified services; or
[It means credit in respect of above is available only if provided among the above specified taxable service provider but not available to other taxable service provider]

(B) General insurance service, Rent a cab scheme operator service, Authorized service station service and Supply of tangible goods for use service, 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; or

(C) 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;

EXEMPTED SERVICES [RULE 2(e)] ***[Amended w.e.f 1.4.2011 vide notification no. 3/2011, dated 1.3.2011]***

Exempted service 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 u/s. 66 of the Finance Act ***and 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.

Explanation.- For the removal of doubts, it is hereby clarified that "exempted services" includes trading" ;

Departmental clarification - Circular No.943/04/2011-CX, New Delhi, 29th April 2011

(a) Is the credit of input services used for repair or renovation of factory or office available? – **YES**

→ 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.

(b) 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.

(c) ***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 cenvat credit is not allowed when any goods and services are used primarily for personal use or consumption of employees

(d) 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

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DISCUSSIONS & EXPLANATIONS

→Whether Cenvat Credit of Input Service shall be available in the following cases -

Example 1: Output service – Commercial Coaching Centre
Input Service – Architect Service

Answer: - Not available

Example 2: Output service – Commercial construction
Input Service – Architect Service

Answer: - Available

Example 3: A person gets a building constructed from a construction company. He procures services of a real estate agent to let out the property.

Answer: Output service- Renting of Immovable property.
Input service- (1) Commercial Construction service
(2) Real estate agent service

Cenvat credit available only with respect to "Real estate agent service" and not w.r.t "Commercial construction service".

Example 4: Mr. X is engaged in renting of immovable property services. He engaged a Construction company for repair of the building.

Answer: Output service – Renting of immovable property
Input service – Repair & Maintenance service

Cenvat credit available.

Example 5: Mr. X is engaged in construction of commercial building. He has procured following services –

(1) Architect services
(2) Real estate agent services

Answer: Cenvat credit available in both of the input services. Assuming Mr. X has not claimed abatement.

Example 6: Mr. X is a manufacturer of final product. He has obtained services of contractor for construction of a structure on which capital goods shall be laid. He also procured input for the same. Excise duty and service tax paid ₹ 1,10,300.

Answer: Cenvat credit shall not be available both in case of input and input service.

Example 7: Mr. X is engaged in "Courier Services". State whether Cenvat Credit is available in respect of the following –

(a) Motor car purchased during the year (Excise duty paid ₹ 70,000) → Cenvat credit available as "Capital goods" First year ₹ 35,000 and next year ₹ 35,000.

(b) General Insurance of Motor car (Service tax paid ₹ 10,000) → 100% Cenvat Credit available as "Input Service"

(c) Petrol and Diesel (excise duty paid ₹ 1,00,000) → NO Cenvat. Not regarded as Input, since specifically excluded from the definition of input

Example 8: Mr. X is engaged in "Practicing Services". State whether Cenvat Credit is available in respect of the following –

(a) Motor car purchased during the year (Excise duty paid ₹ 70,000) → NO Cenvat credit available(not reagred as "Capital goods" for Practicing CA service)

(b) General Insurance of Motor car (Service tax paid ₹ 10,000) → NO Cenvat Credit available, not an "Input Service" for Practicing CA service)

(c) General Insurance of office premises → Cenvat credit available as Input Service. Restriction is only w.r.t motor car and for others.

8
ADJUSTMENT OF EXCESS SERVICE TAX PAID

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(1) Option to pay service tax in advance and adjust the same against future service tax liability:

Rule 6 (1A): Every person liable to pay service tax, may, on his own option, pay an amount as service tax in advance and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period.

However, the assessee shall, -

(a) intimate the details of the amount of service tax paid in advance, to the jurisdictional Superintendent of Central Excise within 15 days from the date of such payment; and

(b) indicate the details of the advance payment made, and its adjustment, if any in the subsequent return to be filled U/s 70 of the Act.

***(2)* Adjustment of service tax paid where service is not provided (wholly or partially) or change in invoice (less amount received):**

Rule 6(3): 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.";

(3) Adjustment of excess amount paid towards service tax liability

The assessee may adjust excess amount of service tax paid for a particular month/quarter against his service tax liability for the succeeding month/quarter. Further, the details and reasons for such adjustment shall be intimated to jurisdictional Superintendent of Central Excise within a period of 15 days from the date of such adjustment.

(a) **Excess amount paid due to delay/non-receipts of details of branches** – Extra amount can be adjusted in subsequent month/Quarter without any limit. (Applicable only in case of centralized registration)

(b) **Excess amount paid due to Interpretation of law, valuation, classification, exemption, Bad debt (i.e, if no amount received) -** No adjustment. However refund must be claimed. *It is to be noted that Refund should be subject to "Doctrine of Unjust Enrichment".*

(c) **Excess amount paid due to any other reason** – Maximum of **₹2,00,000** per month/Quarter can be adjusted.

(4) Adjustment of excess amount paid as service tax in case of renting of immovable property service

Refer taxable service "Renting of Immovable property"

9
PENALTY & PROSECUTION

Sec.	Reasons of penalty	Quantum of penalty
76	Failure to pay service tax. [***Note 1:*** example as given in the Act]	(a) ₹ ~~200~~ ₹ ***100*** per day of failure, or (b) ~~2%~~ 1% p.m. of service tax, whichever is higher, starting with the first day after due date till the date of actual payment of outstanding amount of service tax, ~~subject to maximum of tax not paid.~~ ***Subject to, 50% of service tax not paid. [w.e.f 8.4.2011]***
77	(1) Failure to take registration as per provisions of section 69 or rules made under this Chapter	Penalty which may extend to – (a) ₹ 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, (b) ~~₹ 5000~~ ***₹10,000***, whichever is higher. ***[w.e.f 8.4.2011]***
	(2) Failure to keep, maintain or retain books of account and other documents as required by this law.	Penalty which may extend to ~~₹ 5000~~ ***₹10,000***
	(3) Failure to - (i) furnish information called by an officer in accordance with the provisions of this Chapter or rules made thereunder; or (ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder; or (iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry.	Penalty which may extend to – (a) ₹ 200 per day during which such failure continues starting with the first day after the due date, till the date of actual compliance, or (b) ₹ ~~5000,~~ ***₹10,000 [w.e.f 8.4.2011]*** whichever is higher.
	(4) Failure to pay tax electronically through internet banking, though required to pay tax electronically.	Penalty which may extend to ₹ ~~5000~~. ***₹10,000 [w.e.f 8.4.2011]***
	(5) Issuing invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or failure to account for an invoice in his books of account	Penalty which may extend to ~~₹ 5000~~. ₹10,000 ***[w.e.f 8.4.2011]***
	(6) Contravention of any of the provisions of this Chapter or any rules made thereunder for which no penalty is separately provided	Penalty which may extend to ~~₹ 5000~~ ***₹10,000 [w.e.f 8.4.2011]***
78	***Non levy/short levy or Not paid/short paid or erroneous refund of service tax due fraud, collusion, suppression, or willful misstatement or contravention of provisions with intent to evade payment of tax. [Similar to section 11AC of Excise]*** ***w.e.f 8.4.2011***	***Normal penalty- 100% of the service tax evaded.*** ***Penalty reduced to 50% if true and complete details of transactions are available in the specified records [First proviso to sec. 78(1)]*** ***Further reduced to 25% if service tax and interest paid within 30 days. For assessee whose turnover is within 60 lakhs then, 30 days time is extended to 90 days.***

		Penalty shall be modified accordingly in case of increase or decreased in the amount of service tax due to order of Comm(A)/ Tribunal/ Courts. And benefit of reduced penalty of 25% shall be available if increased service tax and interest along with 25% penalty on such increase service tax is paid within 30/90days. ***Further, any amount paid before 30/90 days to be adjusted against total amount due.***

Points to be noted:

(1) No penalty is imposable u/s 76 or 77 or ***first proviso to section 78(1)***, if defaulter proves that there was reasonable cause for failure. [Section 80]

(2)Other provisions of section 78 are similar to that in section 11AC of the Central Excise Act, 1944.

(3) If penalty u/s 78 is payable, then the provision of section 76 shall not apply.

Note 1: Illustration given in the Act regarding section 76.

X, an assessee fails to pay service tax of ₹10,00,000 payable by 6/3/2012, X pays the amount on 16/3/2012. The default has continued for 10 days. The penalty payable by X is computed as under-

(a) 1% P.M of the amount for default of 10 days = 1/100 x 10,00,000 x 10/31 = ₹ 3,226.
Or
(b) Penalty @ ₹100 per day for 10 days = ₹ 1,000;

Penalty liable to be paid (higher of a or b) = ₹ 3,226

TOPICS ALREADY DONE AT THE PCC/IPCC LEVEL – AGAIN REPRODUCED FOR SELF STUDY

1
EXEMPTIONS UNDER SERVICE TAX

Section 93 of the Finance Act, 1994 empowers the Central Govt. to grant exemption from service tax in public interest by notification in official Gazette.

Exemption	**Remarks**
1. Export of Services is exempted from Service Tax	**Refer chapter "Export of Service"**
2. **Any Services provided to the United Nations or International organizations are exempt from service tax.**	An international organization means an international organization declared by the Central Government in pursuance of section 3 of the United Nations (Privileges & Immunities) Act, 1947.
3. Any Service provided to diplomatic missions or Consular posts for their official use/ personal use of such agents/officers are exempt from service tax.	
5. <u>Services provided in the territory of Jammu and Kashmir are exempted</u>	**<u>Example 1</u>: *Mr. X of J&K provides services in West Bengal to Mr. Y.*** **Answer-** Exemption is available only when service is provided in the territory of J&K. In the given case since the service is provided in West Bengal therefore TAXABLE **<u>Example 2</u>: *Mr. A of WB provides services in territory of J&K to Mr. B*** **Answer-** Exempted. Since the service is provided in the territory of J&K.
6.<u>Exemption to digital cinema service provider</u>	Services provided by digital cinema service provider to producer/distributor in relation to delivery of content of cinema in digital form after electronic encryption are exempt from service tax.
7. <u>Exemption to RBI</u>: *[Notification No. 22/2006 – S.T., dated 31-5-2006]* a) All Services provided by RBI to any person is exempted. b) However, Generally service received by RBI is taxable but in case of situation of "Reverse charged/ where Service recipient is liable to pay service Tax", then service received by RBI is also exempt.	**For example** – In case RBI import services, Incase RBI received service from GTA/Insurance Agent/Sponsorship service etc.. then RBI is not liable to pay service Tax. However, If RBI received service from A Charted Accountants then service tax is payable.
8. <u>Exemption for Sovereign Functions</u> carried on	Sovereign function means statutory/compulsory function i.e,

by various Govt. Dept.	the basic function of Govt. e.g., Police services, RTO providing driving license, VISA facillator providing VISA, General Postal service, Issuing of Voter ID, ADHAR CARD etc. Hence, these service provided by various Govt. dept. are not liable to service tax. However, if such Govt. dept provides any special service which is not mandatory/ basic for all, then service tax is chargeable. E.g, Speed post service provided by Postal Dept are liable to service tax.
9. Transmission and Distribution of electricity has been exempted from Service Tax.	Supply of electricity meters for hire to the consumers is also eligible for exemptions since it is an essential activity having direct and close nexus with transmission and distribution of electricity.
10. Any Service provided in relation to management, maintenance or repair of roads, bridges, tunnels, dams, airport, railways and transport terminals has been exempted from service tax.	
11. Exemption to service provided by a person located outside India in relation to booking of accommodation for a customer located outside India in a hotel in India.	**Located outside India means-** place of business, fixed establishment, permanent address or usual place of residence, in a country other than India **Hotel** –means a place that provides boarding and lodging facilities to public on commercial basis.

12. SMALL SERVICE PROVIDERS -*[Notification No. 6/2005, dated 1-3-2005]*

When aggregate value of taxable services rendered by a service provider from one or more premises, does not exceed ₹10 lakhs in the preceding financial year then the service provider shall be considered as small service provider in the current financial year and shall claim exemption for value of taxable services of ₹10,00,000.

"Aggregate value not exceeding ₹10 lakh" means the total of first consecutive payments received during a financial year towards the gross amount charged "by the service provider towards taxable services till the aggregate amount of such payments is equal to ₹10 lakh but does not include payments received towards such gross amount which are wholly exempt from service tax under any other notification.

This exemption shall not apply to -

(a) Taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or

(b) Such value of taxable services in respect of which person liable to pay service tax is specified under section 68(2) (i.e. person liable to pay service tax is the person other than the service provider).

During the period of exemption the Small Service Provider shall not be eligible to claim CENVAT credit. Once the exemption has been already availed and the Service Provider starts paying service tax and he can again claim CENVAT credit Alternatively, the Small Service Provider may opt not to claim SSP exemption i.e.pay service tax and claim CENVAT credit also

Notes: (1) "Brand name" or Trade name "means a brand name or a trade name , whether registered or not, that is to say, a name or a mark ,such as symbol, monogram, logo, lavel, signature, or invented word or writing which is used in relation to such specified services for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified services and some person using such name or mark with or without any indication of the identity of that person,

(2) In the first year of business or in a year in which the service has been made taxable, the basic exemption of ₹ 10 lakhs will be available in the first year upto ₹10 lakhs , as the case may be.
(3) Exemption is optional and if once exercised in a financial year shall not be withdrawn during the remaining part of such financial year.

(4) No credit of input/ input service /capital goods available if option exercised.

(5) Exemption to apply service provider wise, not for each taxable services or each premises.

(6) Rule 11 of Cenvat Credit Rules applied accordingly.

Concept Capsule 1:

Year	Taxable value of service	Service tax payable
1	₹ 8,00,000	
2	₹ 15,00,000	
3	₹ 6,00,000	
4	₹ 25,00,000	

Concept Capsule 2: X Ltd. has two branches one at Park Street and another at Salt Lake. The value of taxable services for 2010-11 of these two branches amounted to ₹ 5 lakhs and ₹ 6 lakhs respectively. Turnover of 2011-12 amounted to ₹ 15lakhs.

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13. Exemption of taxable service of production of goods on behalf of client i.e. Job work production

[Notification No.8/2005, dated 1-3-2005]

The Central Government has exempted the taxable service of production or processing of goods for, or on behalf of the client.

However, the said exemption shall apply only in case where such goods are produced or processed (not manufacture) using raw materials or semi-finished goods supplied by the client and goods so produced are returned back to the said client for use in or in relation to manufacture of any other goods falling under the first Schedule to the Central Excise Tariff Act, 1985 on which appropriate duty of excise is payable.

Notes:

(i) The expression “production or processing of goods” means working upon raw materials or semi-finished goods so as to complete part or whole of production or processing, subject to the condition that such production does not amount to “manufacture” within the meaning of clause (f) or section 2 of the Central Excise act,1944:

(ii) "Appropriate duty of excise "shall not include 'Nil' rate of duty or duty of excise wholly exempt.

14. Exemptions to services provided by TBI/STEP, or, a entrepreneur in TBI/STEP:

(i) Taxable services provided by a recognized Technology Business Incubator (TBI) or a recongised Science and Technology Entrepreneurship park (STEP), are exempt from whole of the service tax provided the TBI/STEP furnish the requisite information of Incubator and Incubate in the prescribed format to the concerned Asst./Deputy Comm. of Central Excise, before availing exemption and within 30th June of each financial after that.

(ii) Taxable service provided by an entrepreneur (incubatee) located within the premises of a recognized TBI or STEP, is exempt from the whole of the service tax. Provided that- (i) the entrepreneur enters into an agreement with the TBI or the STEP as an incubate, to enable himself to develop and produce hi-tech and innovative products and (ii) the total business turnover of such entrepreneur does not exceed ₹ 50 lakhs during the previous financial year. **Exemptions shall be available only for 3 years from the date on which the incubatee enters into agreement with the TBI/STEP. However, no exemption shall be available for any taxable services provided or to be provided immediately after the total business turnover of the incubatee exceeds ₹50 lakh during a given financial year.**

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15. Exemption for services provided to units in SEZ:

(a) The taxable services (whether domestic or imported) received by a Unit located in a SEZ or Developer of SEZ for the authorised operations, shall be exempted from the whole of the service tax, education cess and secondary and higher education cess leviable thereon.

(b) **Manner of exemptions -**

Particulars	Manner of Exemption
(1) Specified Services consumed wholly within the Special Economic Zone. ***[Refer Note 1]***	(a) Pay tax and claim full refund [refund route]; ***or*** (b) Do not pay tax at all. [Upfront exemption]
(2) Specified Services not consumed wholly within SEZ i.e, shared between authorised operations in SEZ Unit and Domestic DTA Unit	Pay tax full and claim proportionate refund. ***[Refer note 2]***

Note 1- Explanation: "wholly consumed" refer to -

(i) in-relation to Category A Service- service in relation to an immovable property situated within the SEZ; or

(ii) in relation to Category B service –service as are wholly performed within the SEZ; or

(iii) in relation to Category C service-, service provided to a Developer or Unit of SEZ, who does not own or carry on any business other than the operations in the SEZ; ***however, SEZ unit can have a liaison/ business promotion office in DTA[circular No. 142/11/2011, ST, dated 18/5/2011]***

Issue : There may be a situation, that a service may not be wholly consumed as per legal definition but fully used in SEZ unit e.g. in relation to Category C service a SEZ unit may have other business unit in DTA but servicer is wholly used in SEZ unit i.e, it is not share between DTA unit.

In that case, how exemption is available is an issue because we cannot follow proportionate refund system as service is not share between SEZ and DTA rather service is fully used in SEZ.

CBEC clarified this issue ***vide circular No. 142/11/2011, dated 18/5/2011***, that in such a situation the SEZ unit has to pay tax fully and claim 100% refund but upfront exemption is not available.
Hence, in relation to category A and B service wholly consumed in SEZ whether they have other business unit in DTA or not, always two option is available [1) Upfront exemption or (2) Refund route]

In relation to category C service, if service is fully used in SEZ and no other business in DTA, then also two options is available. [1) Upfront exemption or (2) Refund route]

However, In relation to category C service, where service is fully used in SEZ and the assessee has other business in DTA, then only 100% Refund route available.

Requirement to prove that service is used wholly in SEZ-
i) The invoice is issued in the name of SEZ Unit /developer or it has been mentioned that taxable services are supplied to SEZ unit/Developer for authorised operation.

ii) Such services are approved by the "Unit Approval Committee", as required for authorised operation

iii) received and use of such services is recorded in the Books of the SEZ Unit/ developer.

Note 2: Mathematically, Maximum refund =

$$\frac{\textbf{\textit{Export Turnover of SEZ unit for the period}}}{\textbf{\textit{Total turnover for the period}}} \times \textbf{\textit{Service tax paid on specified services used for SEZ Authorised operations shared with DTA Unit for the period.}}$$

(1) "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.

(2) "turnover of SEZ Unit" shall mean the sum total of the value of final products and output services exported during the period of which the invoices pertain and the exporter claims the facility of refund under this notification;

(3)
(i) To calculate the export turnover of SEZ, in the case of export of goods, FOB value provided in Shipping Bills or Bills of Export, should be taken into account, which have been duly certified by the officer of customs to the effect that the goods have in fact been exported;

(ii) To calculate the export turnover of SEZ, in the case of export of services, value of output services exported shall be on the basis of certificates issued by the bank certifying realization of export proceeds

(iii) The mathematical computation should be verified and certified as true by the statutory auditor of the SEZ Unit

Note 4: Condition to be satisfied -
(a) Exemption is only to specified services approved by Approval Committee of the concerned SEZ.

(b) refund shall be granted to the SEZ unit or developer only if, the value of service and service tax is actually paid by the SEZ unit or developer.

(c) No CENVAT credit shall be available in respect of input service which is exempted or refund claimed. However, in case of proportionate refund for the portion for which refund is not available DTA unit can claim Cenvat.

(d) no other exemption/refund is allowed except under this notification.

(e) 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.

Question 7: Whether Exemption is also available in case Taxable Service is provided by SEZ Units?

NO: Circular No. 105/08/2008 dated. 16-09-2008: Section 66 of the Finance Act 1994, (service tax law) doesn't exclude SEZs from the scope of its levy. Therefore service tax is applicable on taxable services which are provided by SEZ units, except such services which are specifically exempt. Accordingly, SEZ units, providing taxable services to any person or consumption in Domestic Tariff Area (DTA) or providing any taxable service which is otherwise not exempt, are liable to pay service tax.

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(16) Some miscellaneous points- Just read

(a) Services provided by State Government under Centrally Sponsored Schemes (CSS) are not liable to Service tax.

CSS- These are special grants provided by Central Government to State Government for planning and implementation of various programmes that help to attain national goals and objective. E.g., eradicating polio and tuberculosis, making primary education universal for every female and male child etc.

(b) Underwriting commission received by the primary dealers for the auction of Govt. securities not liable to service tax.

(**c**) Donation and grant-in-aid received by a charitable foundation imparting free livelihood training to the youth not liable to service tax.

(d) "Janata Personal Accident Policy" (JPAP) provided by insurance company as specified by State Govts. is exempt from service tax.

(e) Service provided by a visa facilitator in the form of assistance to individual directly to obtain a visa does not liable to service tax. However, service tax would be leviable on any service provided other than direct assistance to individuals for obtaining visa. For instance where the visa facilitators also act as agents of recruitment or of the foreign employer, then service tax would be leviable.

(f) Outdoor catering service provided for mid-day meal scheme is exempt from service tax.

(g) General Insurance service provided under "Rashtriya Swasthya Bima Yojana" is exempt from service tax.

(h) Fumigation of export cargo in compliance of export obligation is not taxable under 'cleaning service'

(i) Service tax exemption is also applicable to Education Cess and Secondary and Higher Education Cess –

Since EC and SHEC are levied and collected as percentage of service tax therefore service tax exemptions are also applies to EC and SHEC as well. Hence, when and wherever service tax is NIL by virtue of exemption, EC and SHEC would also be NIL.

2
REGISTRATION

Q1. Who shall apply for registration and within what time limit?

(a) Service provider whose aggregate value of taxable service in a financial year exceeds ₹ 9,00,000 shall apply for registration within 30 days from such date.
(b) An input service distributor shall apply for registration within 30 days of commencement of business.
(c) An existing service provider shall apply for registration within 30 days of from the date of levy of service tax.
(d) Where service receiver is liable to pay service tax then he must apply for registration within 30 days from the days when he becomes liable to pay service Tax.

Example- Turnover exceeds ₹ 9 lakhs on 5/10/2011. The last date of registration shall be 5/11/2011. But if 5/11/2011 is a public holiday then the last date of registration shall be the next working day.

Note: If registration is not done within the specified time then penalty of ₹ 10,000 or 200 for every day during which failure continues; whichever is higher, shall be levied.

Q2. Which are the premises to be registered?

(a) Where the service provider provides services from more than one premises or more than one premises are engaged in providing such service and is following Centralised Billing or accounting system then he can opt for Centralised registration of premises where centralized billing or accounting system is located.

(b) Where an assessee is providing a taxable service from more than one premises or offices, and does not have any centralized billing or accounting systems, then each such premises must be registered separately.

Q3. Mr. X is providing various services such as Consultancy, Commercial coaching, financial services etc. from a single premises. How many applications required to registration?

Under service tax registration is premises specific therefore the service provider have to make only one single application for registration even if he is providing more than one services from such premises.

He need not apply for separate registration for each taxable service. Single application mentioning therein all the taxable services provided shall be sufficient.

Q4. Procedure for Registration-

(a) Application: Application shall be made in FORM ST- 1 to the concerned superintendent of Central Excise. However, a Large Tax payer shall apply for registration to the ~~chief Commissioner~~ ***Superintendent of Central Excise. [w.e.f 18.7.2011]***

(b) Documents to be attached: **The CBEC may, by an order specify the documents which are to be submitted by the assessee along with FORM ST-1 within such period, as may be specified in the said order. [Amendment w.e.f. 19-10-2011]** ***Rule 4(1A) of Service Tax Rules, 1994***

Accordingly the following document is specified by CBEC vide its order No. 2 dated 13.12.2011
(a) Copy of Permanent Account Number (PAN)
(b) Proof of Residence
(c) Constitution of the Applicant.
(d) Power of Attorney in respect of authorised person (s).

It is further stated that the above documents must be submitted to the concerned authority within a period of 15 days from the date of filing of the application for registration. Failure to do so would lead to rejection of the registration application.

(c) Issue of Registration certificate -

The registration certificate is issued by the Superintendent of Central Excise within 7 days of making application in FORM 2. If the registration certificate is not granted within the said period, then the applicant shall be deemed to be registered.

It is also clarified that the time limit of 7 days from date of receipt of application or intimation under Rule 4(5A), within which the registration is to be granted by the Superintendent of Central Excise or Service Tax, as referred to in Rule 4(5) shall be reckoned from the date the application for registration is complete in all respects.

(d) Service Tax registration number- (<u>New PAN Based service Tax Code)</u>

The service tax registration No. is a 15 digits alphanumeric code.

First 10 digits: PAN NO.
Next 2 digits: ST
Last 3 digits: 001, 002, 003 etc. (Premises No.

E.g. PAN – AKOPH1581K
Service Tax Reg. No- AKOPH1581K ST 001

Q5. State whether in the following cases registration certificate is required to be made amended or fresh application for registration is required?

(a) Mr. X a sole proprietor, carrying on a business dies and his son Y continues the business of his father.
Ans: In this case the certificate of Mr. X has to be cancelled and Fresh registration certificate must be issued.

(b) M/s. XYZ a partnership firm changes its name to M/s. Super Enterprises.
Ans: An application in Form ST-1 must be made for amendment of registration certificate within 30 Days.

(c) M/s XYZ is a registered partnership firm and one of the partner Mr. X retired from the firm?
Ans: An application in Form ST -1 should be made for amendment of certificate within 30days.

(d) Incase of change in place of business?
Answer- An application in Form ST -1 should be made for amendment of certificate within 30days.

Note- Form ST-1 is both for new registration and as well as amendment to existing registration certificate.

Q6. Cancellation of registration-

(a) If the assessee ceases to carry on the activity for which he is registered, he should surrender the registration certificate to the Superintendent of Central Excise.

(b) On receipt of application with certificate, the Superintendent of Central Excise shall ensure that the assessee has paid all dues to the Central Government under the provision of the Act and then he will cancel the registration

(c) It is to be note that the cancellation of registration may be done when the assessee applies for cancellation on his own or surrenders his certificate and not in other cases.

3
Payment of Service Tax

Person liable to pay service tax

Any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration shall also be liable to pay service tax. However, in case of Resident Welfare Association providing services to their members where monthly subscription does not exceed ₹ 3,000 shall be exempted.

Class Notes

Q 1. A service provider fails to collect Service Tax from customer. Discuss

Where Service Tax is not charged separately in the invoice then the amount so collected from customer is regarded as inclusive of service Tax. In that case Service tax is calculated as under –

$$\frac{\text{Rate of Service Tax}}{100+\text{ Rate of Service Tax}} \times \text{Consideration Received.}$$

Q 2. A service provider raises a bill of ₹ 1,10,300 on customer but the bill is settled at ₹ 95,000 in full settlement. Determine the service tax liability.

In this case the amount received ₹ 95,000 shall be deemed to be inclusive of Service Tax. Hence, Service Tax would be payable

$$\frac{10.3}{110.3} \times 95{,}000 = ₹\ 8871.$$

However, this is subject to the condition that the Service provider must amend the original bill or cancel the original bill and issue a revised bill.

Q 3. A service provider wrongly charges service Tax of 12.36% instead of 10.3% from the customer.

As per Section 73A where service provider has collected excess Service Tax from customer then such excess amount should be paid to the credit of Central Govt. Under any circumstances the Service provider cannot keep the amount with himself.

Further, along with excess service tax the assessee is required to pay Interest @ 18% p.a to Central Govt. ***However, a concessional rate of interest @ 15% is charged if the turnover of assessee does not exceed ₹ 60 lakhs during any of the year covered in the notice or the preceding financial year. [Section 73B amended w.e.f 8.4.2011, by the Finance Act, 2011]***

4: **Service tax is not payable in case of free services.**

How to make the payment

(1) **Physically Deposit in Bank** -Under rule 6(2), the assessee is required to deposit the service tax with the bank designated by the Central board of Excise & Customs. **EASIEST** Scheme has been developed for this purpose.

→What is EASIEST scheme?

EASIEST (Electronic Accounting System in Excise and Service Tax) scheme has been developed to make payment of tax easy. The facility is available with 28 banks. The payment is made by GAR-7 challan. Assessee had to make one singly copy of challan and its counterfoil.

This mode of payment can be used only by assesses whose payment of service tax (including tax paid through CENVAT credit) was less than Rs. 10 lakhs in previous year. For other assesses, e-payment is mandatory.

→Benefits of EASIEST to the taxpayer
(a) Only one copy of the challan has to be filled instead of earlier four copies.
(b) Facility of online verification of the status of tax payment using CIN.

→ Challan Identification Number (CIN): Challan Identification Number (CIN) is a 20 digit unique identifier which will be given on the Taxpayer's computer generated acknowledgement / receipt. This number is a combination of the BSR code of the bank branch (first 7 digits), the date of deposit (next 8 digits) and Challan Serial Number (last 5 digits).

Note: If an assessee deposits the tax other than 28 bank where Easiest scheme is not available, then the payment is made by TR-6 challan with four copies.

→Payment in Cheque – Date of Tender [Rule 6(2A)]
In case of payment by cheque, Rule 6(2A) provides that the date of payment is the date on which the cheque is tendered to the designated bank, provided the cheque is not dishonored in the course of clearing.

(2) <u>e-payment:</u> In case the assessee has paid service tax of ₹10,00,000 or more in the preceding financial year **including utilization of CENVAT credit** service tax shall have to be paid electronically through internet banking . If the assessee fails to pay electronically then a penalty up to ₹ 10,000 shall be charged.

<u>Example 1</u>: Service Tax paid in 2010-11- ₹ 9,00,000
Service Tax paid in 2011-12- ₹ 11,00,000

<u>Answer</u>: Assessee is not required to make e-payment of service tax in 2011-12.

<u>Example 2</u>: Service Tax paid in 2010-11- ₹ 11,00,000
Service Tax paid in 2011-12- ₹ 8,00,000

<u>Answer</u>: Assessee is required to make e-payment of service tax in 2011-12.

<u>Example 3</u>: Mr. X a Service Provider furnishes the following information for 2010-11-

	₹
Service Tax on output service	11,00,000
Less: Service Tax on Input service (Cenvat Credit)	2,00,000
Net Service Tax paid	**9,00,000**

State how shall service tax be paid in 2011-12?

4
EXPORT OF SERVICES

The Export of services Rules, 2005 makes an attempt to define the term “export of services”. Rule 3 of the export service rules classifies the taxable services as category ‘A’, ‘B’ and ‘C’. The meaning of categories ‘A’, ‘B’ and ‘C’ is as follows-

(A) Immovable property situated abroad

(B) Service performed (wholly or partly) outside India. However, in case of Management, Maintenance or Repair services; Technical Inspection and Certification Services; and ~~Technical Testing and analytical services~~, where such services are provided in relation to any goods or material or any immovable property 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, shall be treated as taxable service performed outside India.

(C) (i) When services is provided in relation to business or commerce, export means- provision of such services to a recipient located outside India. (Note 1)

(ii) When service is provided other wise, export means - provision of such services to a recipient located outside India at the time of provision of such services. (Note 1)

Note 1: Where such recipient has commercial establishment or any office relating thereto, in India, such taxable services provided shall be treated as export of service only when order of provision of such service is made from any of his commercial establishment or office located outside India.

If taxable service in the nature of ‘supply of tangible goods for use’ is provided to a recipient located outside India, then such taxable service shall be treated as export of taxable service subject to the condition that the tangible goods supplied for use are located outside India during the period of use of such tangible goods by such recipient.

The provisions of any taxable services under the above categories shall be treated as export of service when the following conditions are satisfied -

(i) payment for such service provided outside India is received by the service provider in convertible foreign exchange.

Rule 4 of the Export of services Rules specifies that any taxable service can be exported without the payment of service tax.

Rule 5 also enables the Central Government to grant rebate of input taxes paid for the provision of services which are ultimately exported. It is to be noted that the Central Government has granted the rebate by way of notification in the official Gazette and the procedure for claim of such rebates has also been specified. The rebate is available only if the amount of rebate is ₹500 or more.

Section 93A: ***Power to grant rebate:*** Where any goods or services are exported, the Central Government may grant rebate, in prescribed manner, of service tax paid on taxable services used as input services for the manufacturing or processing of such goods or for providing any taxable services.

However, if the sale proceeds / consideration of such goods / services is not received within the time limit allowed by RBI under the FEMA, 1999, then, the rebate granted shall, [1]***except under circumstances or such conditions as may be prescribed***, be never to have been allowed and the same shall be recovered / adjusted in the prescribed manner.

[1]Note: By virtue of Amendment made by the Finance Act, 2011 w.e.f 8.4.2011, now the Central Govt. has the power to allow rebate in certain circumstances even if the sale proceeds/ consideration are not received within the stipulated period.

5
IMPORT OF SERVICES

Charge of service tax on service received from outside India [Sec. 66A]

Where any service specified in section 65(105) is provided or to be provided by a person who has:

(i) established a business or has a fixed establishment from which service is provided or has been provided in a country outside India, or

(ii) his permanent address or usual place of residence is in a country other than India

And

Such service is received by a person (i.e. recipient) who has his place of business, fixed establishment, permanent address or usual place of residence in India.

It will be treated as if recipient himself has provided the services in India and it will be chargeable to tax in his hands instead of the service provider.

However, if the recipient of the service is an individual, such service shall not be taxable unless it has been received by him in any business or commerce,

Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishment shall be treated as separate persons for the purposes of the section.

Where the provider of service has his business establishment both in that country and elsewhere, then, the country, where the establishment of the provider of service. Directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.

Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 have been framed to govern the provisions of this section. This provides as under-

Rule 3: It classify all taxable services in four categories, namely (i) Services in relation to immovable property (ii) Services to be performed in India and (iii) Services received by recipient located in India (iv) Services which will never be treated as 'import of service'.

Note: The classification is same as per export of Service Rules,

Rule 4: The recipient of service shall make an application for registration in accordance with the provisions of section 69 and rules framed thereunder.

Rule 5: The service taxable under this section shall not be treated as 'output service' for the purpose of availing credit of excise duty/service tax paid on any input/input service.

Exemption: Taxable service provided by a person located outside India, in relation to booking of an accommodation in a hotel located in India for a customer located outside India, is being exempted from levy of service tax. (Notification No. 14/2008 ST dated 1-3-2008)

VALUATION IN CASE OF SERVICE TAXABLE U/S. 66A

RULE 7 of the Service tax (Determination of Value) Rules 2006: The value of taxable service received under the provisions of section 66A, shall be such amount as is equal to the actual consideration charged for the services provided or to be provided.

However, where a taxable service is only partly performed in India, then, the value of taxable service shall be the total consideration paid by the recipient for such services including the value of service partly performed outside India.

Inclusions/Exclusion of certain items: Rule 6 of Valuation Rules specifies certain items to be included in or excluded from the value.

6
FILING OF RETURNS OF SERVICE TAX

1. Service Tax Returns are to be filed half yearly in Form ST -3.

2. The due dates of Service Tax Returns are as under:

For Period of April to September – 25th October
For period of October to March – 25th April.

In case the due date of deposit of tax or filing of return happens to be a public holiday, the service tax can be paid or the return can be filed on the next working day immediately following the holiday.

Further, the CBEC may by order extended the due date of filing return by such period as deemed necessary under circumstances of special nature to be specified in such order. [Rule 7(4) of Service Tax Rules, 1994] w.e.f 19.10.2011.

Accordingly, with the view that e-filling is mandatory for all assessee for the first time, the CBEC vide its order NO. 3-ST, dated 29-12-2011, has extended the due date of filing return for the period April 2011 to September 2011 – from 25th October2011 to 6.1.2012.

3. An assessee may submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within **90 days** from date of submission of original return.

4. **Return in case of multiple service provider:** In case the assessee provides various taxable services such as Consultancy, Commercial coaching, financial services etc, he need not required to file separate return rather he can file a single return for all the categories of taxable services. However, complete information should be presented in the return month-wise and category wise.

5. Fees for delayed furnishing of returns [Rule 7C]:

Period of delay in furnishing return	Fees to be paid
15 days from the due date	₹500
Beyond 15 days but up to 30 days from the due date	₹1, 000
Beyond 30 days from the due date	₹1, 000 +₹100 for every day from the 31st day till the date of furnishing of return; subject to a maximum of ~~₹2,000~~ ***20,000 [w.e.f 8.4.2011]***

Where the gross amount of service tax payable is nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty.

6. <u>Contents of the service tax return</u>

The return should include inter alia, month wise details for each of the taxable service rendered by the assessee –

- Value of taxable service charged/billed;
- Value of services which are exempted – with reference to the notification;
- Value of services which are exported;
- Abatement Claimed – with reference to the notification;
- Value of taxable service realized for services already rendered;
- Value of taxable service realized for services yet to be rendered;
- Amount of service tax payable/paid;
- Amount of education cess payable/paid;

- Details of CENVAT Credit.

7. Enclosures to the Return

The following documents should be enclosed with the return:

- Copies of GAR-7 challans for the enclosed with the return:
- Memorandum in Form ST-3A in case of a provisional assessment.
- List of accounts maintained in relation to service tax by the assessee should be attached with the first return.
- Documentary Proof for adjustment of excess service tax paid in terms rule 6(3).
- Worksheet of calculation of interest in case of delayed payment of service tax.

8. E-Filing of Returns

Upto 30.9.2011 -e-filing of returns is mandatory for the assessee who has paid total service tax of ₹10 lakh or more including the amount of service tax paid by utilization of CENVAT credit in the preceding financial year.

Now w.e.f 1.10.2011- every assessee shall submit the return electronically.

E-filing is a facility for the electronic filing of service tax returns by the assessee from his office, residence or any other place of choice, through the Internet, by using a computer.

E-filing of returns is an assessee facilitation measure of the Department in continuation of its modernization and simplification program. It is an alternative to the manual filing of returns.

9. Submission of returns through Service Tax preparers (Section 71)

The Board is empowered to frame a scheme providing that specified class of person may furnish their service tax returns through an authorised Service Tax Return Preparer. Such scheme may provide for various provisions applicable to the Service Tax Return Preparer (including educational qualification, duties, etc.)

"Service Tax Return Preparer" means any individual, who has been authorised to act as a Service Tax Return Preparer under aforesaid Scheme.

A Service Tax Return Preparer shall assist the specified person or class of person to prepare and furnish the return in such manner as may be specified in the Scheme framed under this section.

The Scheme framed by the board may provide the following, namely-

i) The manner in which and the period for which the Service Tax Return Preparer shall be authorized.

ii) the educational and other qualification to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Service Tax Return Preparer.

iii) the code of conduct, duties and obligation for/of the Service Tax Return Preparer.

iv) the circumstances under which the authorization given to Service Tax Return Preparer may be withdrawn.
v) any other matter which is required to be, or may be, specified by the Scheme for the purpose of this section.
Accordingly the board has notified Service Tax Return Prepares Scheme 2009

Para 5 of Service Tax Return preparer Scheme 2009

Persons eligible to file return through Service Tax Return Preparer : Any assessee, may at his option furnish his return after getting it prepared through a Service Tax Return Preparer. However, an assessee shall not furnish a revised service tax return under rule 7B of the rules through a Service Tax Return Preparer unless he has furnished the original return through such or any other Service Tax Return Preparer.

The Service Tax Return Preparer shall prepare and furnish the return to the Superintendent of Central Excise having jurisdiction over the assessee, or to such other person as may be directed by the Directorate General of Service Tax or any other directorate with the approval of the Board and hand over the acknowledgement of having furnished the return to the concerned eligible person.

Duties and Obligations of assessee: An assessee opting to furnish his return under this Scheme shall–
(a) give his consent to any Service Tax Return Preparer to prepare and furnish his return;

(b) Before verifying and signing the return, ensure that the facts mentioned therein are true and correct.

TOPICS SIMILAR TO EXCISE

1
PROSECUTION

SECTION 89: OFFENCES AND PENALTIES
[Newly inserted by the Finance Act, 2011 w.e.f 8.4.2011]

(1) Whoever commits any of the following offences, namely,—

(a) provides any taxable service chargeable to service tax u/s. 68(1) or receives any taxable service chargeable to tax u/s. 68(2), without an invoice issued in accordance with the provisions of this Chapter or the rules made thereunder; or

(b) 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; or

(c) 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 supplies false information (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true); or

(d) 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 6 months from the date on which such payment becomes due, ***shall be punishable,—***

(i) in the case of an offence where the amount exceeds ₹50 lakh - imprisonment for a term which may extend to 3 years;

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than 6 months;

(ii) in any other case - imprisonment for a term which may extend to 1 year.

(2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to 3 years ;

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term less than 6months.

(3) The following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than 6 months, namely:— ***same as in Excise Section 9***

(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.

(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.

CBEC clarification on the above provisions – [Circular No. 140/9/2011-S.T., dated 12-5-2011]

1) The Director General of Central Excise Intelligence (DGCEI) can exercise the power of Chief Commissioner of Central Excise, throughout India for sanctioning prosecution. The sanctioning authority should record detailed reasons for its decision to sanction or not to sanction prosecution, on file.

2) No prosecution under this section can be imposed merely on technical ground. It should be exercised with due diligence, cautions and responsibility after carefully weighing all the facts on records. Evidence regarding the specified offence should be beyond reasonable doubt, to obtain conviction.

3) The Department fix a minimum monetary limit upto ₹ 10 lakh for which no prosecution proceeding shall be launched. However, the monetary limit will not apply in the case of repeat offences.

4) **Section 89(1)(a):**

(i) Offences is attracts where services have been provided/received without issuance of invoice rather than non-mention of the technical details in the invoice that have no bearing on the determination of tax liability.
(ii) 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 of the books of accounts or the date of payment towards the service received.

(iii) Invoice includes Bill or Challan, as the case may be and it also includes any 'document' specified in respect of certain taxable services, in the proviso to Rule 4A and 4B of Service Tax Rules, 1994.

5) Section 89(1)(b):

(i) In order to constitute an offence the taxpayer must both avail as well as utilize the credit without having actually received the goods or service.

(ii) 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.

(iii) 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.

6) Section 89(1)(c): It should be noted that 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) Section 89(1)(d): This clause 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 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.

Q1: Where the offences u/s. 89(1) has been committed by a company can prosecution proceeding starts against the officers of the company?

Answer: Section 83 of the Finance Act, 1994 provides that certain section of Central Excise Act,1944, is also applicable to service tax. Further, the Finance Act, 2011 w.e.f 8.4.2011 inserted section 9AA of the Central Excise Act under section 83 which means provisions of section 9AA is also made applicable to section 89.

Section 9AA of the Central Excise Act provides that where an offence has been committed by the company, in addition to the company every person who was in charge of the company and responsible for the conduct of the business, at the time when offence is committed, can be deemed to be guilty of an offence and can be proceeded against. **However**, such person shall not be liable to punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Q2: Whether prove of mens rea is required for offences of section 89(1)?
Answer – As per section 83 of the Finance Act, 1994 section 9C of the Central Excise Act, 1944 is also made applicable to service tax. Hence, by virtue of section 9C, offences under section 89(1) has an inherent means rea. The burden of prove regarding non-existence of mens rea is on the accused and not on the department.

2
ASSESSMENT PROCEDURES

Self Assessment

Section 70 provides that every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such Form ST 3 and in such manner and as such frequency as may be prescribed. It is the duty of the assessee to make self-assessment of tax due in respect of services provided by him in a particular period and pay the tax on the basis of self-assessment. ***Otherwise the assessee is liable to pay interest along with the unpaid service tax amount.***

Provisional assessment

(1) Rule 6(4) provides that where an assessee is unable to correctly estimate the actual amounts of service tax payable for any month or quarter, then the assessee can make a request in writing to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise to make a provisional assessment of tax on the basis of the amount deposited.

(2) The Assistant Commissioner or Deputy Commissioner may, on receipt of such request, order provisional assessment of tax.

(3) Rule 6(5) provides that after such request is made, the assessee shall submit a memorandum, in Form ST-3A; giving details of difference between the provisional amount of service tax deposited and the actual amount of service tax payable for each month along with the half-yearly return in Form ST- 3.

(4) Where the assessee submit a memorandum, in Form-3A, the AC /DC of Central Excise, as the case may be shall complete the assessment, wherever he deems it necessary and proper in the circumstances of the case.

Section 72: Best judgment assessment

If any person, liable to pay service tax,

(a) fails to furnish the return under section 70;

(b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder,

the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

Rectification of Mistake [Section 74]

If there is any mistake apparent from the record in an order, the Central Excise officer, who passed such order, may, .within two years of the date on which such order was passed, amend the order by passing a rectified order in writing.

The amendment can be made by the Central Excise officer concerned - (a) Of his own motion; or (b) On application of the assessee; or (c) If mistake is brought to his notice by Commissioner / Commissioner (Appeals) of Central Excise.

In case any matter has been considered and decided in any proceeding by way of appeal or revision Central Excise officer passing such order may amend the order in relation to any other matter, which has been so considered and decided.

Every amendment, which enhances liability of assessee or reduces his refund, shall be made only after giving the assessee concerned, a reasonable opportunity of being heard.

Where such amendment reduces liability of assessee or enhances refund, the Central Excise officer shall make any refund due to such assessee, however, if such amendment enhances liability or reduces refund, then, such officer shall make an order demanding the sum payable by the assessee.

Forms under Service Tax

ST-1: Application for Registration
ST-2: Registration certificate
ST-3: Filling of Return
ST-3A: Memorandum of adjustment in case of Provisional assessment.
GAR 7: Service Tax payment challan ***(if paid electronically or deposited in bank having EASIEST facility)***
TR 6 : Service Tax payment challan (if directly paid in bank other than EASIEST Scheme)

3
OTHER PROCEDURES UNDER SERVICE TAX

Procedure for Issue of bill/invoice/ challan [Rule 4A & 4B]

(1) Every person providing taxable service shall issue an invoice/bill/challan signed by such person or a person authorized by him in respect of such taxable service provided or to be provided.

(2) Time limit for issue of invoice/bill/challan: The invoice/bill/challan shall be issued not later than 14 days from the date of completion of such taxable service ***or*** receipt of any payment towards the value of such taxable service, whichever is earlier.

However, in case of continuous supply of service, invoice/bill/challan shall be issued within 14 days from the date of completion of each such event specified in the contact on which date the service receiver is liable to make payment.

(3) Contents: Such invoice/bill/challan shall be serially numbered and shall contain the following -

(a) The name, address and the registration number of such person;

(b) The name and address of the person receiving taxable service;

(c) Description, classification and value of taxable service provided or to be provided; and

(d) The service tax payable thereon.

(4) Issue of consignment note by goods transport agency: Any goods transport agency providing taxable service shall issue a consignment note to **the recipient of service**. However, where any taxable service is wholly exempted, the goods transport agency shall not be required to issue the consignment note.

(5) Invoice in case of input service distributor: A input service distributor distributing the credit of taxable services shall issue a invoice/bill/challan in respect of credit distributed by it.

(6) Air ticket to be considered a valid invoice/bill/challan:

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.

Maintenance of records [Rule 5]

The records (including computerised data) shall be acceptable. Every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time a list in duplicate, of –

(1) all records prepared or maintained by the assessee for accounting of transactions in regard to, -
- (a) providing of any service, whether taxable or exempted;
- (b) receipt or procurement of input services and payment for such input services;
- (c) receipt, purchase, and manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;

(d) other activities, such as manufacture and sale of goods, if any.

(2) All other financial records maintained by him in the normal course of business.
All such records shall be preserved at least for a period of 5 years immediately after the financial year to which such records pertain.

Power of authorised officer to have access to registered premises for scrutiny, etc. [Rule 5A]

An officer authorised by Commissioner in this behalf shall have access to any registered premises for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

Records may be demanded for scrutiny: For the purposes of the scrutiny, such authorised officer, or, the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, may demand –

(a) the records listed in Rule 5 ;
(b) trial balance or its equivalent; and
(c) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961.

Assessee to furnish requisite records within 15 days: On such demand, every assessee shall make available all the requisite records to such officer or the audit party within a reasonable time not exceeding 15 working days from the day when such demand is made, or such further period as may be allowed by such officer or the audit party.

Note: "registered premises" includes all premises or offices from where an assessee is providing taxable services.

Power of adjudication of penalty by Central Excise Officers – [section 83A]

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)	Add. Commissioner of Central Excise	₹20,00,000 to ₹50,00,000
(5)	Commissioner of Excise	Without limit.

4
RECOVERY OF SERVICE TAX

Time limit for issue of Show cause notice

(i) If any service tax is not levied or not paid or short levied short paid or erroneously refunded, Central Excise officer shall issue a show cause notice for demand can be made within **1 year** from 'relevant date' [Section 73(1)]. Only service tax + Interest is payable. No penalty is charged.

(ii) If such short payment etc. was by reason of fraud, collusion, willful misstatement, suppression of facts or contravention of any provision of Finance Act, 1994 or rules, show cause notice can be issued within **5 year** [Section 73(1)]. In this case, Service tax + Interest+ Penalty u/s. 73(4A) is charged.

Relevant date for calculating time limit [1 year/5 year]

Situation	Relevant date
(i) If taxable service in respect of which service tax has not been levied or paid or has been short levied or short paid-	
(a) where a periodic return is to be filed	➢ the date on which such return is filed.
(b) Where no return was filed	➢ the last date on which the return should have been filed.
(c) Any other case	➢ the date on which service tax is to be paid.
(ii) Where Service Tax is provisionally assessed	➢ the date of adjustment of service tax after final assessment thereof.
(iii) In case of erroneously refunded	➢ the date of such refund.

No SCN if Service tax plus interest paid voluntarily before receipt of SCN

Assessee may pay such tax on the basis of own ascertainment or on the basis of tax ascertain by central excise officer, before issue of show cause notice. After payment of tax, assessee should inform the Central Excise officer in writing about such payment, and then the central excise officer shall not issue any show cause notice u/s 73(1) in respect of service tax so paid. However, even after such payment, show cause notice for further amount can be issued within 1 year from the date on which the assessee had informed the Central Excise officer about payment of service tax by him. [Section 73(3)]

"Explanation 2.—For the removal of doubts, it is hereby declared that no penalty under any of the provisions of this Act or the rules made there under shall be imposed in respect of payment of service-tax under this sub-section and interest thereon." However, Interest u/s 75 shall be payable.

Even after payment of tax by assessee, demand can be raised within 5 years in case of suppression of facts, fraud, collusion, willful misstatement or contravention of any provision with intent to evade service tax. [Section 73(4)]

Penalty chargeable u/s. 73 (4A)

Notwithstanding anything contained in sub-sections (3) and (4), where during the course of any audit, investigation or verification, it is found that any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded,

but the true and complete details of transactions are available in the specified records, the person chargeable to service tax or to whom erroneous refund has been made, may pay before service of Notice on him –

(i) the service tax in full or in part, as he may accept to be the amount of tax chargeable or erroneously refunded
(ii) along with interest payable thereon under section 75 and
(iii) penalty equal to 1% of such tax, for each month, for the period during which the default continues, up to a maximum of 25% of the tax amount, and

inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice in respect of the amount so paid and proceedings in respect of the said amount of service tax shall be deemed to have been concluded. However, notice can be served in case of part payment.

Explanation.—For the purposes of this sub-section and section 78, "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.';

Provisional attachment pending adjudication [Sec. 73C]

1. Finance Act, 2006 has added a provision for provisional attachment of property of a person to whom show cause notice has been serviced u/s 73 or 73A, if the Central Excise Officer is of the opinion that it is necessary to do so, to protect interests of revenue. He can do so only with prior approval of Commissioner of Central Excise.

2. The provisions seems to be harsh and may lead to harassment of assessees, though some safeguard have been kept.
3. The attachment can be done only in manner prescribed by rules and only with prior written approval of commissioner.

4. The attachment will cease to have effect after 6 months from date of order of attachment. This period can be extended with written permission of Chief Commissioner of Central Excise, but total period of extension cannot be for more than 2 year.

SECTION 88: LIABILITY UNDER ACT TO BE FIRST CHARGE
(newly inserted w.e.f 8.4.2011 by the Finance Act, 2011]

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 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.

5
CLASSIFICATION OF SERVICES

Section 65A(1) provides that where a taxable service is prima facie classifiable under two or more categories of service, then, classification shall be done as follows -

(a) <u>Specific description to be preferred over a general description</u>: It shall be classified under the category which provides the most specific description; For example, if a Chartered Accountant provides management or business consultancy service, it should be classified as 'Service of Chartered Accountant' since that is a special heading, while 'Management or Business Consultant' is a general heading.

(b) <u>Classification should be as per essential character in case of composite services</u>: In case the service is a composite service consisting of a combination of different services which cannot be classified in the manner specified in clause (a), then such service shall be classified under that category which gives them their essential character;

(c) When a service cannot be classified in the manner specified in clause (a) or clause (b), then it shaft be classified under the category, which occurs first in clause (105) of section 65.

Thus if a hotel rents out a conference room for official conference where lunch is also served, feel such a case the said service prima facie seems to be classifiable both under the category of 'and keeper' and 'convention service. As per clause (a) of section 65A the service shall be classified under the category, which provides the most specific description. Services of 'Mandap keeper' includes official social as well as business functions while 'convention' service covers formal functions like conferences only. Hence, in the said case the service provided by the hotel shall be classifiable under the category of 'convention' service, which provides the most specific description.

Amended by the Finance Act, 2010 w.e.f. 1-7-2010: It has been provided that the provisions of section 65A shall not apply to any service when the same is rendered wholly within-

(i) the port; or
(ii) other port; or
(iii) the airport or civil enclave.

Thus, any service rendered wholly within the port, or, other port, or, the airport/civil enclave shall respectively be classified only under "Port Services", or "Other Port Services", or, "Airport Services".

For example, construction activity carried within a port shall fall under "Port Services" and not under "Commercial or Industrial Construction", or, "Construction of Complex Service".

Judicial pronouncements

Burden of proof of classifying service under one head or another is on the department. ***[United Telecom Ltd. Vs. CST (2008) (CESTAT)]***

6
MISCELLANEOUS PROVISIONS

PROVISIONS OF THE FINANCE ACT, 1994 DEALING WITH PROCEDURES UNDER SERVICE TAX

Section 73: It provides for recovery of service tax not levied / paid or short-levied or short-paid or erroneously refunded. Time limit for demand is 1 year, which is extended to 5 years in case of fraud, etc. The other provisions are similar to that in section 11A of the Central Excise Act, 1944.

Section 73A & 73B: It provides that any amount collected in the name of service tax by any person has to be deposited with Central Government. Delay in deposit shall result in charge of ***interest @ ~~13%~~ 18%p.a. or 15% if the turnover of the assessee does not exceeds 60 lakhs.*** Other provisions similar to that in section 11D and 11DD of the Central Excise Act, 1944

Section 73C: Provisional attachment to protect revenue in certain cases: Similar to section 11DDA of the Central Excise Act, 1944

Section 73D: Publication of information in respect of persons in certain cases: Similar to section 37E of the Central Excise Act, 1944.

Section 82: **Power to Search**: If the ~~Commissioner~~ ***Joint commissioner of Central Excise*** has reason to believe that any documents /books / things, useful for or relevant to any proceeding relating to service tax are secreted in any place, he may authorise any ~~Assistant /Deputy Commissioner~~ ***Superintendent of Central Excise*** to search for and seize or may himself search for and seize documents or books or things.***[Amendment w.e.f 8.4.2011 by the Finance Act, 2011]***

Section 83: It provides that provisions of the following sections of the Central Excise Act, 1944 will apply in respect of Service Tax –

(a) ***Section 9A,9AA,9B, 9D [Inserted w.e.f 8.4.2011 by the Finance Act, 2011]***
(a) Section 9C, Presumption of culpable mental state; Section 9D, Relevancy of statements under certain circumstances;
(b) Section 11B, Claim for refund of duty and Section 11BB, Interest on delayed refunds;
(c) Section 11C, Power not to recover duty of excise not levied or short levied as a result off general practice;
(d) Section 12, Application of the provisions of [Act No. 52 of 1962 i.e. Customs Act, 1962] to Central Excise Duties;
(e) Section 12A to `12D, Price of goods to indicate the amount of duty paid thereon; Presumption that the incidence of duty has been passed on to the buyer; Consumer Welfare Fund; and Utilisation of the Fund;
(f) Section 12E, Powers of Central Excise Officers;
(g) Section 14, Power to summon persons to give evidence and produce documents in inquires under this Act;
(h) Section 14AA, Special audit in cases where credit of duty availed or utilised is not within the normal limits, etc.(CENVAT Audit);
(i) Section 15, Officers required to assist Central Excise Officers;
(j) Section 33A, Adjudication procedure;
(k) ***Section 34A [Inserted w.e.f 8.4.2011 by the Finance Act, 2011]***
(l) Section 35F to 35O, 35Q and 36, Deposit, pending appeal, of duty demanded or penalty levied and interest on refund thereof ; Appeals to High Court; Appeals to Supreme Court; Sums due to be paid notwithstanding reference, etc.; Exclusion of time taken for copy; Appearance by authorised representative ; and Definitions;
(m) ***Section 35R [Inserted w.e.f 20.10.2010 by the Finance Act, 2011]***
(n) Section 36A, Presumption as to documents in certain cases;

(o) Section 36B, Admissibility of micro films, facsimile copies of documents and computer point outs as documents and as evidence;
(p) Section 37A, Delegation of powers; Section 37B, Instructions to Central Excise Officers;
(q) Section 37C, Service of decisions, orders, summons, etc.;
(r) Section 37D, Rounding off duty, etc.;
(s) Section 38A, Effect of amendments, etc., of rules, notifications or orders; and
(t) Section 40, Protection of action taken under the Act.

Section 83A: Power of adjudication of penalty by Central Excise Officer

Section 84: Commissioner's power to revise orders of subordinate authorities
Revision of orders by the Commissioner abolished - Section 84 substituted by new section 84 (Effective from 19.08.2009)

(1) The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Chapter for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order.

(2) Every order under sub-section (1) shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.

(3) Where in pursuance of an order under sub-section (1), the adjudicating authority or any other officer authorised in this behalf makes an application to the Commissioner of Central Excise (Appeals) within a period of one month from the date of communication of the order under sub-section (1) to the adjudicating authority, such application shall be heard by the Commissioner of Central Excise (Appeals), as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Chapter regarding appeals shall apply to such application.

Explanation — For the removal of doubts, it is hereby declared that above mentioned provision would come into effect from 19.08.2009. All cases decided before this date would continue to be governed by the existing provisions only.

Section 85: Appeal to Commissioner (Appeals): Same as in section 35 of the Central Excise Act, 1944, except that the time limit for making appeal is 3 months from the date of the receipt of the order appealed against. Further, the time can be extended for further 3 months on sufficient cause being shown.

Section 86: Appeal to Appellate Tribunal: Appeal to Appellate Tribunal u/s. 86 cannot be filed against the order passed by Commissioner of Central Excise u/s. 84 – Section 86 (Effective from 19.08.2009)

(1) Any assessee aggrieved by an order passed by a Commissioner of Central Excise under section 73 or section 83A, or an order passed by a Commissioner of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal against such order.

(2) The Committee of Chief Commissioners of Central Excise may, if it objects to any order passed by the Commissioner of Central Excise under section 73 or section 83A, direct the Commissioner of Central Excise to appeal to the Appellate Tr***ibunal against the order.***

Section 87: *Recovery of any amount due to Central Government:* Same as section 11/142 of Central Excise / Customs.

Additional provisions under section 87- ***Garnishee Proceedings***

The central Excise officer may, by notice in writing, require any person (i.e, a third party/garnishee), from whom money is due or may become due to, or who holds or may subsequently hold money for, the person from whom recovery is to be made, to pay to the credit of Central Govt. the amount due under the Act or money due/held by such third party/ garnishee, whichever is less. However, such other person cannot be required to make any such payment before the money becomes due or is held by him.

Further, such other person shall be bound to comply with such notice and if he fails to make such payment, then he shall be deemed to be assessee in default in respect of the amount specified in the notice and all the consequences of the Act shall follow.

Section 93: Power of CG to Grant Exemption under service tax (Refer Chapter general Exemption) Similar Section in Excise (Sec.25) /Customs (Sec. 5A)

Section 93A: *Power to grant rebate:* Refer Chapter Export.

Section 94(2): Central Government empowered to frame rules in relation to the date for determination of rate of service tax and the place of provision of taxable service *(Effective from 19.08.2009)*

Finance (No.2) Act, 2009 has empowered Central Government under section 94 to make rules with respect to the place of supply of taxable services, and the relevant date for determination of service tax. Clause (hhh) has been inserted after clause (hh) to section 94(2) for the said purpose.

ADVANCE RULING

As per section 96A(a), "Advance ruling" means the determination, by Authority for Advance Rulings (Central Excise, Customs and Service Tax), of a question of law or fact specified in the application, regarding the liability to pay service tax in relation to a service proposed to be provided, by applicant.

Section 96C: Application for Advance Ruling
The questions on which Advance Ruling may be sought shall be in respect of -

(a) Classification of service under Chapter V of Finance Act, 1944;

(b) The valuation of taxable services for charging service tax;

(c) The principles to be adopted for the purposes of determination of value of the taxable service under the provisions of Chapter;

(d) Applicability of notifications issued under Chapter V;

(e) Admissibility of credit of service tax; and

(f) Determination of liability to pay service tax on a taxable service under the provisions of Chapter V.
The definition of 'applicant' and other procedural provisions relating to advance rulings' are similar to those applicable under Central Excise.

2. Notification No. 27/2009 ST dated 20.08.2009 has notified a public sector company as class of persons for the purpose of the sub-clause (iii) of section 96A(b) (i.e., filing to Advance ruling) of the Finance Act, 1994. A "public sector company" shall have the same meaning as is assigned to it in clause (36A) of section 2 of the Income-tax Act, 1961.

EXPLAIN AS TO HOW AND WHEN THE AMENDMENTS MADE IN THE FINANCE BILL IN RESPECT OF THE SERVICE TAX MATTERS COME INTO THE FORCE.

The law relating to service tax is governed by Chapter V and Chapter V-A of Finance Act,1994(i.e. Service Tax law).Every year a finance bill containing amendments proposed in the service tax law is introduced in the Parliament at the end of February month, which when receives assent of the President becomes the Finance Act of that year. The amendments made by the Finance Act of that year are then incorporated in the service tax law comprising of Chapter V and V-A of the Finance Act,1994. The amendments relating to procedures and charge of tax made by Finance Act of that year come into effect on the date on which the Finance Act of that year receives assent of President. However, amendments relating to taxable services come into effect from the date to be notified by the Central Government.

For example, the Finance (No.2) Bill,2009 proposing amendments in the Service Tax law received assent of the President on 19-8-2009 and amendments relating to service tax procedures came into effect on that date. While other amendments relating to taxable services came into effect on date notified by the Central Governments i.e.1-9-2009

Whether sub-contractor providing services to main Contractor are classified under services provided by the main contractor and hence liable to exemption if the main contractor getting exemption for services provided?

For example- A Works contact service in relation to construction of dams, tunnels, road, bridges etc. is provided by a Works Contract Service provider, which is exempt from service tax. The service provider receives various services such as Architect, Consulting engineering, design service etc. from his sub-contractor. The sub-contractors are arguing that they are also covered under "Works Contract Service" and hence liable to exemption as like the main contractor.

The CBEC clarified vide its **Circular No. 138/7/2011, dated 6-5-2011** that, As per section 65A when a descriptive clause is available for classification, the services cannot be classified under another sub-clause of section 65(105) which is generic in nature. Hence, the services provided by the sub-contractors are classified under their respective category of service and not under Works Contract Service and therefore not eligible for exemption.

However, further the CBEC vide its **circular No. 147/16/2011-ST, 21-10-2011** clarified that, if the main works contract in relation to roads, bridges etc. is sub-divided into several sub-project and each such sub-project is assigned by the main contractor to the various sub-contractors, then if the sub-contractors are providing "works contract service" independently to the main contractor for completion of main contract, then service tax is not liable due to exemption on the works contract service provided by such sub-contractor.

Write a notes on GST (Goods and Service Tax) ?

It is now proposed to abolish Excise Law, Service Tax Law and all the State VAT Acts. A new taxation code will be brought known as GST. GST will be a full VAT system in India. Thereby all traders, manufacturers and service provider will pay GST and claim credit for GST. GST will consists of State GST and Central GST i.e, the revenue will be shared between Central Govt. and State Govt. equally.
