

Gamut & Coverage of Taxable Services

Question 1

Whether service tax under the provisions of Finance Act, 1994 is chargeable on the following services:

- (i) Use of the precincts of a religious place as a mandap
- (ii) An interior decorator provides service of beautification of spaces in Srinagar
- (iii) Services provided by a sub-broker to an investor.

Answer

- (i) No, as Notification No. 14/2003 – ST, dated 20.6.2003 exempts services provided to any person by a mandap keeper for the use of the precincts of a religious place as a mandap from service tax.
- (ii) As per section 64(1) of the Finance Act, 1994 the provisions of Finance Act, 1994 relating to service tax are not applicable in the state of Jammu and Kashmir. Therefore, no service tax is chargeable in this case.
- (iii) No, the definition of stock-broker has been amended w.e.f. 01-09-2009 so as to exclude services of sub-broker from the purview of stock-broker's services.

Question 2

What is the percentage of abatement/exemption granted in the following cases?

- (i) Services provided by a tour operator
- (ii) Services provided by an outdoor caterer supplying food also
- (iii) A commercial concern providing construction service where the gross amount charged includes the value of goods and material
- (iv) Goods transport agency providing taxable service and paying service tax itself.

Answer

The following table exhibits the percentage of abatement available under Notification No. 1/2006 dated 01.03.2006 as amended from time to time:

(i)

Nature of services provided by tour operator	Percentage of abatement
Package Tour	75
Booking of accommodation only	90
Tour other than package tour	60

- (ii) 50% abatement of the gross amount charged inclusive of charges for supply of food
- (iii) 67% abatement of the gross amount charged
- (iv) 75% unconditional exemption of the gross amount charged from customer.

Question 3

What is the percentage of abatement/exemption granted in the following cases?

- (i) *Rent-a-cab Operator's Services provided within the premises of Port, Other Port or Airport*
- (ii) *Convention Services*
- (iii) *Services in relation to chit*
- (iv) *Complex Construction Services provided outside the premises of Port, Other Port or Airport.*
- (v) *Complex Construction Services if the gross amount charged from the buyer by the builder or his representative includes the value of land as well as materials supplied or provided or used for providing such these taxable services.*
- (vi) *Transport of Coastal Goods, Goods through National Waterway or Goods through inland water.*
- (vii) *Services provided by a Restaurant*
- (viii) *Shot-term Accommodation Services provided by a hotel, inn etc.*
- (ix) *Pandal or Shamina Contractor's Services.*
- (x) *Erection, Commissioning or Installation Services if provided within the premises of a Port or Other Port or Airport.*

Answer

The following table showcases the percentage of abatement available in each of the above cases:

S.No.	Nature of Services	Percentage of abatement of Gross Amount charged available under Notification No.1/2006 dated 01.03.2006
(i)	Rent-a-cab Operator's Services provided within the premises of Port, Other Port or Airport	60%
(ii)	Convention Services	40%
(iii)	Services in relation to chit	30%

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(iv)	Complex Construction Services provided outside the premises of Port, Other Port or Airport.	75%
(v)	Complex Construction Services if the gross amount charged from the buyer by the builder or his representative includes the value of land as well as materials supplied or provided or used for providing such these taxable services.	75%
(vi)	Transport of Coastal Goods, Goods through National Waterway or Goods through inland water.	75%
(vii)	Services provided by a Restaurant	70%
(viii)	Short-term Accommodation Services provided by a hotel, inn etc.	50%
(ix)	Pandal or Shamiana Contractor's Services	30%
(x)	Erection, Commissioning or Installation Services if provided within the premises of a Port or Other Port or Airport.	67%

Question 4

- (i) *M/s. Renu Consultants are a labour contractor of manpower to M/s. Sanu Creations. They charge to the principal employer for the wages of their labour which amounts to ₹ 1,20,000 plus their service charge of ₹ 12,000 for arranging the labour. The issue is whether service tax is payable on the gross amount charged by them or only on their charges for labour. Examine the case and advise suitably.*
- (ii) *For providing beauty treatment services, a parlour uses materials such as cosmetics and toilet preparations. Whether the cost of such materials will be included in the value of taxable service? Whether any abatement is admissible on account of the value of materials consumed in providing the service?*

Answer

- (i) Section 67 states that value of any taxable service is the gross amount charged by the service provider for the taxable services rendered by him. The labour contractor charges to the principal employer for the wages of his labour plus his service charges for arranging the labour.

Further, the department has clarified vide *M.F. (D.R.) Letter F.No.B1/6/2005-TRU dated 27.07.2005* that service tax is to be charged on the full amount of consideration for the supply of manpower, whether full-time or part-time. The value includes recovery of staff costs from the recipient e.g. salary and other contributions. Even if the arrangement does not involve the recipient paying these staff costs to the supplier (because the salary is paid directly to the individual or the contributions are paid to the respective authority)

these amounts are still part of the consideration and hence form part of the gross amount.

Hence the taxable amount is the entire amount i.e. Rs1,32,000.

- (ii) It has been clarified vide *M.F. (D.R.) F. No.B11/1/2002 TRU dt. 01.08.2002* that the cost of cosmetics and toilet preparations used for providing the service shall be included in the value of taxable service as they are not sold as such but are integral to the service provided. No abatement will be admissible on account of the value of material consumed in providing the service.

Question 5

Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:

- (i) *Entrance fee and life membership fee paid by members of the club providing various services and facilities and organizing get togethers and functions for its members.*
- (ii) *Construction of residential complex having ten bungalows.*
- (iii) *Study material or written text provided by commercial training and coaching centre.*

Answer

- (i) Facilities or advantages are provided by clubs or associations to their respective members in return for a subscription or other consideration. Entrance fee and life membership fee shall also be treated in the same way as a subscription; hence these would also be taxable.
- (ii) Section 65(91a) inter alia provides that 'Residential Complex' means any complex comprising of a building or buildings, having more than twelve residential units. Thus, construction of residential complex having 10 bungalows would not be chargeable to service tax.
- (iii) The gross amount charged for rendering the taxable services is liable to service tax. However, Notification No.12/2003-ST, dated 20.06.2003 exempts so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service from the service tax leviable thereon subject to condition that there is documentary proof specifically indicating the value of the said goods and materials. Further, the said exemption is available only when CENVAT credit on such goods and materials sold has not been taken by the service provider.

Therefore, the study material and written text provided by the coaching centre will be charged to service tax if the conditions set out in the above notification are not complied with. However, if the abovementioned conditions are complied with, exemption will be granted.

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Question 6

State whether in the following cases service tax is payable, with reasons:

- (i) Temporary transfer of any intellectual property right.
- (ii) Canteens in office run by the canteen contractor providing service directly to employees/workmen.
- (iii) Business auxiliary service provided by commission agents in relation to sale of agricultural produce.
- (iv) Services provided by in relation to client processing of tobacco involving threshing and drying of tobacco leaves and client processing of raw cashew involving roasting/drying, shelling and peeling of raw cashew to recover kernel.

Answer

- (i) Section 65(55b) of the Finance Act, 1994 defines intellectual property service as:
 - (a) transferring, temporarily; or
 - (b) permitting the use or enjoyment of, any intellectual property right.Thus, temporary transfer of any intellectual property right (IPR) shall be subject to service tax.
- (ii) Section 65(76a) of the Finance Act, 1994 defines outdoor caterer as a caterer engaged in providing services in connection with catering at a place other than his own but including a place provided by way of tenancy or otherwise by the person receiving such services.

Thus, if service is directly provided to employees/workmen, then the canteen will not come within the purview of the definition of the outdoor caterer as the place is not provided by the person receiving the service. Hence, this service would not be chargeable to service tax.
- (iii) Business auxiliary services provided by commission agents in relation to sale or purchase of agricultural produce is exempt from service tax vide Notification No. 13/2003 ST dated 20.06.03 as amended.
- (iv) It has been categorically clarified in Circular No. 143/12/2011 dated 26.05.2011 that the agricultural produce namely tobacco or raw cashew, which are subject to client processing retains their essential characteristics at the output stage and therefore the processes undertaken on or behalf of client should be considered as covered by the expression 'in relation to agriculture'. Client processing which falls under business auxiliary service undertaken on the primary agricultural produce namely tobacco or raw cashew, does not result in any change in their essential character of tobacco or cashew. In the light of the above principle

- (i) process of threshing and drying of tobacco leaves and thereafter packing the same and
- (ii) processing of raw cashew and recovering kernel, undertaken for, or on behalf of, the clients by processing units are covered by the expression "... processing of goods for, or on behalf of, the client.....and provided in relation to agriculture,..." appearing in the said notification.

Accordingly, the above services shall be exempted from levy of service tax by virtue of Notification No. 14/2004 dated 10.09.2004.

Question 7

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

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

Make suitable assumptions and provide explanations where required.

Answer

Computation of the Net service tax payable:

	₹
Gross amount charged (excluding VAT)	1,00,000
Less: Value of goods and materials	<u>70,000</u>
	<u>30,000</u>
Service tax @ 10.30%	3,090
Less: CENVAT credit of service tax paid on input service + CENVAT credit of excise duty paid on capital goods (50%) [Rs 1,000 + (50% of Rs 1,000)] [Note 2]	<u>1,500</u>
Net service tax payable	<u>1,590</u>

Notes –

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

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

Question 8

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

Briefly explain, with reference to relevant provisions and case law, if any, whether the stand taken by the department is correct in law.

- (b) *M/s Krishna Computer Colour Lab is in the business of developing and printing of colour photographic films. It develops the negatives supplied by the customer and provides positive prints as per the order placed by the customer. The Department has demanded service tax on the entire amount charged from the customers without deduction of any amount towards cost of materials.*

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

Briefly explain, whether the stand taken by M/s Krishna Computer Colour Lab is correct in law.

Answer

- (a) No, the stand taken by the Department is not correct. The facts in the case are similar to the matter decided by the **Rajasthan High Court** in **S.B. Construction Company v. UOI (2006) 4 STR 545**. The High Court observed that the service tax is levied on cargo handling services, which undertake the activities of packing, unpacking, loading, unloading of goods to be transported by any means of transportation namely truck, rail, ship or aircraft. However, in the instant case, the services provided by the company under the contract is distinct i.e., transporting coal from wagons to thermal power station by conveyor belt and not by any means of transportation. Thus, the High Court held that the services rendered by the company could not fall under the ambit of cargo handling services and as such would not be

liable to service tax. The above decision was also followed in *Sainik Mining & Allied Services Ltd. Vs CCE (2008) 12 STT 433 (CESTAT-Kol.)*

- (b) With effect from 18.04.2006, Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 provides that the expenditure or costs incurred by the service provider in the course of providing taxable service forms integral part of the taxable value of the service provided and therefore, should be included in the value of the taxable service. Such expenditure or costs would be included even if they are separately indicated in the invoice or bill issued by the service provider to his client. Such expenditures or costs can be excluded from the value of the taxable services only if the same are incurred by the service provider as a 'pure agent' of the service receiver.

In view of the facts of the given case, it can be concluded that M/s Krishna Computer Colour Lab's stand is not correct. Service tax would be levied on the entire amount charged from the customers without deduction of any amount received towards cost of materials.

However, M/s Krishna Computer Colour Lab can take exemption under **Notification No. 12/2003 ST dated 20-06-2003** for the value of materials and goods sold by it from the gross amount charged for the service only if there is a documentary proof specifically indicating the value of the goods and materials.

Question 9

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

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

Answer

Computation of value of taxable service

	₹
Total freight collected	13,50,000
Less : Freight charges received for transporting fruits (Note-1)	1,25,000
Less : Freight collected less than ₹ 750/- for each consignment (Note-2)	75,000

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

Notes:

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

(Notification No. 34/ 2004-ST dated 3.12.2004)
3. As per Notification No. 13/2008-ST dated 1.3.2008, service tax is required to be paid on 25% of the gross amount charged i.e. 75% of the gross amount charged is allowed as unconditional exemption.

Question 10

- (a) Mr. Yes is the owner of a collection centre with facilities and trained employees for collection of human blood, urine and stool samples for biological testing. He sends the samples collected to its principal lab for actual test to be done. The assessee receives 25% of the price charged by the principal lab as commission for work of collection. The Revenue wants to charge service tax on such collection service as it amounts to promotion or marketing of services provided by its principal lab. Mr. Yes seeks your advise in this regard with reference to a decided case law, if any.
- (b) The assessee used to finance the purchase of vehicles manufactured by a leading automobile company which used to sell the vehicles through its distributors. Assessee financed part of the vehicle cost to the purchaser of vehicle, after signing an agreement with the purchaser of providing the right of repossession of the vehicle in case buyer of the vehicle defaulted in paying installment. Immediately on sale, purchaser of the vehicle became the owner and vehicle was registered in his name. The Department seeks to levy service tax in the category of "Banking and other Financial Services." Examine whether Department's stand is correct in terms of legal provisions and case law.

Answer

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

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

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

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

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

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

Question 11

The value of service provided by a consulting engineer is ₹10,00,000. He has paid ₹ 50,000 as cess under section 3 of the Research and Development Cess Act, 1986. What is the amount of service tax payable by him?

Answer

Notification No. 18/2002 dated 16.12.2002 provides exemption to the taxable services provided by a consulting engineer to a client on transfer of technology from so much of the service tax

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leviable thereon as is equivalent to the amount of cess paid on the said transfer of technology under the provisions of section 3 of the Research and Development Cess Act, 1986.

Thus, service tax payable will be computed in the following manner:

Value of taxable services	=	₹10,00,000
Service tax @ 10.30%	=	₹1,03,000
Less : Cess paid	=	<u>₹ 50,000</u>
Net service tax payable	=	<u>₹ 53,000</u>

Question 12

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

- (i) *Services provided in connection with the management of an organization by a management consultant having no professional qualification.*
- (ii) *Services provided regarding construction of canals by the Government as well as by private agencies independently.*
- (iii) *The prospective buyer pays a part of the agreed consideration to the builder/promoter/developer before completion of the construction of a new building to be used for commerce or industry.*

Answer

- (i) Yes, as per **section 65(65)**, no academic or professional qualification is required in order to be taxable under the category of 'management or business consultant' service. In case, a person is not professionally qualified and is providing service of management consultancy, he is still liable to pay service tax on the taxable value of services provided by him.
- (ii) The Department has clarified vide **Circular No. 116/10/2009-S.T. dated 15.09.2009** that the canal system built by the Government or under Government projects does not fall under the ambit of term 'Commercial Activity.' Accordingly, the canal system built by the Government will not be chargeable under **"Commercial or Industrial Construction Services."**

On the other hand, if the canal system is built by private agencies and **is developed as a revenue generating measure then it** will be subjected to service tax under "Commercial or Industrial Construction Services."

- (iii) An **explanation** has been inserted with effect from **01.07.2010** to section 65(105)(zzq) which gives the definition of taxable service in relation to commercial or industrial construction. According to aforementioned explanation **unless the entire consideration** for the property is paid by the prospective buyer or on his behalf **after the completion of construction** (i.e. after issuance of completion certificate by the competent authority) the activity of construction would be deemed to a taxable service provided by the

builder/promoter/developer to the prospective buyer and the service tax would be charged accordingly.

Since in the given case the prospective buyer has paid a part of the consideration to the builder/promoter/developer before the completion of construction, the activity of construction would be deemed to be a taxable service provided by the builder/promoter/developer, as the case may be.

Question 13

Examine briefly whether any service tax liability would arise in the following cases:

- (i) *Services provided by one scheduled bank to another scheduled bank in relation to inter-bank transactions of purchase and sale of foreign currency.*
- (ii) *Services provided to or from installations, structures and vessels in the entire continental shelf and exclusive economic zone of India.*
- (iii) *Services provided to any person by Government Railways in relation to transport of goods by rail.*
- (iv) *Services provided by Transport of Goods by Road/Rail/Air Services when both the original and final destination of goods are located outside India.*

Answer

- (i) No. Services provided by one scheduled bank to another scheduled bank in relation to inter-bank transactions of purchase and sale of foreign currency have been exempted from whole of the service tax payable thereon vide **Notification No. 19/2009-ST dated 07.07.2009**. It is also worth mentioning here that the scope of exemption provided by aforementioned Notification No. 19/2009 has been enlarged by **Notification No. 27/2011-S.T. dated 31.03.2011** with effect from 01.04.2011. Consequently, transaction of purchase or sale of foreign currency provided to any bank [including a bank located outside India] or money-changer by any other bank or money changer will be exempted from service tax w.e.f. 01.04.2011.
- (ii) By virtue of **Notification No. 14/2010 dated 27.02.2010** the provisions of service tax have been extended to the following specified area and purposes:

S No	The areas in the Continental Shelf and the Exclusive Economic Zone of India	Purpose
(1)	(2)	(3)
1.	Whole of continental shelf and exclusive economic zone of India	Any service provided for all activities pertaining to construction of installations, structures and vessels for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply

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

- (iii) Yes. Notification No. 07/2010-ST dated 27-02-2010 has been amended further by Notification No. 38/2011 dated 14.06.2011. Resultantly, exemption granted to services provided or to be provided by Transport of Goods by Rail has been extended upto 31.12.2011. In other words, services provided or to be provided by Government Railways in relation to transport of goods by rail, whether in container or otherwise will come within the purview of S.T. with effect from 01.01.2012.
- (iv) Notification No. 8/2011 dated 01.03.2011 grants exemption with effect from 01.04.2011 from the levy of Service Tax if **Transport of Goods by Road/Rail/Air Services** are **provided to any person located in India** when both the origin as well as final destination is located outside India. For better understanding of said Exemption Notification following table has been purposely prepared:

S. No.	Location of the Service Recipient	Origin of Goods	Final Destination of Goods	Entitlement to Exemption under Notification 8/2011 dt. 01.03.2011
(i)	In India	Any place outside India[for instance Germany]	Any place outside India[For instance Australia]	Yes
(ii)	In India	Any Place in India[For instance New Delhi]	Any Place outside India[For instance England]	No
(iii)	In India	Any Place outside India[For instance Japan]	Any Place in India[For instance Mumbai]	No

Question 14

Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:

- (i) *Manpower recruitment agency services in respect of staff not contractually employed by the recipient of service but who come under his direction.*
- (ii) *Business support services in the context of "outsourced services".*
- (iii) *Construction of roads, airports, railways, bridges, tunnels in the context of "site preparation and clearance, excavation, earth moving and demolition services".*
- (iv) *Clearing and forwarding agent's services.*
- (v) *Operational or administrative assistance in any manner.*
- (vi) *Services provided by a club or association to its non-members.*
- (vii) *Unrecognised education provided by an institute which also conducts another course that is recognised by law.*

Answer

- (i) As per section 65(105)(k) of the Finance Act, 1994, the scope of taxable service in relation to recruitment or supply of manpower includes any service provided or to be provided to a client by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise in any manner.

In the instant case, the manpower recruitment agency is supplying manpower on a temporary basis as the staff is not contractually employed by the recipient. Since, the scope of taxable service includes temporary supply of manpower, the service in the instant case shall be liable to service tax

- (ii) Business entities outsource a number of services for use in business or commerce. These services include transaction processing, routine administration or accountancy, customer relationship management and tele-marketing. There are also business entities which provide infrastructural support such as providing instant offices along with secretarial assistance known as "Business Centre Services". All such outsourced services are liable to service tax under business support services. Definition of support services of business or commerce gives indicative list of outsourced services
- (iii) Site formation and clearance, excavation and earthmoving and demolition and such other activities provided to any person by any other person in the course of construction of *inter alia* roads, airports, railways, bridges, tunnels are exempt from the whole of the service tax leviable thereon vide *Notification No. 17/2005 ST dated 07.06.2005*.
- (iv) As per section 65(25) of the Finance Act, 1994, clearing and forwarding agent means any person who is engaged in providing any service either directly or indirectly, connected with clearing and forwarding operations in any manner to any other person and includes a consignment agent.

The functions of a clearing and forwarding agent include receiving of goods from the factories of the principal, warehousing the goods, arranging the dispatch of the goods, maintenance of records etc. and preparation of invoices.

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- (v) With effect from 01.05.2011 the definition of term “support services of business or commerce” given vide section 65(104c) has been amended to include ‘Operational or Administrative Assistance in any manner’. Consequently, operational or administrative assistance are most likely to fall within the purview of the Business Support Services. It is also pertinent to add that it has been clarified in D.O.F. No. 334/3/2011-TRU dated 28.02.2011 that the words ‘operational and administrative assistance’ have wide connotation and can include certain services already taxed under any other head of more specific description. The correct classification will continue to be governed by Section 65A.
- (vi) With effect from 01.05.2011 section 65(105)(zzze) has been amended to include services provided “to any other person” [besides its members] within the ambit of Club or Association Services. As a result, services provided to non-members will be taxable under the heading Club or Association Services. In addition, services provided to members of other affiliated clubs will also be taxable under the heading Club or Association Services with effect from 01.05.2011.
- (vii) With effect from 01.05.2011 all unrecognised education will be taxable under the category “Commercial Training or Coaching Services” even if aforementioned unrecognised education is imparted by an institute which conducts another course that is recognised by law. For achieving the aforementioned aim of bringing all unrecognised education within the ambit of service tax, the definition of term “Commercial Training or Coaching Centre” given under section 65(27) has been suitably modified.

Question 15

Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:

- (i) *Sale of lottery tickets.*
- (ii) *Depository services and Electronic Access to Securities Information Services (EASI) provided by the Central Depository Services India Ltd.*
- (iii) *Services provided by educational institutions like IIMs by charging a fee from prospective employers like corporate houses regarding recruiting candidates through campus interviews.*

Answer

- (i) Sale of Lottery Tickets is taxable under section 65(105)(zzzzn) under the category of ‘Services of Promoting/Marketing/Organising of Games of Chance’ w.e.f. 01-07-2010. Taxable Service in relation to aforementioned services means any service provided or to be provided to any person by any other person, for promotion, marketing, organising or in any other manner assisting in organising or in any other manner assisting in organising games of chance, including lottery, Bingo or Lotto in whatever form or by whatever name called, whether or not conducted through internet or other electronic networks.

- (ii) As per **Circular No. 96/7/2007 ST dated 23.08.2007** definition of banking and other financial services *inter alia* specifically includes depository services [Section 65(12)(a)(v)] and provision and transfer of information and data processing [Section 65(12)(a)(vii)]. EASI services provided by the Central Depository Services India Ltd. (CDSL) fall within the scope of “provision and transfer of information and data processing”. Therefore, the depository services provided by CDSL, including EASI services, for a fee are liable to service tax under banking and other financial services. [Section 65(105)(zm)]
- (iii) Manpower recruitment or supply agency is defined as ‘any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to a client [Section 65(68)].

Educational institutes like IITs, IIMs etc. fall within the above definition. Thus, service tax is liable to be paid on services provided by such institutes in relation to campus recruitment under section 65(105)(k) of the Finance Act, 1994.

Question 16

State with reason whether service tax liability arises in the following cases:

- (i) *Services provided by ‘angadia’ in undertaking delivery of documents or goods received from a customer to another person for a consideration.*
- (ii) *Commission received by distributors for distribution of mutual fund units.*
- (iii) *Consultancy services in the field of computer software engineering by consulting engineer.*

Answer

- (i) Yes, the services provided by ‘Angadia’ will be covered under courier agency services. The **Circular No. 96/7/2007 ST dated 23.08.2007** clarifies that angadias are covered within the definition of ‘courier agency’ [section 65(33) of the Finance Act, 1994 as amended]. Therefore, such services provided by angadia are liable to service tax under courier agency service.
- (ii) Yes, the services provided by distributors for distribution of mutual funds units are liable to service tax under business auxiliary service. The **Circular No. 96/7/2007 ST dated 23.08.2007** clarifies that distributors receive commission from mutual fund for providing services relating to purchase and sale of mutual fund units. Services provided by such distributors are in the nature of commission agent and are, thus, liable to service tax under business auxiliary service [section 65(19) of finance Act 1994].
- (iii) Yes, as per the Finance Act, 1994 “consulting services in the field of computer software engineering” have been included within the scope of taxable services provided by a ‘consulting engineer’. Hence, the consultancy services provided in the field of computer software engineering by consulting engineer shall be liable to service tax.

Question 17

Which exemption provided to practicing Chartered Accountants has been withdrawn with effect from 01.05.2011?

Answer

As per **Notification No.25/2006-ST dated 13.07.2006**, the representational services provided or to be provided by a practicing Chartered Accountant in his professional capacity before any statutory authority in the course of proceedings initiated under any law, by way of issue of notice, were exempt from the whole of service tax leviable thereon. However, the aforementioned exemption has been withdrawn vide **Notification No. 32/2011 dated 25.04.2011** with effect from 01.05.2011.

Question 18

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

Answer

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

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

- (ii) Following is an illustrative list of services which fall within the ambit and scope of consulting engineer's services:-
- (i) Design engineering
 - (ii) Pre design services/project report
 - (iii) Supervision or construction and project management
 - (iv) Feasibility study
 - (v) Supervision of commissioning and initial operation
 - (vi) Post operation and management
 - (vii) Trouble shooting and technical services including establishing system and procedures for an existing plant.
- (iii) Following new services have been brought under service tax net by the Finance Act, 2011 w.e.f. 01-05-2011:-
1. Services provided by a restaurant having the facility of air-conditioning in any part of the establishment at any time during the financial year and which has licence to serve alcoholic beverages
 2. Short-term accommodation services by a hotel, inn, guest house, club or campsite etc.

Question 19

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

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

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

Answer

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

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

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

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

Question 20

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

- (i) Services in relation to production of alcoholic liquor on job work basis.
- (ii) Services of recovering Container Detention Charges by shipping lines.

Answer

- (i) Yes, as per Finance Act, 1994, the definition of business auxiliary service under section 65(19) excludes any activity that amounts to manufacture of excisable goods. Therefore, services provided in relation to manufacture of alcoholic liquor, which is not excisable, for or on behalf of the client shall attract service tax.
- (ii) As per **Circular No. 121/2/2010-ST dated 26.04.2010**, Container Detention Charges recovered by shipping lines pertains to charges for delay in returning containers provided by shipping lines for a predetermined period. The Board has clarified that such charges at the best can be called as "Penal Rent" for retaining containers beyond predetermined period. These charges are neither towards services provided on behalf of client i.e. Business Auxiliary Services nor Infrastructure Support Services i.e. Business Support Services.

Question 21

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

Answer

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

Present rate of service tax under the composition scheme is **4.12%** (inclusive of education cess and secondary and higher education cess) of gross amount charged for the works contract. The assessee **cannot avail CENVAT credit of inputs**. However, he can avail CENVAT credit of input services and capital goods.

Question 22

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

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

Answer

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

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

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Notes:

1. The definition of 'cargo handling service' under section 65(23) of Finance Act 1994 specifically excludes handling of export cargo or passenger baggage. Hence, they do not form part of taxable services.
2. **Circular No. B.11/1/2002-TRU dated 1/8/2002** clarifies that activity of storing/washing/repairing and handling empty containers for the shipping lines does not come within the purview of "cargo handling services".
3. **Notification No. 10/2002 dated 01.08.2002** exempts the taxable service provided to any person by a cargo handling agency in relation to agricultural produce or goods intended to be stored in a cold storage from payment of service tax.
4. The definition of 'cargo handling service' under section 65(23) specifically excludes mere transportation of goods. Hence, they do not form part of taxable services.
5. As per section 65(23), charges received for packing together with transportation of cargo, ₹ 3,00,000, is taxable.

Question 23

- (a) *M/s M Construction Ltd. constructs, builds and sells premises/flats in a building. During the course of development and construction of the building, it enters into a flat purchase agreement in terms of which the buyers are allotted flats in the building. The buyers pay the consideration to M/s. M Construction Ltd. in installments. The said 'flat purchase agreement' reflects the entire consideration for the purchase of flat. This agreement is registered and advance payments in installments are collected. The contention of M/s M Construction Ltd. is that the consideration is for the purchase and sale of the entire flat/premises and the company does not carry out any construction activity. Examine, with a brief note, whether the company is liable to pay service tax in terms of the Finance Act, 1994*
- (b) *Good Luck Agencies is engaged in the purchase of lottery tickets in bulk from the State Government and sells them subsequently on behalf of the Government. However, no service tax is paid on the said activity. The Department has sought to levy service tax under the category of 'Services of Promoting, Marketing/Organising of Games of Chance' under section 65(105)(zzzn). Discuss briefly, with a note whether the action of the Department is correct in law.*

Answer

- (a) In the given case M Construction Ltd. is providing taxable services under the category "Construction of complex" service under section 65(105)(zzzh). An Explanation has been added to Complex Construction Services w.e.f. 01-07-2010. As per this explanation unless the entire consideration for a property is paid either by a prospective buyer or on his behalf after the completion of construction (i.e. after issue of a completion certificate

by a competent authority), the construction activity will be deemed to be a taxable service provided by the Promoter/Builder/Developer to the prospective buyer and service tax would be charged accordingly.

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

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

Question 24

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

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

Answer

- (i) **Provision of Service in relation to Information Technology Software:-** W.e.f. 01-07-2010 scope of services provided or to be provided in relation to Information Technology (IT) software has been widened by including even those services within Service Tax net which are provided for other than business or commerce purposes. As a consequence, service provided or to be provided in relation to IT software for both commercial and non-commercial purposes have been made liable to service tax under the category of "I.T. Software Services."
- (ii) Transaction of allowing another person to use the goods, without giving legal right of possession and effective control is liable to service tax under the category of "Supply of

Tangible Goods for use in India". According to Section 65(105)(zzzz) of Finance Act 1994 taxable service means any service provided or to be provided to any person by any other person in relation to supply of tangible goods, including machinery, equipment, and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances.

Selected Self-Examination Questions

1. Which of the following services are liable to service tax:
 - (a) During the month of September, 2011 Services provided by a restaurant which posses the licence to service alcoholic beverages but which does not have the facility of air conditioning in any part of the establishment in relation to servicing of food or beverage.
 - (b) During the financial year 2011-12 Services provided by a hotel for providing accommodation for a continuous period of five months.
 - (c) During the month of June, 2011 Services of purchase or sale of foreign currency provided to any bank [including a bank located outside India] or money-changer, by any other bank or money changer.

[Hint: (a) Not-taxable under "Services provided by a Restaurant" because the restaurant does not have the facility of air-conditioning in any part of the establishment at any time during the financial year.

(b) Not-taxable under "Short-term Accommodation Services" as services have been provided for a period exceeding three months. Further, not taxable under "Renting of Immovable Property Services" because term immovable property does not inter alia include hotels.

(c) Not taxable because of enlarged scope of exemption w.e.f. 01.04.2011 by Notification No. 27/2011 dated 31.03.2011

2. What percentage of abatement is available from the gross amount charged in respect of following services? State the necessary conditions for availing such abatements.
 - (i) Commercial or Industrial Construction Services
 - (ii) Services in relation to Pandal or Shamina
 - (iii) Outdoor Catering Services
 - (iv) Services provided by a tour operator providing services solely of arranging or booking accommodation in relation to a tour.
 - (v) Erection, Commissioning or installation Services
 - (vi) Manpower Recruitment or Supply Agency's Services
 - (vii) Chartered Accountant's Services
 - (viii) Convention Services

[Hint:

S.No.	Nature of Services	Percentage of Abatement of Gross amount Charged, if available
(i)	Commercial or Industrial Construction Services	75%
(ii)	Services in relation to Pandal or Shamiana	30%
(iii)	Outdoor Catering Services	50%
(iv)	Services provided by a tour operator providing services solely of arranging or booking accommodation in relation to a tour.	90%
(v)	Erection, Commissioning or installation Services	67%
(vi)	Manpower Recruitment or Supply Agency's Services	No Abatement
(vii)	Chartered Accountant's Services	No Abatement
(viii)	Convention Services	40%

3. Rishabh Consultants is engaged in providing manpower recruitment and supply agency's services. For the financial year 2010-11, its receipts are as follows:-

Particulars	Amount (₹)
Pre-recruitment screening of the prospective candidates	12,00,000
Verification of the credentials of the candidates	7,00,000
Supply of contractual employees to big business houses	15,00,000
Manpower recruitment services provided to Sindhu Transporters-a goods transport agency	2,25,000

On the basis of the above information, compute the service tax payable by Rishabh Consultants under the category of 'manpower recruitment and supply agency's services for the financial year 2010-11.

Note: Rishabh Consultants enjoys a good reputation among its clients. Resultantly, its aggregate value of taxable services amounted to ₹ 23 lakh in the financial year 2008-09. Further, the amount of service tax has been charged separately.

4. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:
- Services provided by a mandap keeper from a religious place.
 - Services provided by call centres.
 - Services provided by medical transcription centers.
 - Surfing facilities provided by internet cafes.

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5. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:
 - (i) Services provided by multi-system operator to cable operators.
 - (ii) Maintenance services provided by M/s. Complete Software Solutions for computers sold by it.
 - (iii) Services provided by Sarwan Tent House in respect of pandal and shamiana for the purpose of holding a purely religious congregation.
 - (iv) Route navigation services provided by Airports Authority of India to various airlines.
6. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax.
 - (i) Service provided by a sub-broker to a main broker.
 - (ii) Services provided by a banking company or financial institutions to Government of India or a State government.
 - (iii) Services provided by the outdoor caterer to a client on a railway train.
 - (iv) Premium paid on a life insurance policy.
7. State the conditions for availing the exemption from payment of service tax in respect of production or processing of goods for or on behalf of the client.
8. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:
 - (i) Maintenance services provided in respect of shopping malls.
 - (ii) Service provided by goods transport agency in respect of transport of fruits, vegetables, eggs or milk.
 - (iii) Service provided by individual videographer.
 - (iv) Bottling services provided by a commercial concern.
9. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:
 - (i) Survey and map-making services provided by 'Survey of India'.
 - (ii) Construction services provided in respect of a residential complex having 12 residential units.
 - (iii) Membership fee paid by chartered accountants to the Institute of Chartered Accountants of India.
 - (iv) 'XY' Ltd. provides service of sending documents and materials by addressing, sealing and mailing the envelope for or on behalf of 'AB' Ltd., its client.
10. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:
 - (i) Services provided by vaastu/feng shui consultants.

- (ii) Service provided by an individual in respect of procuring the inputs and managing the inventory for a company.
 - (iii) Disinfecting services provided in relation to agriculture.
 - (iv) Floor and wall cleaning performed on the premises of non-commercial buildings.
11. Who is a registrar to an issue? Briefly discuss whether the services provided by him in relation to sale or purchase of securities are liable to service tax?
12. Briefly discuss the provisions of the Finance Act, 1994 as amended relating to service tax with respect to the following taxable services:
- (i) Business exhibition service
 - (ii) Opinion poll service
 - (iii) Dry cleaning service
 - (iv) Storage and warehousing service
 - (v) Real estate agent's service
13. Briefly explain the exemption from service tax available in relation to the inputs used for providing business auxiliary service during manufacture/processing of alcoholic beverages.