

Basic Concepts Applicable to all Services

Question 1

Determine the Point of Taxation in each of following independent cases in accordance with Point of Taxation Rules, 2011:

S. No.	Date of completion of service	Time[Date] of Invoice, Bill or Challan as the case may be	Date on which payment received
1.	10.04. 2011	20.04.2011	30.04.2011
2.	10.04. 2011	20.04.2011	15.04.2011
3.	10.04. 2011	20.04.2011	15.04.2011 (Part) and 30.04.2011 (remaining)
4.	10.04. 2011	20.04.2011	06.04.2011(Part) and 09.04.2011 (remaining)
5.	10.04. 2011	20.04.2011	06.04.2011(Part) and 16.04.2011 (remaining)
6.	10.04. 2011	26.04.2011	30.04.2011
7.	10.04. 2011	26.04.2011	05.04.2011(Part) and 25.04.2011 (remaining)
8.	10.04. 2011	26.04.2011	05.04.2011(Part) and 16.04.2011
9.	10.04. 2011	26.04.2011	05.04.2011(Part) and 30.04.2011
10.	10.04. 2011	26.04.2011	05.04.2011

Answer

Before giving the answer to above practical problem, it will be worthwhile to have a quick look at the provisions of Rule 3 of Point of Taxation Rules which are given below in Tabular Format for easy recap:

Point of Taxation Unless Otherwise Specified	Time of Issue of Invoice	Position of Advance
Earlier of the following two dates: (i) Time[which practically	Within fourteen days from the date of completion of the service	According to Explanation appended to this Rule 3 wherever any advance by whatever name known is

means Date] of issue of Invoice for the service provided or to be provided ; or (ii) Date of payment to the extent it is received.		received by the service provider towards the provision of taxable service, the Point of Taxation shall be the Date of Receipt of each such advance.
Earlier of the following two dates: (i) Date of completion of the service or (ii) Date of Payment to the extent it is received	Not issued within [i.e. After] fourteen days from the date of completion of the service	

Point of Taxation in each of above cases has been given in following table:

S. No	Date of completion of service	Time [Date] of Invoice, Bill or Challan as the case may be	Date on which payment received	Point of Taxation	Remarks
1.	10.04. 2011	20.04.2011	30.04.2011	20.04.2011	Invoice issued within 14 days and before receipt of payment.
2.	10.04. 2011	20.04.2011	15.04.2011	15.04.2011	Invoice issued within 14 days but payment received before invoice.
3.	10.04. 2011	20.04.2011	15.04.2011 (Part) and 30.04.2011 (remaining)	15.04.2011 and 20.04.2011 for respective amount	Invoice issued within 14 days. Part payment received before invoice and remaining payment after invoice.
4.	10.04. 2011	20.04.2011	06.04.2011(Part) and 09.04.2011 (remaining)	06.04.2011a nd 09.04.2011 for the	Invoice issued within 14 days. However, the advance has

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				respective amount	been received in two installments before the date of completion of service. Thus, date of receipt of each such advance shall be treated as point of taxation.
5.	10.04. 2011	20.04.2011	06.04.2011(Part) and 16.04.2011 (remaining)	06.04.2011 and 16.04.2011 for the respective amount	Invoice issued within 14 days. Part payment [in the form of advance] received before issue of invoice and remaining payment received after completion of service.
6.	10.04. 2011	26.04.2011	30.04.2011	10.04.2011	Invoice not issued within 14 days and payment received after completion of service
7.	10.04. 2011	26.04.2011	05.04.2011(Part) and 25.04.2011 (remaining)	05.04.2011 and 10.04.2011 for respective amount	Invoice not issued within 14 days. Part payment received as advance before completion of service and remaining payment received subsequently.

8.	10.04. 2011	26.04.2011	05.04.2011(Part) and 16.04.2011	05.04.2011 and 10.04.2011 for the respective amount	Invoice not issued within 14 days. Part payment received as advance before completion of service and remaining payment received subsequently but before issue of invoice.
9.	10.04. 2011	26.04.2011	05.04.2011(Part) and 30.04.2011	05.04.2011 and 10.04.2011 for the respective amount	Invoice not issued within 14 days. Part payment received as advance before completion of service and remaining payment received subsequently after the issue of invoice.
10.	10.04. 2011	26.04.2011	05.04.2011	05.04.2011	Invoice not issued within 14 days but entire payment received as advance before completion of service.

Question 2

A newly introduced service becomes taxable with effect from 01.05.2011. Determine in each of the following independent cases whether service tax is leviable in accordance with Point of Taxation Rules, 2011?

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Time of Issuance of Invoice as well as Amount of Invoice	Time of receipt of payment / as well as Amount of Payment received
25.04.2011 for ₹ 1,00,000/-	26.04.2011 for ₹ 1,00,000/-
25.04.2011 for ₹ 1,00,000/-	26.04.2011 for ₹ 60,000/-
25.04.2011 for ₹ 60,000/-	26.04.2011 for ₹ 1,00,000/-
25.04.2011 for ₹ 2,00,000/-	20.04.2011 for ₹ 2,00,000/-
03.05.2011 for ₹ 2,00,000/-	30.04.2011 for ₹ 2,00,000/-
24.05.2011 for ₹ 2,00,000/-	30.04.2011 for ₹ 2,00,000/-

Answer

According to Rule 5 of Point of Taxation Rules, 2011 where a service not being a service covered by Rule 6 [viz. it is not a continuous supply of service] and is taxed for the first time, then payment of tax will be determined in the following manner:

Case	Time of Issue of Invoice	Time of receipt of payment	Position of Taxability
I	Before the date such service becomes taxable for the first time	Before the date such service becomes taxable for the first time	Not-Taxable to the extent of issue of invoice and receipt of payment against such invoice.
II	Issue of invoice within the period referred to in Rule 4A of STR, 1994 i.e. 14 days from the date of completion of service or receipt of payment. In this case it is possible that invoice is issued on the date when such service is taxable.	Before the date such service becomes taxable for the first time	Not Taxable if the payment has been received before the service become taxable and invoice has been issued within 14 days against such payment.

Note: If a new taxable service falls within the ambit of the expression "continuous supply of service" then provisions of Rule 6 will become applicable.

In the light of above provisions, the position of taxability in each of cases given in the question will be as under:

Time of Issuance of Invoice as well as Amount of Invoice	Time of receipt of payment / as well as Amount of Payment received	Position of Taxability
25.04.2011 for ₹ 1,00,000/-	26.04.2011 for ₹ 1,00,000/-	Not-Taxable to the extent of issue of invoice and receipt of payment against such invoice before

		such service becomes taxable i.e. entire amount of ₹ 1,00,000/- in this case		
25.04.2011 for ₹ 1,00,000/-	26.04.2011 for ₹ 60,000/-	Not-taxable to the extent of ₹ 60,000/- because against the invoice of ₹ 1,00,000/- only part payment to the extent of ₹ 60,000/- has been received before such service becomes taxable for the first time. In other words, ₹ 40,000/- received after such service become taxable [i.e. after 01.05.2011] will be subject to service tax at the rate prevailing on the date of receipt of payment.		
25.04.2011 for ₹ 60,000/-	26.04.2011 for ₹ 1,00,000/-	Not-taxable to the extent of ₹ 60,000/- because of Case I of this Rule i.e. to the extent of issue of invoice and receipt of payment against such invoice before such service becomes taxable. The taxability of remaining Rs.40,000/- will be determined in the following manner:		
		Time of Issuance of Invoice	Time of Receipt of Payment	Position of Taxability
		If invoice for ₹ 40,000/ is issued within 14 days [i.e. latest by 09.05.2011 in the present case] from the date of receipt of payment [in the form of advance] as per Rule 4A of STR, 1994.	Before the date such service becomes taxable for the first time	Not Taxable because the situation will be squarely covered by Case II of this Rule
		If invoice for ₹ 40,000/- is Not issued within 14 days [i.e. after 09.05.2011 in the present case] from the date of receipt of payment[in the form of advance] as per Rule 4A of STR, 1994	Before the date such service becomes taxable for the first time	Taxable because for neither the requirement of case I nor case II is met.

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25.04.2011 for ₹ 2,00,000/-	20.04.2011 for ₹ 2,00,000/-	Not Taxable as the payment has been received before the service becomes taxable and invoice has been issued within 14 days against such payment
03.05.2011 for ₹ 2,00,000/-	30.04.2011 for ₹ 2,00,000/-	Not Taxable to the extent of receipt of payment and subsequent issue of invoice within 14 days against such payment i.e. ₹ 2,00,000/-
24.05.2011 for ₹ 2,00,000/-	30.04.2011 for ₹ 2,00,000/-	Taxable because essential requirement of issue of invoice within 14 days from the date of receipt of payment is not met.

Question 3

Renu Ltd. enters into a contract with XYZ Ltd. for construction of a new building primarily for the purpose of commerce or industry for a total consideration of ₹ 150 lakhs on 02.07.2011. The aforementioned contract falls within the purview of "Services in Execution of Works Contract" which are taxable under section 65(105)(zzzza) of Finance Act, 1994. The relevant details are given as under:

Stage	Date [Expected]	Date of issuance of invoice	Date of Payment	Amount of Payment (Rs)
Initial/Booking	02.07.2011	02.07.2011	02.07.2011	15 lakhs
50% completion of building [after getting certificate from the stipulated Chartered Engineer]	15.03.2012	22.03.2012	29.03.2012	60 lakhs
75% completion of building [after getting certificate from the stipulated Chartered Engineer]	20.06.2012	10.07.2012	25.07.2012	35 lakhs
100% completion of building [after getting certificate from the stipulated Chartered Engineer]	30.09.2012	11.10.2012	07.10.2012	40 lakhs

Determine the Point of Taxation in respect of each of above stage of completion.

Answer

Firstly, it is worth mentioning that following services have been notified as continuous supply of service for the purpose of Point of Taxation Rules, 2011:

- (i) Commercial or Industrial Construction Services [Section 65(105)(zzq)]
- (ii) Complex Construction Services [Section 65(105)(zzzh)]
- (iii) Telecommunication Services [Section 65(105)(zzzx)]
- (iv) Internet Telecommunication Services [Section 65(105)(zzzv)]
- (v) Services in Execution of Works Contract [Section 65(105)(zzzza)]

Since Services in Execution of Works Contract have been notified as continuous supply of service for the purpose of Point of Taxation Rules, 2011 Rule 6 will become applicable in the present case. And according to aforementioned Rule 6 of Point of Taxation Rules, 2011 in case of continuous supply of services Point of Taxation will be determined in the following manner:

Time of Issue of Invoice	Point of Taxation	Deemed date of completion of provision of service	Position of Advance
Within fourteen days from the date of completion of the provision of service	Earlier of the following two dates: (i) Date of Invoice for the service provided or to be provided ; or (ii) Date of payment to the extent it is received.	According to Explanation 1 annexed to Rule 6 where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the service receiver to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be date of completion of provision of service.	According to Explanation 2 appended to Rule 6 wherever any advance by whatever name known is received by the service provider towards the provision of taxable service, the Point of Taxation shall be the Date of Receipt of each such advance.
Not issued within fourteen days from the date of completion of the provision of service [i.e. issued thereafter]	Earlier of the following two dates: (i) Date of completion of the provision of the service or (ii) Date of Payment to the extent it is received.		

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Therefore, according to Rule 6 of Point of Taxation Rules, 2011 in respect of each of the above stage of completion Point of Taxation will be determined as under

Stage of Completion	Deemed date of completion of provision of service as per Explanation 1 to Rule 6	Point of Taxation	Reason/Remarks
Initial/ Booking	02.07.2011	02.07.2011	Date of issuance of invoice as well as Date of Payment is same i.e. 02.07.2011.
50%	15.03.2012	22.03.2012	Since invoice has been issued on 20.03.2012 i.e. within 14 days from the date of completion of provision of service [which is 15.03.2012], comparison has been made between Date of issuance of Invoice [22.03.2012] and Date of Payment [29.03.2012]. Accordingly, Point of Taxation will be 22.03.2012.
75%	20.06.2012	20.06.2012	Since invoice has been issued on 10.07.2012 i.e. after 14 days from the date of completion of provision of service [which is 20.06.2012], comparison has been made between Date of Completion of Provision of Service [20.06.2012] and Date of Payment [25.07.2012]. Accordingly, Point of Taxation will be 20.06.2012
100%	30.09.2012	07.10.2012	Since invoice has been issued on 11.10.2012 i.e. within 14 days from the date of completion of provision of service [which is 30.09.2012], comparison has been made between Date of issuance of Invoice [11.10.2012] and Date of Payment [07.10.2012]. Accordingly, Point of Taxation will be 07.10.2012

Question 4

Harpreet Ltd. provides Business or Management Consultancy Services to a foreign based company on 20.07.2011 for agreed consideration of \$ 50,000/-. The invoice is raised by Harpreet Ltd. on 25.07.2011. However, the said company receives the payment in convertible foreign exchange in accordance with following brief table:

CASE I	03.01.2012
CASE II	14.11.2012

Determine Point of Taxation in each of above two cases.

Answer

Point of Taxation in each of above two cases will be as under:

CASE	Point of Taxation	Detailed Reason/Remark
CASE I	Date of receipt of payment i.e. 03.01.2012.	Since the exporter company is able to realise the payment within the period prescribed by RBI, provisions of Rule 7(a) become applicable. Accordingly, date on which payment is received will be considered as Point of Taxation.(Note 1)
CASE II	Date of invoice i.e. 25.07.2011	As the exporter company is NOT able to realise the payment within the period prescribed by RBI, provisions of Rule 7(a) will not apply. Point of Taxation will be determined as if Rule 7(a) does not exist. In simple words, Point of Taxation will be determined on the basis of Rule 3. Since in the present case invoice has been issued within 14 days from the date of completion of provision of service, earlier of the following two dates will be point of taxation: (i) Date of Invoice; or (ii) Date of payment to the extent it is received.

Note1: According to Regulations 9 of Foreign Exchange Management (Export of Goods and Services) Regulations, 2000, the amount representing the full export value of goods or software exported shall be realised and repatriated to India within twelve months from the date of export.

Question 5

Manoj Ltd. imports Business Support Services from Green Ltd. of USA on 13.07.2011. The relevant invoice for \$ 1,20,000 is raised by Green Ltd. 18.08.2011. Manoj Ltd. makes the aforementioned payment as per following table:

CASE I	22.11.2011
CASE II	27.05.2012

Answer

Point of Taxation in each of above two cases will be as under:

CASE	Point of Taxation	Detailed Reason/Remark
CASE I	Date of payment i.e. 22.11.2011	Since the importing company i.e. Manoj Ltd makes the payment within the six months from the date of invoice, provisions of Rule 7(b) become applicable. Accordingly,

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		date on which payment is made will be considered as Point of Taxation.
CASE II	Date of completion of service i.e. 13.07.2011	As Manoj Ltd. does not make the payment within six months from the date of invoice, provisions of Rule 7(b) will not apply. Point of Taxation will be determined in the absence of this rule. In simple words, Point of Taxation will be determined on the basis of Rule 3. Since in the present case invoice has NOT been issued within 14 days from the date of completion of provision of service, earlier of the following two dates will be point of taxation: (i) Date of completion of provision of service; or (ii) Date of payment to the extent it is made in the present situation. Since in the present case Date of completion of provision of service [13.07.2011] precedes the date of payment [27.05.2012], date of completion of provision of service will be point of taxation.

Question 6

In respect of which category of taxable services, service tax is still required to be deposited on payment basis even after coming into force of Point of Taxation Rules, 2011?

Answer

According to Rule 7(c) of Point of Taxation Rules, 2011 for individuals or proprietary firms or partnership firms providing following taxable services the Point of Taxation shall be date on which payment is received or made, as the case may be. In simple words, in respect of these services service tax is still required to be deposited on cash basis and not on accrual basis:

- Ø Consulting Engineer's Services [section 65(105)(g) of Finance Act, 1994]
- Ø Architect's Services [section 65(105)(p)]
- Ø Interior Decorator's Services [section 65(105)(q)]
- Ø Practicing Chartered Accountant's Services [section 65(105)(s)]
- Ø Practicing Cost Accountant's Services [section 65(105)(t)]
- Ø Practicing Company Secretary's Services [section 65(105)(u)]
- Ø Scientific or Technical Consultancy's Services [section 65(105)(za)]
- Ø Legal Consultancy's Services [section 65(105)(zzzm)]

Question 7

Anupam & Associates is a partnership firm of Practicing Chartered Accountants. It has provided a legal opinion on an issue of Income Tax to a client for an agreed of ₹ 1,00,000/- as per following details:

<i>Date of Completion of Service</i>	<i>12.09.2011</i>
<i>Date of issue of an invoice in r/o above service</i>	<i>17.09.2011</i>
<i>Date of Receipt of payment</i>	<i>14.11.2011</i>

Determine Point of Taxation for Anupam & Associates.

Answer

In accordance with Rule 7(c) of Point of Taxation Rules, 2011 Point of Taxation in above case will be the date of receipt of payment i.e. 14.11.2011. Date of Completion of service as well as Date of issue of an invoice is inconsequential in the present case.

Question 8

Gupta & Gupta Ltd. is located in India and holding 60% shares of Vasu Ltd., a U.K. based company. The latter company [Vasu Ltd.] provides Business Auxiliary Services to former company [Gupta & Gupta Ltd.] The other relevant details are given in the following table:

<i>Agreed Consideration</i>	<i>£ 2,00,000/-</i>
<i>Date on which services are provided by Vasu Ltd.</i>	<i>16.07.2011</i>
<i>Date on which invoice is sent by Vasu Ltd.</i>	<i>19.07.2011</i>
<i>Date on which invoice is received and recorded by Gupta & Gupta Ltd.</i>	<i>31.07.2011.</i>
<i>Date on which payment is made by Gupta & Gupta Ltd.</i>	<i>23.10.2011</i>

Determine Point of Taxation for Gupta & Gupta Ltd.

Answer

In the above case Point of Taxation will be determined as under:

First of all it is worth highlighting that by virtue of its aforementioned shares in Vasu Ltd., Gupta & Gupta Ltd. becomes the **holding company** of Vasu Ltd as per section 4 of Companies Act, 1956. Resultantly, both Gupta & Gupta Ltd. and Vasu Ltd. will fall within the ambit of the term “**associated enterprises**” as per section 92A of Income Tax Act, 1961. As a result, third proviso to Rule 7 of Point of Taxation Rules, 2011 becomes applicable in the present case. Thus, Point of Taxation will be determined in the following manner:

Earlier of the following two dates:

<i>Date of credit in the books of account of person receiving the service [which is Gupta & Gupta Ltd. in the present case]</i>	<i>31.07.2011</i>
<i>Date of making the payment [by Gupta & Gupta Ltd. in the present case]</i>	<i>23.10.2011</i>

Thus, Point of Taxation will be 31.07.2011.

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Question 9

Kirti Ltd is the owner of a coal-mine in Bihar. It obtained a patent from the concerned competent authorities in r/o foregoing coal-mine in February, 2011. Further, the company has entered into an agreement with ABC Ltd in April, 2011 for allowing the latter party to extract coals for the next three years. The consideration payable by ABC Ltd. for using the coal-mine has been fixed @ ₹ 1000 per tonne. The quantum of coal extracted by ABC Ltd and other relevant details are given in the following table:

Relevant Year	Relevant Output (in Tonnes]	Consideration for using the coal-mine @ ₹ 1000/- per tonne	Date of Issuance of Invoice	Date of Receipt of Payment
2011-12	2,000	20,00,000	05.07.2012	26.08.2012
2012-13	3,000	30,00,000	13.04.2013	03.04.2013
2013-14	4,000	40,00,000	11.04.2014	20.07.2014

Answer

It is pertinent to clarify here that in the present question Kirti Ltd. is the service provider and ABC Ltd. is the service recipient. Since whole amount of the consideration for the provision of patent is not ascertainable at the time when service was performed and subsequently the use of these services by a person other than the provider gives right to any payment of consideration, both the conditions specified in Rule 8 get satisfied. The Point of Taxation of Kirti Ltd. for the various Financial Years has been exhibited in the following table:

Point of Taxation For Various Financial Years As Per Rule 8	
Earlier of the following two: (i) Date of Issuance of Invoice; (ii) Date of receipt of payment. It is worth highlighting that Point of Taxation is to be determined in the above manner each time on the occurrence of earlier of the above two events.	
Point of Taxation	Reason/Remarks
05.07.2012	Date of Issuance of Invoice[05.07.2012] falls before Date of Payment[26.08.2012]
03.04.2013	Date of Payment [03.04.2013]precedes Date of Issuance of Invoice[13.04.2013]
11.04.2014	Date of Issuance of Invoice[11.04.2014]falls before Date of Payment[20.07.2014]

Question 10

HMV Ltd. is having the copyright of classic songs of Late Kishore Kumar recorded in a Compact Disk [CD]. The company gave the aforementioned copyright to Super Cassettes Industries Ltd. [hereinafter abbreviated as "SCI Ltd."] on 20.04.2011. The consideration payable by SCI Ltd. to HMV Ltd. for acquiring the foregoing copyright has been fixed @ ₹10/- per CD sold by it [SCI Ltd.]. The No. of CDs Sold by SCI Ltd. during different financial years as well as other relevant details is given in the following table:

Relevant Year	No. of CDs sold	Consideration Payable @ ₹10- per CD sold [Rs.]	Date of Issuance of Invoice by HMV Ltd.	Date of Receipt of Payment from SCI Ltd.
2011-12	4,00,000	40,00,000	29.07.2012	16.08.2012
2012-13	6,00,000	60,00,000	03.06.2013	23.05.2013
2013-14	7,00,000	70,00,000	16.06.2014	16.06.2014

Answer

Point of Taxation for different financial years will be determined in the following manner:

Point of Taxation	Reason/Remarks
29.07.2012	Date of Issuance of Invoice[29.07.2012] falls before Date of Payment [16.08.2012]
23.05.2013	Date of Payment [23.05.2013]precedes Date of Issuance of Invoice[03.06.2013]
16.06.2014	Date of Issuance of Invoice [16.06.2014] as well as Date of Receipt of Payment [16.06.2014] is same.

Question 11

Raj Jaggi is the author and copyright-owner in r/o a book on the subject of Central Excise. He enters into an agreement with ABC Publishers on 15.07.2011. As a result of foregoing agreement. Raj Jaggi transfers the copyright to said publishers for a lump sum consideration of ₹10,00,000/-. The other relevant details are as under:

Relevant Date	Particulars
15.07.2011	Issue of invoice by Raj Jaggi
27.11.2011	Receipt of lump sum consideration of ₹10,00,000/-

Determine Point of Taxation in the above case.

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Answer

In the above case Point of Taxation will be determined as under:

The first important thing is that although the above-mentioned contract is in r/o copy-rights, provisions of Rule 8 of Point of Taxation Rules, 2011 will not apply. The reason is that one of the essential requirements of Rule 8 is not getting satisfied in this case. According to prescribed requirement the whole amount of consideration for the provision of service should not be ascertainable at the time when service was performed [i.e. when the agreement is entered into between the concerned parties]. Since in the present case the whole amount of consideration of ₹ 10,00,000/- has been ascertained at the time of entering into agreement itself, one of the essential requirements of Rule 8 does not get satisfied. Resultantly, Rule 8 becomes inapplicable in the present case. Contrarily, Point of Taxation will be determined in accordance with Rule 3 of Point of Taxation Rules, 2011 in the following manner:

Since invoice has been issued within 14 days from the date of completion of provision of service [which in the present case is the date of entering into agreement] , earlier of the following dates will be the Point of Taxation:

Date of invoice	15.07.2011
Date of payment	27.11.2011

Thus, Point of Taxation is 15.07.2011.

Question 12

Whether service tax under the provisions of Finance Act, 1994 is chargeable in the following case:

- (i) *Payment of service is received in India in convertible foreign exchange*
- (ii) *Transporters who are rendering "Express Cargo Service" for delivery.*

Answer

- (i) No, receipt of foreign exchange is common condition in respect of all taxable services for treating the service as export of service in accordance with Rule 3(2)(b) of Export of Services Rules 2005.
- (ii) As per section 65(105)(f), the nature of service provided by 'Express Cargo Service' provider falls within the scope and definition of the courier agency. Hence, the said service is liable to service tax under courier agency service

[Circular No. 96/7/2007 ST dated 23.08.2007]

Question 13

Certain abatement/exemption of the gross amount charged has been notified for computing the value of some taxable services. What are the conditions to be fulfilled to avail such partial exemption?

Answer

The partial exemption available under **Notification No. 1/2006 dated 01.03.2006** [as amended from time to time] is available only when the service provider has not availed –

- (i) CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service under the provisions of Cenvat Credit Rules, 2004; and
- (ii) the benefit of exemption under **Notification No.12/2003-ST, dated 20.06.2003** in respect of value of goods and materials sold by him.

Besides, bill/challan issued for this purpose must indicate that it is inclusive of all charges.

Question 14

State briefly, whether the following persons are liable to apply for registration under the Finance Act, 1994 and the Service Tax (Registration of Special Category of Persons) Rules, 2005 and if so, from which date:

- (i) *An input service distributor who starts his business with effect from 1st November, 2010.*
- (ii) *A provider of taxable service under an unregistered brand name of another person. Aggregate value of taxable services was ₹ 8,00,000 up to 31.3.11.*

Answer

- (i) Yes, as per Rule 3(1) of the Service Tax (Registration of Special Category of Persons) Rules, 2005, an input service distributor is liable to apply for registration within a period of 30 days of the commencement of business. Thus, in the given case, the input service distributor should apply for registration by 30.11.2010.
- (ii) Yes, a provider of taxable service under an unregistered brand name of another person is liable to apply for registration within a period of 30 days of commencement of business of providing taxable service as basic exemption for small service provider is not available to a service provider who provides taxable service under a trade name or brand name, whether registered or not, of another person.

Question 15

What is the general exemption available to small service providers? Who are the persons excluded from this exemption?

Answer

A small service provider is eligible to avail exemption from service tax on aggregate value of taxable services not exceeding ₹ 10 lakh in any financial year subject to the condition that during the preceding financial year, the aggregate value of all taxable services provided by him did not exceed ₹ 10 lakh.

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Such general exemption is not applicable in following cases-

- (i) If the taxable services are provided by the service provider under a brand name or trade name, whether registered or not, of another person.
- (ii) Where the service receiver is liable to pay service tax as per provisions of section 68(2) read with rule 2(1)(d) of the Service Tax Rules, 1994.
- (iii) If the provider of taxable service is availing the CENVAT credit of service tax paid on any input services.

Question 16

Export of Services Rules, 2005 were made effective from March 15, 2005. Answer the following questions with reference to the said rules:

- (i) What are the three categories of taxable services dealt with under Rule 3?*
- (ii) What are the three options available to an exporter of taxable services under these rules for claiming exemption or rebate of service tax?*

Answer

(i) Rule 3 of Export of Services Rules, 2005 classifies the taxable services in three categories as under:

- (a) when the immovable property in respect of which the service is rendered is situated abroad [Rule 3(1)(i)];
- (b) when the service is partly/fully performed outside India [Rule 3(1)(ii)];
- (c) when service is provided from India, but recipient of service is located outside India [Rule 3(1)(iii)].

In order to be treated as export of services, different requirements in each of the three categories have to be fulfilled.

(ii) The three options available to an exporter of taxable services for claiming exemption or rebate of service tax are:

- (a) Export taxable service without payment of service tax under Rule 4 and utilize CENVAT credit of excise duty/service tax paid on inputs/input services used in providing exported taxable services for payment of service tax on other services[which are provided in India]
- (b) Export taxable service without payment of service tax and claim rebate of service tax paid on input services and excise duty paid on inputs used in providing such taxable service under Rule 5. This situation will arise when exporter is engaged in export of taxable services only. In other words, he does not provide any taxable services within India.
- (c) Pay service tax on exported service and claim rebate of service tax paid on such taxable service under Rule 5 of Export of Services Rules, 2005.

Question 17

Service Tax (Determination of Value) Rules, 2006 (Valuation Rules) and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 (Import Rules) came into force from 19.4.2006. Answer the following with reference to the said Rules:

- (i) *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. Who is a "pure agent" under the Valuation rules?*
- (ii) *What is the value of taxable service in the case of service provided from outside India under the Valuation Rules?*
- (iii) *What are the three categories of taxable services specified in Rule 3 of the Import Rules?*

Answer

- (i) Explanation 1 to rule 5 of the Valuation Rules provides that "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.
- (ii) Rule 7(1) of the Valuation Rules provides that the value of taxable service received under section 66A (i.e., the services which are provided from outside India and received in India) of the Finance Act, 1994 shall be such amount as is equal to the actual consideration charged for the services provided or to be provided. For instance, Raj Ltd. an Indian-based company receives Business Exhibition Services [which are performed based services and fall within the purview of Rule 3(ii) of Taxation of Services (Provided from outside India and Received in India) Rules, 2006 These Rules are commonly known as Import of Services Rules, 2006] from US-based Jewel Ltd. for US dollars 1,00,000/- which when converted into Indian rupees works out to be ₹ 45,10,000/-. Thus, in the given example, according to Rule 7(1) of Valuation Rules, 2006 value of Business Exhibition Services received under section 66A of Finance Act, 1994 shall be ₹ 45,10,000/-

However, Rule 7(2) provides that the value of the taxable services partly performed in India and specified in Rule 3(ii) of the Import Rules shall be the total consideration paid by the recipient for such services including the value of service partly performed outside India. For instance, if the above example is slightly modified by assuming that in addition to foregoing Business Exhibition Services of ₹ 45,10,000/- Raj Ltd. receives Business

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Exhibition Services from Jewel Ltd. which are performed in India for an agreed consideration of \$ 20,000 [which when converted into Rupees works out to be ₹ 9,02,000]. Thus, according to Rule 7(2) of Valuation Rules, 2006 value of Business Exhibition Services works out to be ₹ 54,12,000/- [₹ 45,10,000 + ₹ 9,02,000/-]

- (iii) The three broad categories of taxable services specified under Services (Provided from outside India & Received in India) Rules 2006 [popularly abbreviated as Import Rules 2006] are as under:

When the immovable property in respect of which the service is provided or to be provided is located in India [Rule 3(i) of Import Rules]

When the service is performed in India [Rule 3(ii) of Import Rules]

When the service is received by a recipient located in India for use in relation to business or commerce [Rule 3(iii) of Import Rules].

Question 17

- (a) State with reasons in brief, whether service tax is payable in the following cases:
- (i) Services provided to Special Economic Zone (SEZ) unit and SEZ developer, except where services are wholly consumed within SEZ.
 - (ii) Services provided by SEZ to DTA (Domestic Tariff Area).
- (b) Briefly state the concept of export of taxable services under rule 3 of the Export of Services Rules, 2005.

Answer

- (a) (i) Service tax is payable on the services provided to SEZ unit or SEZ developer except where services are consumed wholly within SEZ. However, the SEZ unit or SEZ developer can get the refund of service tax paid by them by filing a refund claim as per the procedure prescribed in Notification No. 17/2011-S.T. dated 01.03.2011. Incidentally, where the services are wholly consumed within SEZ then there is unconditional exemption.
- (ii) Yes. CBE&C vide Circular No. 105/08/2008 ST dated 16.09.2008 has clarified that a special economic zone unit will be liable to pay service tax on services provided by it to a DTA [Domestic Tariff Area] Unit.
- (b) As per Rule 3(1) of the Export of Services Rules, 2005, the following are export of taxable services:-
- (i) When the service is provided in respect of immovable property which is situated outside India. [covered under Rule 3(1)(i)]
 - (ii) When the service is performed (at least partly) outside India. [covered under Rule 3(1)(ii)]

- (iv) When the service is provided from India but the recipient of service is outside India.[covered under Rule 3(1)(iii)]

Selected Self-Examination Questions

1. What is value based exemption available to the service providers. Is it necessary to claim such exemption?
2. Under what circumstances value based exemption is not available ?
3. Question: What is procedure for claiming the rebate of service tax paid on exempted taxable services ?
4. Who is liable to pay service tax for the services which are received in India but are provided from outside India?
5. What are the conditions for availment of the value based exemption from service tax?
6. Explain whether service tax is payable on advance received towards the value of the taxable services.
7. Is there any tax liability for the services received in India, which are provided by a person from outside India? Discuss.
8. What are the benefits available for export of services?