INDIRECT TAX LAWS

AMENDMENTS AT A GLANCE – FINANCE ACT, 2012

S.No.	Particulars	Section/Rule/Schedule
I.	EXCISE	
A.	Central Excise Act, 1944	
1.	Incorporation of definition of "inter-connected undertakings" in section 4	4
2.	Monetary limit of duty in case of applicability of penal provisions extended to ₹ thirty lakh.	9
3.	Provisions relating to recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded redrafted	11A
4.	Provisions relating to penalty for short-levy or non-levy of duty in certain cases redrafted	11AC
5.	Copies of record relating to search to be submitted to the Commissioner of Central Excise instead of Magistrate	12F
6.	Third Schedule of the Central Excise Act relating to deeming of certain processes as "manufacture" amended to include cigarettes	Third Schedule
II.	SERVICE TAX	
	Chapter V and VA of the Finance Act, 1994	
1.	Section providing definitions ceased to apply	65
2.	Newly inserted section dealing with definition	65B
3.	Existing charging section ceased to apply	66
4.	Section dealing with import of services rescinded	66A
5.	Newly inserted charging section	66B
6.	Section dealing with determination of place of provision of service	66C
7.	Introduction of Negative List Approach	66D
8.	Declared Services	66E
9.	Section dealing with classification of services rescinded	65A
10.	Newly inserted section dealing with principles of interpretation of specified descriptions of services or bundled services	66F
11.	Newly inserted section dealing with date of determination of rate of service tax, value of taxable service and rate of exchange	67A

12.	New Reverse Charge Mechanism prescribed under section 68	68
13.	Newly inserted section relating to Special Audit	72A
14.	Time limit for issuance of notice increased to eighteen months and introduction of deemed notice concept in section 73	73
15.	Waiver of penalty in section 80	80
16.	Section 31,32,32A to 32P and 35EE of the Central Excise Act,1944 made applicable to service tax.	83
17.	Time Limit for filing appeal with Commissioner of Central Excise (Appeals) reduced to 2 months.	85
18.	The time limit for filing appeal by the department to the Appellate Tribunal extended to four months.	86
19.	Rectification of section 88 relating to liability under Act to be first charge	88
20.	Knowingly evasion of payment of service tax to be considered as an offence	89
21.	Scope of rebate expanded	93A
22.	Rules made under section 94 and applicable to taxable services made applicable to services other than taxable services.	93B
23.	Central Government empowered to make rules relating to compounding of offences and settlement of cases.	94
24.	Central Government empowered to issue orders for removal of difficulty in case of sections 65B,66B,66C,66D,66E and section 66F.	95
25.	Advance Ruling can be sought on the question of admissibility of credit of duty or tax.	96C
26.	Management, maintenance or repair service in relation to roads exempted.	97
27.	Management, maintenance or repair service in relation to non-commercial Government buildings exempted.	98
28.	Retrospective effect given to application of Rule 6(6A) of CENVAT Credit Rules,2004	6(6A)
III.	CUSTOMS	
A.	Customs Act, 1962	
1.	Definition of customs airport amended to include air freight stations.	2

2.	Central Board of Excise and Customs empowered to appoint “air freight stations” for unloading and loading of import and export cargo.	7
3.	Insertion of new section relating to recovery of duties in certain cases.	28AAA
4.	Section 28BA amended to make the provisions relating to provisional attachment of property applicable to the new section 28AAA	28BA
5.	Insertion of new proviso in section 47 providing that central government may specify the class of importers for electronic payment of customs duty.	47
6.	Substitution of reference to “section 28AB” with “section 28AA” in section 75A.	75A
7.	Section 104 relating to Power to arrest amended to provide that offence relating to prohibited goods or evasion of duty exceeding fifty lakh rupees shall be cognizable.	104
8.	Enhancement of monetary limits in section 122	122
9.	Section 153 amended to bring ‘courier services’ within its ambit for the purpose of serving any order by the commissioner	153
B.	Customs Tariff Act, 1975	
1.	In case of imports from China, Central Government may extend the safeguard duty if it opines that even though the measures has been taken by the domestic industry towards adjustment to market disruption, article continues to be imported.	8C

INDIRECT TAX LAWS

AMENDMENTS MADE BY THE FINANCE ACT, 2012

A. EXCISE

AMENDMENTS IN THE CENTRAL EXCISE ACT, 1944

(1) Incorporation of definition of “inter-connected undertakings” in section 4

Section 4 deals with the determination of value of excisable goods chargeable to duty on *ad valorem* basis. It has been amended to incorporate the definition of “inter-connected undertakings” contained in Monopolies and Restrictive Trade Practices Act, 1969 as the latter has been repealed.

In the Central Excise Act, 1944, in section 4,in sub-section (3), in clause (b), dealing with related party, in the Explanation, for clause (i) providing the meaning of inter-connected undertakings, the following clause has been substituted,

namely:—

(i) "inter-connected undertakings" means two or more undertakings which are inter-connected with each other in any of the following manners, namely:—

- (A) if one owns or controls the other;
- (B) where the undertakings are owned by firms, if such firms have one or more common partners;
- (C) where the undertakings are owned by bodies corporate,—
  - (I) if one body corporate manages the other body corporate; or
  - (II) if one body corporate is a subsidiary of the other body corporate; or
  - (III) if the bodies corporate are under the same management; or
  - (IV) if one body corporate exercises control over the other body corporate in any other manner;
- (D) where one undertaking is owned by a body corporate and the other is owned by a firm, if one or more partners of the firm,—
  - (I) hold, directly or indirectly, not less than fifty per cent. of the shares, whether preference or equity, of the body corporate; or
  - (II) exercise control, directly or indirectly, whether as director or otherwise, over the body corporate;
- (E) if one is owned by a body corporate and the other is owned by a firm having bodies corporate as its partners, if such bodies corporate are under the same management;
- (F) if the undertakings are owned or controlled by the same person or by the same group;

(G) if one is connected with the other either directly or through any number of undertakings which are inter-connected undertakings within the meaning of one or more of the foregoing sub clauses.

Explanation I.— For the purposes of this clause, two bodies corporate shall be deemed to be under the same management,—

(i) if one such body corporate exercises control over the other or both are under the control of the same group or any of the constituents of the same group; or

(ii) if the managing director or manager of one such body corporate is the managing director or manager of the other; or

(iii) if one such body corporate holds not less than one-fourth of the equity shares in the other or controls the composition of not less than one-fourth of the total membership of the Board of directors of the other; or

(iv) if one or more directors of one such body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management, constituted (whether independently or together with relatives of such directors or employees of the first mentioned body corporate) one-fourth of the directors of the other; or

(v) if the same individual or individuals belonging to a group, while holding (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in one such body corporate also hold (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in the other; or

(vi) if the same body corporate or bodies corporate belonging to a group, holding, whether independently or along with its or their subsidiary or subsidiaries, not less than one-fourth of the equity shares in one body corporate, also hold not less than one-fourth of the equity shares in the other; or

(vii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individual (whether independently or together with his relatives) or the same body corporate (whether independently or together with its subsidiaries); or

(viii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individuals belonging to a group or by the same bodies corporate belonging to a group, or jointly by such individual or individuals and one or more of such bodies corporate; or

(ix) if the directors of one such body corporate are accustomed to act in accordance with the directions or instructions of one or more of the directors of the other, or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of an individual, whether belonging to a group or not.

Explanation II.— If a group exercises control over a body corporate, that body corporate and every other body corporate, which is a constituent of, or controlled by, the group shall be deemed to be under the same management.

Explanation III.— If two or more bodies corporate under the same management hold, in the aggregate, not less than one-fourth equity share capital in any other body corporate, such other body corporate shall be deemed to be under the same management as the first mentioned bodies corporate.

Explanation IV.— In determining whether or not two or more bodies corporate are under the same management, the shares held by financial institutions in such bodies corporate shall not be taken into account.

Illustration

Undertaking B is inter-connected with undertaking A and undertaking C is inter-connected with undertaking B. Undertaking C is inter-connected with undertaking A; if undertaking D is inter-connected with undertaking C, undertaking D will be inter-connected with undertaking B and consequently with undertaking A; and so on.

Explanation V.— For the purposes of this clause, "group" means a group of—

(*i*) two or more individuals, associations of individuals, firms, trusts, trustees or bodies corporate (excluding financial institutions), or any combination thereof, which exercises, or is established to be in a position to exercise, control, directly or indirectly, over any body corporate, firm or trust; or

(*ii*) associated persons.

Explanation VI.— For the purposes of this clause,—

(*I*) a group of persons who are able, directly or indirectly, to control the policy of a body corporate, firm or trust, without having a controlling interest in that body corporate, firm or trust, shall also be deemed to be in a position to exercise control over it;

(*II*) "associated persons"—

(*a*) in relation to a director of a body corporate, means—

(*i*) a relative of such director, and includes a firm in which such director or his relative is a partner;

(*ii*) any trust of which any such director or his relative is a trustee;

(*iii*) any company of which such director, whether independently or together with his relatives, constitutes one-fourth of its Board of directors;

(*iv*) any other body corporate, at any general meeting of which not less than one-fourth of the total number of directors of such other body corporate are appointed or controlled by the director of the first mentioned body corporate or his relative, whether acting singly or jointly;

(*b*) in relation to the partner of a firm, means a relative of such partner and includes any other partner of such firm; and

(*c*) in relation to the trustee of a trust, means any other trustee of such trust;

(*III*) where any person is an associated person in relation to another, the latter shall also be deemed to be an associated person in relation to the former;'.

(Effective from May 28th, 2012)

(2) Section 9-Offences and Penalties amended.

As per the existing provisions of section 9(1)(i), any person who commits any of the offences specified therein, will be imprisoned for a term extendible upto seven years and with fine. However, penal provisions are applicable in case of offences relating to any excisable goods wherein the duty leviable thereon exceeds Rs. 1,00,000.

The Finance Act, 2012 has amended section 9(1)(i) to the effect that such penal provisions will now apply in the case of an offence relating to any excisable goods, in which the duty leviable thereon under this Act exceeds thirty lakh of rupees. Hence, now the offence relating to any excisable goods, in which the duty leviable thereon under this Act exceeds thirty lakh of rupees, is punishable with imprisonment for a term which may extend to seven years and with fine .

Crux of the Amendment

Section 9 provides that cases of evasion in which the duty leviable exceeds Rupees one lakh shall be punishable with a term of imprisonment extending to seven years and with fine. The section has been amended to substitute this amount with Rupees thirty lakh. Hence, now in the case of an offence relating to any excisable goods, in which the duty leviable thereon under this Act exceeds thirty lakh of rupees, is punishable with imprisonment for a term which may extend to seven years and with fine .

(Effective from May 28th, 2012)

(3) Section 11A- Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded, amended

(i) Prior to Amendment

Where, during the course of any audit, investigation or verification, it is found that any duty has not been levied or paid or short-levied or short-paid or erroneously refunded for the reason mentioned in clause (a) or clause (b) or clause (c) or clause (d) or clause (e) of sub-section (4) but the details relating to the transactions are available in the specified record, then in such cases, the Central Excise Officer shall within a period of five years from the relevant date, serve a notice on the person chargeable with the duty requiring him to show cause why he should not pay the amount specified in the notice along with interest under section 11AA and penalty equivalent to fifty per cent of such duty.

Amendment made by the Finance Act 2012

Where, during the course of any audit, investigation or verification, it is found that any duty **has not been levied or paid or** has been **short-levied or short-paid** or erroneously refunded for the reason mentioned in clause (a) or clause (b) or clause (c) or clause (d) or clause (e) of sub-section (4) but the details relating to the transactions are available in the specified record, then in such cases, the Central Excise Officer shall within a period of five years from the relevant date, serve a notice on the person chargeable with the duty requiring him to show cause why he should not pay the amount specified in the notice along with interest under section 11AA and penalty equivalent to fifty per cent of such duty.

(Effective from May 28th, 2012)

(ii) Prior to Amendment

In computing the period of one year referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4) or sub-section (5), the period during which there was any stay by an order of the court or tribunal in respect of payment of such duty shall be excluded.

Amendment made by the Finance Act 2012

Section 11A has been amended to exclude the period of stay in computing the period of one year or five years, as the case may be, for issuance of show cause notice where **service of notice** is stayed by an order of a court or tribunal.

(Effective from May 28th, 2012)

(4) Section 11AC- Penalty for short-levy or non-levy of duty in certain cases, amended

(i) Prior to Amendment

(1) **The amount of penalty for non-levy or short-levy or non-payment or short payment or erroneous refund shall be as follows :—**

(a) where any duty of excise **has not been levied or paid or short-levied or short-paid** or erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined;

(b) where details of any transaction available in the specified records, reveal that any duty of excise **has not been levied or paid or short-levied or short-paid** or erroneously refunded as referred to in sub-section (5) of section 11A, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to fifty per cent of the duty so determined;

Amendment made by the Finance Act 2012

(1) The amount of penalty for non-levy or short-levy or non-payment or short payment or erroneous refund shall be as follows :—

(a) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined;

(b) where details of any transaction available in the specified records, reveal that any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded as referred to in sub-section (5) of section 11A, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to fifty per cent of the duty so determined;

(ii) Section 11AC provides for reduced penalty if the duty along with interest is paid within 30 days of the communication of the order. It has been amended to make available the benefit of reduced penalty only if the reduced penalty is also paid within the specified period of thirty days.

(Effective from May 28th, 2012)

(5) Section 12F-Power of search and seizure, amended

Prior to Amendment

The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure, shall, so far as may be, apply to search and seizure under this section as they apply to search and seizure under that Code.(Sub section-2)

Amendment made by the Finance Act 2012

Sub-section (2) of Section 12F of the Central Excise Act has been substituted to provide that the provisions of the Code of Criminal Procedure, 1973 relating to search and seizure shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word “Magistrate”, wherever it occurs, the words “Commissioner of Central Excise” were substituted.

Hence from now onwards, where under sub-section (5) of section 165 of the Code of Criminal Procedure, 1973 the police officer submits any copies of record to Magistrate relating to search, now under central excise, copies of record is to be submitted to the Commissioner of Central Excise.

(Effective from May 28th, 2012)

(6) Amendment of the Third Schedule of the Central Excise Act relating to deemed manufacture

Section 2(f)(iii) of the Central Excise Act contains provisions relating to deemed manufacture which inter-alia provides that manufacture includes any process, which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer,

The Third Schedule of the Central Excise Act contains around 100 goods relating to which any process specified above shall amount to manufacture.

Now, the Third Schedule of the Central Excise Act relating to the deeming of certain processes as amounting to "manufacture" has been amended to include cigarettes. Hence forth, the packing, or repacking in a unit container, labeling or relabeling of containers including the declaration or alteration of Retail Sale Price on it or adoption of any treatment to render cigarettes marketable shall be processes amounting to manufacture.

(Effective from May 28th, 2012)

B. SERVICE TAX

AMENDMENTS IN CHAPTER V AND VA OF THE FINANCE ACT, 1994

(1) Section 65 dealing with definitions ceased to apply

Section 65 of the Act deals with definitions of all taxable services as well as various other terms relating to services. A Proviso has been newly inserted in section 65 which provides that the provisions of this section will cease to apply with effect from July 1, 2012.

(Effective from July 1, 2012)

(2) Section 65B newly inserted which deals with definitions

A new section 65B has been inserted so as to define the following expression. Hence, from now onwards definitions will be dealt by newly inserted section 65B instead of section 65.

In this Chapter, unless the context otherwise requires,—

(1) "actionable claim" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882.

"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent. [Section 3 of the Transfer of Property Act, 1882.]

(2) "advertisement" **means** any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means **but does not include** any presentation made in person.

(3) "agriculture" **means** the cultivation of plants and rearing of all life-forms of animals, **except** the rearing of horses, for food, fibre, fuel, raw material or other similar products.

(4) "agricultural extension" means application of scientific research and knowledge to agricultural practices through farmer education or training.

(5) "agricultural produce" means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

(6) "Agricultural Produce Marketing Committee or Board" means any committee or board constituted under a State law for the time being in force for the purpose of regulating the marketing of agricultural produce.

(7) "aircraft" has the meaning assigned to it in clause (*1*) of section 2 of the Aircraft Act,1934.

"aircraft" **means** any machine which can derive support in the atmosphere from reactions of the air, [**other than** reactions of the air against the earth's surface] and **includes** balloons, whether fixed or free, airships, kites, gliders and flying machines. [Section 2(1) of the Aircraft Act,1934.]

(8) "airport" has the meaning assigned to it in clause (*b*) of section 2 of the Airports Authority of India Act, 1994.

"airport" **means** a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and **includes** aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934. [Section 2(b) of the Airports Authority of India Act, 1994.]

(9) "amusement facility" **means** a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places **but does not include** a place within such facility where other services are provided.

(10) "Appellate Tribunal" means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962.

(11) "approved vocational education course" means,––

(i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961; or

(ii) a Modular Employable Skill Course, approved by the National Council of

Vocational Training, run by a person registered with the Directorate General of Employment and Training, Union Ministry of Labour and Employment; or

(iii) a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India.

(12) "assessee" **means** a person liable to pay tax and **includes** his agent.

(13) "associated enterprise" shall have the meaning assigned to it in section 92A of the Income-tax Act, 1961.

"associated enterprise", in relation to another enterprise, means an enterprise--

a which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise ; or

b. in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise. [Section 92A of the Income-tax Act, 1961.]

(14) "authorised dealer of foreign exchange" shall have the meaning assigned to "authorised person" in clause (c) of section 2 of the Foreign Exchange Management Act, 1999.

"authorised person" means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-section (1) of section 10 to deal in foreign exchange or foreign securities.[Section 2(c) of the Foreign Exchange Management Act, 1999.]

(15) "betting or gambling" means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring.

(16) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963.

(17) "business entity" means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.

(18) "Central Electricity Authority" means the authority constituted under section 3 of the Electricity (Supply) Act, 1948.

(19) "Central Transmission Utility" shall have the meaning assigned to it in clause (*10*) of section 2 of the Electricity Act, 2003.

"Central Transmission Utility" means any Government company which the Central Government may notify under sub-section (1) of section 38 of the Electricity Act,2003.[Section 2(10) of the Electricity Act, 2003.]

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

(21) "customs station" shall have the meaning assigned to it in clause (*13*) of section 2 of the Customs Act, 1962.

"customs station" means any customs port, customs airport or land customs station.[Section 2(13) of the Customs Act, 1962.]

(22) "declared service" means any activity carried out by a person for another person for consideration and declared as such under section 66E.

(23) "electricity transmission or distribution utility" means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003; or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government.

(24) "entertainment event" means an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic film, circus, concerts, sporting event, pageants, award functions, dance, musical or theatrical performances including drama, ballets or any such event or programme.

(25) "goods" means every kind of movable property other than actionable claim and money; and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

(26) "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

(27) "India" means,—

(a) the territory of the Union as referred to in clauses (*2*) and (*3*) of article 1 of the Constitution;

(b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976;

(c) the seabed and the subsoil underlying the territorial waters;

(d) the air space above its territory and territorial waters; and

(*e*) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.

(28) "information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine

readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment.

(29) "inland waterway" means national waterways as defined in clause (*h*) of section 2 of the Inland Waterways Authority of India Act, 1985 or other waterway on any inland water, as defined in clause (*b*) of section 2 of the Inland Vessels Act, 1917.

(30) "interest" **means** interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but **does not include** any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised.

(31) "local authority" means-

(a) a Panchayat as referred to in clause (*d*) of article 243 of the Constitution;

(b) a Municipality as referred to in clause (*e*) of article 243P of the Constitution;

(c) a Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(e) a regional council or a district council constituted under the Sixth Schedule to the Constitution;

(f) a development board constituted under article 371 of the Constitution; or

(g) a regional council constituted under article 371A of the Constitution.

(32) "metered cab" means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made thereunder.

(33) "money" **means** legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any such similar instrument but **shall not include** any currency that is held for its numismatic value.

Note:

Omission of definition of money from the explanation to section 67 (w.e.f. July 1, 2012)

The definition of money which was earlier provided in Explanation to Section 67 has now been omitted.

(34) "negative list" means the services which are listed in section 66D.

(35) "non-taxable territory" means the territory which is outside the taxable territory.

(36) "notification" means notification published in the Official Gazette and the expressions ''notify'' and "notified" shall be construed accordingly.

(37) "person" includes,––

(*i*) an individual,

(*ii*) a Hindu undivided family,

(*iii*) a company,

(*iv*) a society,

(*v*) a limited liability partnership,

(*vi*) a firm,

(*vii*) an association of persons or body of individuals, whether incorporated or not,

(*viii*) Government,

(*ix*) a local authority, or

(*x*) every artificial juridical person, not falling within any of the preceding sub-clauses.

(38) "port" has the meaning assigned to it in clause (*q*) of section 2 of the Major Port Trusts Act,1963 or in clause (*4*) of section 3 of the Indian Ports Act, 1908.

"port" includes also any part of a river or channel in which the Indian Ports Act is for the time being in force. [Section 3(4) of the Indian Ports Act, 1908.]

"port" means any major port to which the Major Port Trusts Act applies within such limits as may, from time to time, be defined by the Central Government for the purposes of this Act by notification in the Official Gazette, and, until a notification is so issued, within such limits as may have been defined by the Central Government under the provisions of the Indian Ports Act.[Section 2(q) of the Major Port Trusts Act,1963]

(39) "prescribed" means prescribed by rules made under this Chapter.

(40) "process amounting to manufacture or production of goods" means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force.

(41) "renting" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.

(42) "Reserve Bank of India" means the bank established under section 3 of the Reserve Bank of India Act, 1934.

(43) “securities” has the meaning assigned to it in clause (*h*) of section 2 of the Securities Contract (Regulation) Act, 1956.

“securities” include—

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

(ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case maybe;

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities.

[Section 2(h) of the Securities Contract (Regulation) Act, 1956.]

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but does not include—

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1.— For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,––

(*A*) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(*B*) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(*C*) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2.-For the purposes of this clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Explanation 3.–– For the purposes of this Chapter,—

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 4.— A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory.

(45) "Special Economic Zone" has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.

"Special Economic Zone" means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 of the Special Economic Zones Act, 2005 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone.

[Section 2(za) of the Special Economic Zones Act, 2005.]

(46) "stage carriage" shall have the meaning assigned to it in clause (40) of section 2 of the Motor Vehicles Act, 1988.

"stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. [Section 2(40) of the Motor Vehicles Act, 1988.]

(47) "State Electricity Board" means the Board constituted under section 5 of the Electricity (Supply) Act, 1948.

(48) "State Transmission Utility" shall have the meaning assigned to it in clause (67) of section 2 of the Electricity Act, 2003.

"State Transmission Utility" means the Board or the Government company specified as such by the State Government under sub-section (1) of section 39 of the Electricity Act, 2003. [Section 2(67) of the Electricity Act, 2003.]

(49) "support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis.

(50) "tax" means service tax leviable under the provisions of this Chapter.

(51) "taxable service" means any service on which service tax is leviable under section 66B.

(52) "taxable territory" means the territory to which the provisions of this Chapter apply.

(53) "vessel" has the meaning assigned to it in clause (z) of section 2 of the Major Port Trusts Act, 1963.

"vessel" includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson. [Section 2(z) of the Major Port Trusts Act, 1963.]

(54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.

(55) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.

(Effective from July 1, 2012)

(3) Section 66 –The charging section ceased to apply

Section 66 is the charging section of the Act, which provides that service tax is levied at a specific rate on the value of taxable services referred to in section 65(105) of the Act. A Proviso has been newly inserted in section 66 which provides that the provisions of this section will cease to apply with effect from July 1, 2012.

(Effective from July 1, 2012)

(4) Section 66A dealing with Import of services rescinded

Section 66A of the Act deals with levy of service tax on services received from outside India, that is service tax liability in case of import of services. A Proviso has been newly inserted in section 66A which provides that the provisions of this section will cease to apply with effect from July 1, 2012.

(Effective from July 1, 2012)

(5) Section 66B-The New Charging section.

Section 66B is the new charging section inserted by the Finance Act, 2012. Earlier Section 66 was the charging section which will cease to apply now. Section 66B provides that there shall be levied a service tax at the rate of twelve per cent on the value of all services, except the services specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another and collected in the prescribed manner.

Section 66B: New charging section

Section 66C: Determination of place of provision of service

Section 66D: Negative list of services

Section 66E: Declared services

Section 66F: Bundled services

(Effective from July 1, 2012)

(6) Section 66C, Determination of place of provision of service

For determination of Place of provision of service, the Place of Provision of Service Rules, 2012 have been notified vide *Notification No. 28/2012-ST dated 20 June, 2012*. The Place of Provision of Services Rules, 2012 have been framed to support the negative list approach to taxation of services. The Place of Provision of Services Rules contains principles on the basis of which taxing jurisdiction of a service will be determined.

Provisions of Section 66C

(*1*) Sub –section 1 of Section 66C empowers the Central Government to make rules to determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided having regard to the nature and description of various services.

(*2*) Any rule made under sub-section (*1*) will not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory.

(Effective from July 1, 2012)

(7) INTRODUCTION OF NEGATIVE LIST APPROACH

Service tax was introduced in the year 1994 on three services. India adopted the selective approach for taxing services. Under this approach selected services are made liable to tax. Every Budget new services were added taking the toll to more than 120 services from the modest beginning of 3 services in 1994. However, the selective approach lead to grave classification issues and made the law very complex.

Considering these increasing complexities, the Government has now decided to adopt the comprehensive approach of taxing services. For this purpose, the Finance Minister in this year's budget has introduced the negative list of services. However, the negative list of services is not merely a revenue garnering measure but it aims to widen the tax base of services and simultaneous simplification of the law.

A Negative List approach to taxation of services has been introduced vide new sections, namely, 66B, 66C, 66D, 66E and 66F in Chapter V of the Finance Act. The services specified in the 'Negative List' (section 66D) will remain outside the tax net. All other services, except those specifically exempted by the exercise of powers under section 93(1) of the Finance Act, 1994, would thus be chargeable to service tax.

Negative List of Services, Section 66D

Section 66D has been newly inserted which specify the following list of services as the negative list: –

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere –

   (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government.

   (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport.

   (iii) transport of goods or passengers or

   (iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities.

(b) services by the Reserve Bank of India.

(c) services by a foreign diplomatic mission located in India.

(d) services relating to agriculture or agricultural produce by way of—

   (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing.

   (ii) supply of farm labour.

   (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market.

(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use.

(v) loading, unloading, packing, storage or warehousing of agricultural produce.

(vi) agricultural extension services.

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.

(e) trading of goods.

(f) any process amounting to manufacture or production of goods.

(g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television.

(h) service by way of access to a road or a bridge on payment of toll charges.

(i) betting, gambling or lottery.

(j) admission to entertainment events or access to amusement facilities.

(k) transmission or distribution of electricity by an electricity transmission or distribution utility.

(l) services by way of –

(i) pre-school education and education up to higher secondary school or equivalent.

(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

(iii) education as a part of an approved vocational education course.

(m) services by way of renting of residential dwelling for use as residence.

(n) services by way of –

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount

(ii) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.

(o) service of transportation of passengers, with or without accompanied belongings, by –

(i) a stage carriage

(ii) railways in a class other than –

(A) first class or

(B) an airconditioned coach

(iii) metro, monorail or tramway

(iv) inland waterways

(v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India and

(vi) metered cabs, radio taxis or auto rickshaws

(p) services by way of transportation of goods—

(i) by road except the services of—

(A) a goods transportation agency or

(B) a courier agency

(ii) by an aircraft or a vessel from a place outside India up to the customs station of clearance in India or

(iii) by inland waterways

(q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

(Effective from July 1, 2012)

(8) Section 66E newly inserted- Declared Services

Section 66E has been newly inserted which specify that the nine specific activities or transactions are declared to be covered as 'service'. Such activities includes:–

(a) renting of immovable property

(b) construction of a complex.*

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act

(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods

(g) activities in relation to delivery of goods on hire purchase or any system of payment by instalments

(h) service portion in the execution of a works contract

(i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity

* Construction of a complex

Service to include:

- construction of a complex, building
- civil structure or a part thereof including a complex or building

intended for sale to a buyer, **wholly or partly**,

except the cases where the entire consideration is received after issuance of completion-certificate by the competent authority.

Explanation — For the purposes of this clause, –

(I) the expression **"competent authority"** means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non requirement of such certificate from such authority, from any of the following, namely:–

(A) architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(B) chartered engineer registered with the Institution of Engineers (India); or

(C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(II) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(Effective from July 1, 2012)

<u>Taxability of Service-The New Equation</u>

Service = Activity + Consideration + Person + Declared Service
–
Negative List
=
Taxable Service
–
Exempted Services
+
Place of Provision in Taxable Territory
=
Taxability

(9) **Section 65A dealing with Classification of services rescinded**

Section 65A of the Act deals with classification of taxable services. A new sub-section has been inserted in section 65A which provides that the provisions of this section will cease to apply with effect from July 1, 2012.

(Effective from July 1, 2012)

(10) **Section 66F newly inserted-Principles of interpretation of specified descriptions of services or bundled services**

Section 66F has been newly inserted vide Finance Act, 2012 which specify the principles of interpretation of specified descriptions of services or bundled services.

Provisions of Section 66F

- **Reference to main service**

  Section 66F specifies that whenever reference to main service is made , it will not include reference to a service which is used for providing main service.[Sub-section (1)]

- **Specific over general**

  Where a service is capable of differential treatment for any purpose based on its description, the most specific description will be preferred over a more general description.[Sub-section (2)]

The **taxability of a bundled service** is determined in the following manner, namely:—

(a) **Naturally Bundled-Essential character principle**

If various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character.

(b) **Not Naturally Bundled –Highest liability Principle**

If various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

[Sub-section (3)]

Meaning of "Bundled service"
"Bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.

(Effective from July 1, 2012)

(11) **Section 67A newly inserted- Date of determination of rate of tax, value of taxable service and rate of exchange.**

Section 67A has been newly inserted by the Finance Act, 2012 which specify that the rate of service tax, value of a taxable service and rate of exchange will be the one as in force or as applicable at the time when the taxable service has been provided or agreed to be provided.

(Effective from May 28, 2012)

Explanation.— For the purposes of this section, "rate of exchange" means the rate of exchange referred to in the *Explanation* to section 14 of the Customs Act, 1962

"rate of exchange" means the rate of exchange —

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency. *[Explanation* to section 14 of the Customs Act, 1962]

(12) Section 68, **Payment of service tax**

Prior to Amendment

Section 68 provides as follows:-

(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed. [Sub-Section (1)]

(2) Notwithstanding anything contained in sub-section (1), in respect of **any taxable service notified** by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service. [Sub-Section (2)]

Amendment made by the Finance Act, 2012, NEW REVERSE CHARGE MECHANISM

Sub- section (2) of Section 68 has now been amended providing that for the words "any taxable service notified", the words **"such taxable services as may be notified"** will be substituted.

Prior to the amendment, in respect of certain notified services service tax is to be paid by the recipient of taxable service. With effect from 1.7.2012, a new scheme of taxation has been brought into effect whereby the liability of payment of service tax will be both on the service provider and the service recipient. Usually such liability is affixed either on the service provider or the service recipient, but in specified services and in specified conditions, such liability will be on both the service provider and the service recipient.

The enabling provision has been provided by insertion of proviso to section 68 in the Finance Act, 2012 as per which Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of Chapter V shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider. Under this clause, the Central government has issued *Notification no. 30/2012 dated 20.6.2012* notifying the description of specified services when provided in the manner so specified where part of the service tax has to be paid by the service receiver. The extent to which tax liability has to be discharged by the service receiver has also been specified in the said notification.

(Effective from July 1, 2012)

(13) **Section 72A, newly inserted-Special Audit.**

Till 27th May, 2012,Special audit for CENVAT credit purposes under section 14AA was applicable to service tax vide section 83.Section 83 of Finance Act 1994 deals with applicability of provisions of the Central Excise Act,1944 to service tax. However, now a separate section has been inserted in service tax law itself vide enactment of Finance Act, 2012.

A new section 72A has been inserted vide Finance Act,2012 to introduce provisions relating to special audit in the service tax law on the lines of section 14A and section 14AA of the Central Excise Act, 1944.Consequently, section 14AA has been omitted from section 83.

1. Section 72A provides for a special audit to be carried out by a chartered accountant or cost accountant nominated by the Commissioner of Central Excise.
2. The special audit would be ordered where the service tax assessee has
   - failed to declare or determine the value of taxable service correctly or
   - has availed and utilised credit of duty or tax beyond the normal limit having regard to the nature of taxable service provided, the extent of capital goods used or the type of inputs or input services used, or any other relevant factors as he may deem appropriate or
   - by means of, collusion or wilful mis-statement or
3. he is having operations spread out in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts from the registered premises falling under the jurisdiction of the commissioner.
4. The audit report is to be submitted by the chartered accountant or the cost accountant to the Commissioner on completion of the audit .
5. Such audit may be ordered even though such accounts had been audited under any other law .
6. Before initiating proceedings on the basis of the report, a reasonable opportunity is given to the service tax assessee so audited to present his stand.

(Effective from May 28, 2012)

(14) Section 73 amended- Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded.

Section 73 has now been amended providing for the following-

(1) The one-year time limit for issuance of notice for specified category of offences prescribed under section 73(1) of the Finance Act, 1994, has been increased to eighteen months.

Illustration

Mr. X filed a return in the case of taxable service in respect of which service tax has been short-levied on 25.10.2012. Prior to 28.05.2012, Central Excise Officer could serve a show cause notice on Mr. X till 24.10.2013. However w.e.f. 28.05.2012 CEO has been empowered to issue notice till 24.04.2014.

(i) Deemed Notice

A new sub-section (1A) has been inserted in section 73 of the Finance Act, 1994 to prescribe that notwithstanding anything contained in sub-section (1), follow-on notices issued on the same grounds need not repeat the grounds but only state the amount of service tax chargeable for the subsequent period. Statement of tax due for the subsequent period, served on the assessee with reference to the earlier demand notice, will be deemed as a notice under section 73(1) of the Finance Act, 1994.

(ii) Prior to 28.05.2012, wherever sub-section 4A applies, sub-section(3) dealing with waiver of notice in case service tax is paid before issuance of notice by CEO and sub-section (4) dealing with non-payment of service tax in case of fraud etc did not apply. However, now in case of sub-section (4A), only sub-section (4) will not apply.

(iii) The time limit for serving the deemed notice for recovery of service tax will be eighteen months.

(Effective from May 28, 2012)

(15) Section 80 amended- cases in which penalty is not imposed.

A new sub-section has been inserted in section 80 which provides that no penalty would be imposed on the service tax which is payable as on the 6th day of March, 2012 on service of renting of immovable property with the condition that the service tax and interest are paid in full within period of six months from the 28.05.2012. This waiver of penalty is not subject to anything provided in section 76 or section 77 or section 78.

SECTION 76.	Penalty for failure to pay service tax.
SECTION 77.	Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere.
SECTION 78.	Penalty for suppressing, etc. of value of taxable services

(Effective from May 28, 2012)

(16) Section 83 amended- Applicability of provisions of the Central Excise Act, 1944 to service tax

Section 83 has been amended now whereby following additional provisions of Central Excise Act, 1944 are made applicable to Service Tax.

Section of the CE Act, 1944	Particulars
31	Settlement Commission
32	
32A to 32P	
35EE	Revision by Central Government

Subsequently, reference to Section 14AA is omitted since the said provisions are now contained in newly introduced Section 72A.

(Effective from May 28, 2012)

(17) Section 85 amended- Appeals to the Commissioner of Central Excise (Appeals)

Section 85 has been amended now whereby the time limit for filing appeal with Commissioner of Central Excise (Appeals) has been reduced to 2 months from 3 months. The revised time limit would be applicable in respect of decision or order passed on or after 28.05.2012.

Also, the Commissioner of Central Excise (Appeals) is empowered to condone the delay upto the period of 1 month as against the erstwhile period of 3 months.

(Effective from May 28, 2012)

(18) Section 86 amended-Appeals to the Appellate Tribunal

Section 86 has been amended to provide for the period of limitation for filing appeal before the Tribunal as four months from the date of receipt of order by the Committee of Chief Commissioners or Committee of Commissioners. Earlier, the period of limitation was three months. The extended period of limitation is applicable for all decisions or orders passed after 28.05.2012.

The time limit for filing appeal by the assessee to the Appellate Tribunal still remains the same that is within three months of the date on which the order sought to be appealed against is received by the assessee.

(Effective from May 28, 2012)

(19) Section 88 rectified- liability under Act to be first charge

Section 88 provides that "any amount of duty, penalty, interest, or any other sum payable by an assessee" subject to certain Acts be the first charge on the property of the assessee. However, now in place of the word "duty", the word "tax" has been substituted.

(Effective from May 28, 2012)

(20) Section 89 amended- Offences and Penalties

Section 89 was inserted by Finance Act, 2011 to provide for offences and penalties to enable prosecution of specified offences involving service tax evasion.

- As per Section 89(1)(a), provision/receipt of any taxable service without an invoice issued in accordance with the provisions was considered to be an offence.
- The said Section 89(1)(a) has been substituted so as to prescribe "knowingly evasion of payment of service tax" as an offence.
- Thus with the introduction of new clause, the scope of punishable offence has been widened.

(Effective from May 28, 2012)

(21) Section 93A amended- Power to grant rebate

Prior to Finance Act 2012, the Central Government was empowered to grant rebate of service tax in case taxable services are used as input services for the manufacturing or processing of such goods or for providing any taxable services. However, now the scope of the rebate has been expanded by allowing rebate of service tax even in case of removal or export of such goods.

(Effective from May 28, 2012)

(22) Section 93B newly inserted- Rules made under section 94 to be made applicable to services other than Taxable services

After section 93A, a new section 93B has been inserted in the Finance Act, 1994 so as to provide that all the rules made under section 94 and applicable to taxable services are also applicable to services other than taxable services to the extent they are relevant to the determination of any tax liability, refund, credit of service tax or duties paid on inputs and input services or for carrying out the provisions of Chapter V of the Finance Act, 1994.

(Effective from May 28, 2012)

(23) Section 94 amended- Power to make rules

Section 94 gives power to central government to make rules. The central Government has been given the power to make rules which inter alia provided for ''the credit of service tax paid on the services consumed or duties paid or deemed to have been paid on goods used for providing a taxable service''. This power has now been withdrawn. Power to make rules interalia contains the ''date for determination of rate of service tax and the place of provision of taxable service''. Now this power can be exercised under section 66C i.e. determination of place of provision of service. Also, now the Central government has been given power to make rules relating to following matters as well.

(*i*) provide for the amount to be paid for compounding and the manner of compounding of offences;

(*ii*) provide for the settlement of cases, in accordance with sections 31, 32 and 32A to 32P (both inclusive), in Chapter V of the Central Excise Act, 1944 as made applicable to service tax vide section 83.

(Effective from May 28, 2012)

(24) Section 95 amended- Power to remove difficulties.

Section 95 empowers the Central Government to issue orders for removing difficulties. Section 95 has been amended now so as to empower the Central Government to issue orders for removal of difficulty in case of sections 65B, 66B,66C,66D,66E and section 66F inserted by Finance Act 2012 in chapter V of the Finance Act, 1994, upto two years from 28.05.2012..Power to issue orders also include the power to give retrospective effect from a date not earlier than 28.05.2012.

(Effective from May 28, 2012)

(25) Section 96C amended- Application of advance ruling

Prior to Finance Act, 2012, advance ruling can be sought on the question of ''admissibility of credit of service tax''. However, now it has been amended to provide for ''admissibility of credit of duty or tax in terms of rules made in this regard''.

(Effective from May 28, 2012)

(26) **Section 97 newly inserted - Special provision for exemption in certain cases relating to management, etc., of roads.**

Management, maintenance or repair service undertaken in relation to roads has been exempted from service tax vide section 97 during the period on and from the 16th day of June, 2005 to the 26th day of July, 2009 (both days inclusive).In case service tax has been wrongly collected then refund will be made of all such service tax. An application for the claim of refund of service tax will be made within a period of six months from 28.05.2012.

(Effective from May 28, 2012)

(27) **Section 98 newly inserted - Special provision for exemption in certain cases relating to management, etc., of non commercial buildings.**

Management, maintenance or repair service undertaken in relation to non-commercial Government buildings has been exempted from service tax vide section 98, with effect from 16.06.2005 till July 1,2012. In case service tax has been wrongly collected then refund will be made of all such service tax. An application for the claim of refund of service tax will be made within a period of six months from 28.05.2012.

(Effective from May 28, 2012)

(28) **Amendment of Rule 6 of CENVAT Credit Rules, 2004.**

Rule 6(6A) of the Cenvat Credit Rules, 2004 was inserted by Finance Act, 2011 w.e.f. 1st March,2011 to protect the service providers located in the Domestic Tariff Area from the reversal of Cenvat credit, when they supply taxable services under exemption, to the authorized operations of SEZ. The application of sub-rule 6A has been given retrospective effect from 10.02.2006.

(Effective from February 10, 2006 to February 28, 2011)

C. CUSTOMS

AMENDMENTS IN THE CUSTOMS ACT, 1962

(1). **Definition of customs airport amended in section 2.**

The definition of customs airport has been amended to include air freight stations in the definition of "customs airport".

Prior to Amendment

"customs airport" means any airport appointed under (a) of section 7 to be a customs airport;

Amendment made by Finance Act, 2012

"customs airport" means any airport appointed under (a) of section 7 to be a customs airport and includes a place appointed under clause (*aa*) of that section to be an air freight station;

(Effective from May 28th, 2012)

(2). Section 7-Appointment of customs ports, airports, etc. amended

Section 7 has been amended to empower the Central Board of Excise and Customs to appoint air freight stations for unloading of import cargo and loading of export cargo as in the case of Inland Container Depots.

Section 7 of the Customs Act, 1962 inter alia empowers the Board to appoint by notification in the Official Gazette:

(a) inland container depots, for the unloading of imported goods and the loading of export goods or any class of such goods,

Amendment made by Finance Act, 2012

(a) inland container depots or air freight stations", for the unloading of imported goods and the loading of export goods or any class of such goods,

(Effective from May 28th, 2012)

(3). Insertion of new section 28AAA-Recovery of duties in certain cases.

Reason for insertion of new section 28AAA-

The provisions of the Customs Act enable recovery of duty not-levied, or short-levied by reason of collusion, or willful misstatement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter. Certain cases have been detected relating to utilization of instruments, such as duty credit scrips, where the instrument was obtained by means of collusion or wilful mis-statement or suppression of facts by the person to whom the instrument was issued or his agent or employee and not by the importer who utilized it.

A new section 28AAA has been inserted to provide for recovery of duties, from the person to whom the instrument was issued without prejudice to any action that may be taken against the importer.

After section 28AA of the Customs Act, the section 28AAA has been inserted, providing for:—

Provisions of Section 28AAA

(1) Where an instrument issued to a person has been obtained by him by means of—

(*a*) collusion; or

(*b*) wilful misstatement; or

(*c*) suppression of facts,

- for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992, by such person or his agent or employee and such instrument is utilised under the provisions of this Act or the rules made or notifications issued thereunder,
- by a person other than the person to whom the instrument was issued,

- the duty relatable to such utilisation of instrument shall be deemed never to have been exempted or debited and such duty shall be recovered from the person to whom the said instrument was issued:

Provided that the action relating to recovery of duty under this section against the person to whom the instrument was issued shall be without prejudice to an action against the importer under section 28.

(Subsection-1)

Meaning of Instrument
Instrument means any scrip or authorisation or licence or certificate or such other document, by whatever name called, issued under the Foreign Trade (Development and Regulation) Act, 1992, with respect to a reward or incentive scheme or duty exemption scheme or duty remission scheme or such other scheme bestowing financial or fiscal benefits, which may be utilised under the provisions of this Act or the rules made or notifications issued thereunder.

Applicability of above provisions (i.e. sub-section 1).—The provisions of sub-section 1 will apply to any utilisation of instrument so obtained by the person referred to in this sub-section on or after May 28th, 2012, whether or not such instrument is issued to him prior to the May 28th, 2012.

(*2*) Liability to pay interest (Subsection-2)-

- Where the duty becomes recoverable in accordance with the provisions of sub-section (*1*), the person from whom such duty is to be recovered, will, in addition to such duty, is liable to pay interest
- at the rate fixed by the Central Government under section 28 AA and
- the amount of such interest will be calculated for the period beginning from the date of utilisation of the instrument till the date of recovery of such duty.

(*3*) Manner of Recovery of duty and interest (Subsection-3)-

- For the purposes of recovery under sub-section (2), the proper officer will serve show cause notice on the person to whom the instrument was issued as to why the amount specified in the notice (excluding the interest) should not be recovered from him.
- The Proper Officer will within a period of thirty days from the date of receipt of the notice, and after giving that person an opportunity of being heard, and after considering the representation, if any, made by such person, determine the amount of duty or interest or both to be recovered from such person.
- The amount of duty or interest or both to be recovered will not be in excess of the amount specified in the notice, and then the proper officer will pass order to recover the amount of duty or interest or both.
- The person to whom the instrument was issued will repay the amount so

specified in the notice within a period of thirty days from the date of receipt of the said order, along with the interest due on such amount, whether or not the amount of interest is specified separately.

(*4*) Non applicability of section 28AAA(Subsection-4) – Where an order determining the duty has been passed under section 28, no order to recover that duty will be passed under section 28AAA.

(*5*) Manner of recovery if the person fails to repay the amount (Subsection-5)– Where the person referred to in sub-section (*3*) fails to repay the amount within the period of thirty days specified therein, the amount will be recovered in the manner laid down in sub-section (*1*) of section 142(Recovery of sums due to Government).

Crux of the Amendment

In a nutshell, the new section 28AAA in the Customs Act provides for recovery of duties in certain cases relatable to utilisation of instruments, such as duty credit scrips issued under the Foreign Trade (Development and Regulation) Act, 1992 where the instrument was obtained by means of collusion or wilful misstatement or suppression of facts made by the person to whom it was issued or his agent or employee, and was utilized by another person who acquired it from the original holder, then the duties, relatable to the utilization, will be recovered from the person to whom the instrument had been issued.

(Effective from May 28th, 2012)

(4) Amendment in section 28BA- Provisional attachment of property pending adjudication

Section 28BA has been amended to make the provisions relating to provisional attachment of property applicable to the new Section 28AAA.

Prior to Amendment

1. During the pendency of any proceeding under section 28 or section 28B, the proper officer may provisionally attach any property belonging to the person on whom notice is served under sub-section (1) of section 28 or sub-section (2) of section 28B, as the case may be, in accordance with the rules made in this behalf under section 142 of the Customs Act, 1962.

Amendment made by Finance Act, 2012

1. During the pendency of any proceeding under section 28 or section 28AAA or section 28B, the proper officer may provisionally attach any property belonging to the person on whom notice is served under sub-section (1) of section 28 or sub-section (*3*) of section 28AAA or sub-section (*2*) of section 28B, as the case may be, in accordance with the rules made in this behalf under section 142 of the Customs Act, 1962.

(Effective from May 28th, 2012)

(5) Insertion of new proviso in section 47-Clearance of goods for home consumption.

E-payment of Customs duty

Section 47 has been amended to insert a new proviso therein to provide that the Central Government may, by notification in the official gazette, specify the class or classes of importers who will pay customs duty electronically.

(Effective from May 28th, 2012)

(6) Substitution of reference to "section 28AB" with "section 28AA"in section 75A, Interest on drawback.

Sections 28AA and 28AB of the Customs Act were merged through the provisions of the Finance Act, 2011. However, there was a reference to section 28AB in section 75A.Section 75A has been amended to substitute the reference to "section 28AB" with "section 28AA".

The amendment has also been given retrospective effect from 08.04.2011.

(Effective from May 28th, 2012)

(7) Amendment in section 104-Power to arrest

Prior to Amendment

Section 104 provides that notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under the Act shall not be cognizable.(Subsection-4)

Amendment made by Finance Act, 2012

- Subsection-4 of Section 104 has been substituted with new subsections to provide that notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence relating to-
  - (a) Prohibited goods; or
  - (b) Evasion or attempted evasion of duty exceeding fifty lakh rupees,

    Shall be cognizable. (Subsection-4)
- However, all other offences except provided in sub-section (4) will be non-cognizable. (Subsection-5)
- Also, notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under the Act will be bailable. (Subsection-6)

(Effective from May 28th, 2012)

(8) Enhancement of monetary limits in section 122- Adjudication of confiscations and penalties

Section 122 has been amended to enhance the monetary limits for adjudication of cases involving confiscation of goods and imposition of penalty from Rupees two lakh to Rupees five lakh for Deputy/ Assistant Commissioners and from Rs.10,000 to Rs.50,000 for Gazetted officer lower in rank to Assistant/ Deputy Commissioner.

(Effective from May 28th, 2012)

(9) Amendment in section 153-Service of order, decision, etc.

Section 153 has been amended to bring 'courier services' within its ambit for the purpose of serving any order/decision/ summons/notice by the Commissioner.

Prior to Amendment

Section 153, interalia provides that any order or decision passed or any summons or notice issued under this Act, shall be served -

(a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house.

Amendment made by Finance Act, 2012

Section 153, interalia provides that any order or decision passed or any summons or notice issued under this Act, shall be served -

(a) by tendering the order, decision, summons or notice or sending it by registered post or by such courier as may be approved by the Commissioner of Customs or

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house.

(Effective from May 28th, 2012)

AMENDMENTS IN THE CUSTOMS TARIFF ACT, 1975

(1) Amendment in section 8C- Power of Central Government to impose transitional product specific safeguard duty on imports from the People's Republic of China.

Section 8C empowers the Central Government to levy safeguard duty on imports from Peoples' Republic of China. It has been amended to provide that such duty may continue if the Central Government is of the opinion that

- such articles or goods continue to be imported into India so as to cause or threaten to cause market disruption to domestic industry
- even though the latter has taken measures to adjust to such disruption.

The amendment would align the provisions of the section with the Transitional Product Specific Safeguard Mechanism under Chinese Accession Protocol signed with WTO in 2001.

<u>Amendment made by Finance Act, 2012</u>

<u>Extension of period of safeguard duty (Subsection 5 of section 8C)</u>

Central Government may extend the period of imposition of duty from the date of first imposition provided it is of the opinion that:-

(a) such article continues to be imported into India, from the People's Republic of China, in such increased quantities ,so as to cause or threatening to cause market disruption to domestic industry

(b) even though the measures has been taken by the domestic industry towards adjustment to such market disruption or any threat arising thereof

(c) It is necessary that the safeguard duty should continue to be imposed.

However, the total period of levy of safeguard duty is restricted to 10 years.

(Effective from May 28th, 2012)

SIGNIFICANT AMENDMENTS MADE THROUGH NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.07.2011 TO 30.06.2012

A. EXCISE

I. AMENDMENTS IN THE CENVAT CREDIT RULES, 2004

A large number of amendments have been made in the CENVAT Credit Rules, 2004 vide various notifications issued in the period between March and June. Some of these amendments are applicable from 1st April, some from 1st July while others are applicable from the date of issue of notification. Hence, the date of applicability of the CENVAT amendments in the following amendments has not been mentioned with a view not to confuse the students.

1. Definition of capital goods amended [Rule 2(a)]

Amended definition of capital goods (with amendments given in the italics) is as follows:-

Capital goods means :-

(A) the following goods, namely :-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof;

(vii) storage tank, and

(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis, but including dumpers and tippers

used -

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

(1A) outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory; or

(2) for providing output service;

(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for-

(i) providing an output service of renting of such motor vehicle; or

(ii) transportation of inputs and capital goods used for providing an output service; or

(iii) providing an output service of courier agency.

(C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of-

(i) transportation of passengers; or

(ii) renting of such motor vehicle; or

(iii) imparting motor driving skills.

(D) components, spares and accessories of motor vehicles which are capital goods for the assessee.

A comparative analysis of the position prior to and after the amendment has been tabulated as follows:-

S.No.	Prior to amendment	After the amendment
1.	Motor vehicles, dumpers and tippers were not at all eligible as capital goods *for the purposes of manufacture*.	Motor vehicles and their chassis (including dumpers and tippers) are now eligible as capital goods *used in the factory of the manufacturer of the final products.* However, the following types of motor vehicles would not be eligible as capital goods:- (i) Motor vehicles for the transport of 10 or more persons, including the driver. (ii) Motor cars and other motor vehicles principally designed for the transport of persons (other than those covered in (i) above), including station wagons and racing cars. (iii) Motor vehicles for transport of

		goods. (iv) Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars.
	Motor vehicles used for providing following taxable services were eligible as capital goods:- (i) Courier services (ii) Tour operator's services (iii) Rent-a-cab scheme operator's services (iv) Cargo handling services (v) Goods transport agency services (vi) Outdoor catering services (vii) Pandal or Shamiana services. Similarly, dumpers and tippers registered in the name of provider of output service for providing following taxable services were also eligible as capital goods:- (i) site preparation & clearance,excavation, earth moving & demolition services (ii) mining services	**Motor vehicles designed for transportation of goods** Motor vehicles including their chassis designed for transportation of goods registered in the name of the service provider, are eligible as capital goods when used for- (i) providing an output service of renting of such motor vehicle; or (ii) transportation of inputs and capital goods used for providing an output service; or (iii) providing an output service of courier agency. **Motor vehicle designed to carry passengers** Further, motor vehicle including their chassis designed to carry passengers, registered in the name of the provider of service, are eligible as capital goods when used for providing output service of- (i) transportation of passengers; or (ii) renting of such motor vehicle; or (iii) imparting motor driving skills.
2.	CENVAT credit of components, spares and accessories of dumpers, tippers and motor vehicles	CENVAT credit of components, spares and accessories of those motor vehicles (including dumpers and tippers) which are capital goods for the assessee is

	was allowed only if dumpers, tippers and motor vehicles were eligible as capital goods.	allowed. (Hence, there is no change from the erstwhile provision, only re-drafting of clause is there).

[Notification No. 18/2012-CE (NT) dated 17.03.2012 as amended by *Notification No. 28/2012 CE (NT) dated 20.06.2012]*

2. Definition of exempted goods under rule 2(d) and proviso to rule 3(1)(i) amended

The definition of exempted goods under rule 2(d) has been amended to include goods in respect of which exemption under entries at serial numbers 67 and 128* of *Notification No. 12/2012-CE dated 17.03.2012* is availed.

Further, proviso to rule 3(1)(i) has also been accordingly amended to provide that CENVAT credit of excise duty paid on aforementioned goods shall not be available.

[Notification No. 21/2012 – CE (N.T.) dated 27.03.2012]

**Note: Entries at serial numbers 67 and 128 cover the following goods:-*

S. No.	*Particulars*
67	*Coal, briquettes, ovoids and similar solid fuels manufactured from coal*
128	*All goods mentioned in Chapter 31 (fertilizers), other than those which are clearly not to be used as fertilisers*

3. New definition of exempted services [Rule 2(e)]

The definition of the exempted services has been aligned with the negative list approach of taxation of services. Thus, clause (e) of rule 2 has been substituted with the following clause:-

Exempted service means a-

(1) taxable service which is exempt from the whole of the service tax leviable thereon; or

(2) service, on which no service tax is leviable under section 66B of the Finance Act; or

(3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;

but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.

[Notification No. 28/2012-CE (NT) dated 20.06.2012]

4. Definition of inputs amended [Rule 2(k)]

Prior to amendment

Earlier, the any goods used for -

(a) construction of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods,

were not eligible as inputs.

However, the aforesaid goods were eligible as inputs when they were used for the provision of any of the following taxable services:-

- Port services
- Other port services
- Airport services
- Construction in respect of commercial or industrial buildings or civil structures
- Construction services in respect of residential complexes
- Works contract services

After the amendment made by *Notification No. 28/2012-CE (NT) dated 20.06.2012*

Now, any goods used for -

(a) construction ***or execution of works contract*** of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods,

are not eligible as inputs.

However, the aforesaid goods will be eligible as inputs when they are used for the provision of any of the following services:-

(i) Service portion in the execution of a works contract

(ii) Construction service as listed under section 66E(b) of the Act.

5. Definition of input service amended [Rule 2(l)]

(a) Exclusion Clause (B)

Prior to amendment

Earlier, following services were not eligible as input service if they relate to a motor vehicle which is NOT a capital goods:-

- General insurance business
- Rent-a-cab scheme operator's services
- Service Stations' services
- Supply of tangible goods services

Hence, the aforesaid services were eligible as input services if they were used for providing specified taxable services for which the credit on motor vehicle was available as capital goods.

After the amendment

The exclusion clause (B) has been substituted by clause (B) and (BA) which provide as follows:-

(i) Services provided by way of renting of a motor vehicle where such motor vehicle is not a capital good are excluded from the definition of the input service [Clause (B)]

Implication

It implies that the credit of the service tax paid on hiring of the motor vehicles, which are eligible as capital goods, is available.

(ii) Service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle where such motor vehicle is not a capital good are excluded from the definition of the input service [Clause (BA)]

Implication

It implies that the credit of the service tax paid on insurance, servicing, repair, maintenance etc. of the motor vehicles which are eligible as capital goods, is available.

Exceptions:-

Credit of the service tax paid on insurance, servicing, repair, maintenance etc. of the motor vehicle, even if not a capital good, is available to the following:-

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person.

Analysis

It can be inferred that:-

(a) A manufacturer of motor vehicle can avail credit of the service tax paid on the in-transit insurance and on the repair and maintenance of the motor vehicles manufactured by him.

(b) A motor insurance company can avail credit of the service tax paid on the re-insurance and third party insurance and repair and maintenance of the motor vehicles insured /re-insured by them.

(b) Exclusion clause (A)

Prior to amendment

Following services would not be eligible as input services if they are used for construction of a building or a civil structure or a part thereof; or laying of foundation or making of structures for support of capital goods:-

- Architect's services
- Port services

- Other port services
- Airport services
- Construction in respect of commercial or industrial buildings or civil structures
- Construction services in respect of residential complexes
- Works contract services

However, if any of the said specified services are used for provision of one or more of these specified services, they shall be eligible as input services.

After the amendment

Following services would not be eligible as input services if they are used for construction or execution of works contract of a building or a civil structure or a part thereof; or laying of foundation or making of structures for support of capital goods:-

(i) Service portion in the execution of a works contract

(ii) Construction service as listed under section 66E(b) of the Act.

However, if works contract services are used for provision of construction services, or vice versa, they shall be eligible as input services.

(c) For the words, "taxable service" in the said defintion, the words "output service" have been substituted.

[Notification No. 18/2012-CE (NT) dated 17.03.2012 as amended by *Notification No. 21/2012–CE (NT) dated 27.03.2012* & *Notification No. 28/2012-CE (NT) dated 20.06.2012]*

6. **New definition of output service [Rule 2(p)]**

The definition of the output service has been aligned with the negative list approach of taxation of services. Thus, clause (p) of rule 2 has been substituted with the following clause:-

Output service **means** any service provided by a provider of service located in the taxable territory

but **shall not include** a service,-

(1) specified in the negative list under section 66D of the Finance Act; or

(2) where the whole of service tax is liable to be paid by the recipient of service.

[Notification No. 28/2012-CE (NT) dated 20.06.2012]

7. **Amendments in rule 3 relating to utilization of CENVAT credit**

(a) **CENVAT credit of the service tax leviable under new charging section 66B available**

Since, with effect from 01.07.2012, service tax under negative list approach is leviable under new charging section 66B, it has been provided that a manufacturer or producer of final products or a provider of output service is allowed to take CENVAT credit of the service tax leviable under section 66B of the Finance Act [Clause (ixb) to rule 3(1) inserted].

[Notification No. 28/2012-CE (NT) dated 20.06.2012]

(b) Service receiver cannot utilize the CENVAT credit

CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient [Explanation to rule 3(4) inserted].

(c) Amount payable on capital goods removed after being used as capital goods or as scrap or waste [Third proviso to 3(5) and rule 3(5A)]

<table>
<tr><th>Prior to amendment</th><th>After the amendment</th></tr>
<tr><td>Capital goods removed after being used as capital goods

Third proviso to 3(5) provided that if the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer/provider of output services shall pay an amount equal to the CENVAT credit taken on the said capital goods reduced by the certain specified percentage points** for each quarter of a year or part thereof from the date of taking the CENVAT credit.</td><td rowspan="2">Capital goods removed after being used as capital goods or as scrap or waste

Third proviso to 3(5) has been omitted and rule 3(5A) has been substituted with the new rule 3(5A) which provides as follows:-

If the capital goods, on which CENVAT credit has been taken, are removed after being used, whether as capital goods or as scrap or waste, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the certain specified percentage points** (same rates as prescribed earlier) for each quarter of a year or part thereof from the date of taking the CENVAT credit.

However, if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.</td></tr>
<tr><td>Capital goods removed as scrap or waste

Rule 3(5A) stipulated that if the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.</td></tr>
</table>

In other words, after the amendment:-

If the capital goods are removed after being used, whether as capital goods or as scrap or waste, the manufacturer/provider of output services shall pay an amount equal to:-

(I) CENVAT Credit taken on the said capital goods reduced by the percentage points** calculated by straight line method for each quarter of a year or part thereof from the date of taking the CEVAT Credit.

or

(II) Duty leviable on transaction value.

whichever is higher.

[Notification No. 18/2012-CE (NT) dated 17.03.2012]

> ***Specified percentage points are as follows:-*
>
> *(a) For computers and computer peripherals:*
>
> *for each quarter in the first year @ 10%*
>
> *for each quarter in the second year @ 8%*
>
> *for each quarter in the third year @5%*
>
> *for each quarter in the fourth and fifth year @1%*
>
> *(b) For capital goods other than computers & computer peripherals @ 2.5% for each quarter.*

(d) Other changes

(i) In sub-rule (1), for the words, "provider of taxable service", wherever they occur, the word "provider of output service" have been substituted.

(ii) In the proviso to sub-rule (5B), for the words "taxable services" the words "output services" have been substituted.

8. Credit of capital goods and inputs to be allowed to service provider without bringing them into premises subject to due documentation [Second proviso to rule 4(1) and fourth proviso to rule 4(2)(a) inserted]

Prior to amendment

Earlier, credit on capital goods and inputs could be taken only after they were brought to the premises of the service provider.

Amendment made by *Notification No. 18/2012-CE (NT) dated 17.03.2012*

Second proviso to rule 4(1) and fourth proviso to rule 4(2)(a) have been newly inserted to allow credit of capital goods and inputs without bringing them into premises of the provider of output service subject to due documentation regarding their delivery and location.

Second proviso to rule 4(1) stipulates as follows:-

CENVAT credit in respect of inputs may be taken by the provider of output service when the inputs are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the inputs.

Fourth proviso to rule 4(2)(a) stipulates as follows:-

CENVAT credit in respect of capital goods may be taken by the provider of output service when the capital goods are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the capital goods.

*Note: Rule 3(1) has also been amended suitably to align it with the aforesaid amendment. Earlier, a provider of output service was allowed to take credit of any input or capital goods **received in the premises** of the provider of output service. Now, credit of any input or capital goods **received by** the provider of output service is available.*

9. **Refund of CENVAT credit [Rule 5]**

Refund scheme prescribed under rule 5 has been simplified to a larger extent by substituting with a new rule. The new scheme does not require a direct correlation between exports and input services/inputs used in such exports. Duties or taxes paid on any goods or services that qualify as inputs/input services will be entitled to be refunded in the ratio of the export turnover to total turnover.

The scheme is as under:-

A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette:

Refund amount is as follows:-

$$\left[\frac{\text{Export turnover of goods} + \text{Export turnover of services}}{\text{Total Turnover}} \times \text{Net CENVAT credit}\right]$$

This rule shall apply to exports made on or after 01.04.2012.

Meaning of various terms

(A) **Refund amount** means the maximum refund that is admissible;

(B) **Net CENVAT credit** means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;

(C) **Export turnover of goods** means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;

(D) **Export turnover of services** means the value of the export service calculated in the following manner, namely:-

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period;

(E) **Total turnover** means sum total of the value of -

(a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;

(b) export turnover of services determined in terms of clause (D) of subrule (1) above and the value of all other services, during the relevant period; and

(c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.

(F) **Export service** means a service which is provided as per rule 6A of the Service Tax Rules 1994.

(G) **Relevant period** means the period for which the claim is filed.

However, the refund may be claimed under the erstwhile rule 5 till 31.03.2013.

Further, no refund of credit shall be allowed if the manufacturer or provider of output service avails the drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Service Tax Rules, 1994 in respect of such tax.

Value of services

For the purposes of this rule, the value of services shall be determined in the same manner as the value for the purposes of sub-rule (3) and (3A) of rule 6 is determined.

[Notification No. 18/2012-CE (NT) dated 17.03.2012 as amended by *Notification No. 28/2012-ST dated 20.06.2012]*

In exercise of power conferred by aforesaid rule, CBEC, vide *Notification No. 27/2012-CE (NT) dated 18.06.2012* provides that refund of CENVAT credit shall be allowed subject to the procedure, safeguards, conditions and limitations as specified below, namely:-

A. Safeguards, conditions and limitations

(a) The manufacturer or provider of output service shall submit not more than one claim of refund under this rule for every quarter.

However, a person exporting goods and service simultaneously, may submit two refund claims one in respect of goods exported and other in respect of the export of services every quarter.

(b) In this notification quarter means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.

(c) The value of goods cleared for export during the quarter shall be the sum total of all the goods cleared by the exporter for exports during the quarter as per the monthly or quarterly return filed by the claimant.

(d) The total value of goods cleared during the quarter shall be the sum total of value of all goods cleared by the claimant during the quarter as per the monthly or quarterly return filed by the claimant.

(e) In respect of the services, for the purpose of computation of total turnover, the value of export services shall be determined in accordance with clause (D) of sub-rule (1) of rule 5 of the said rules.

(f) For the value of all services other than export during the quarter, the time of provision of services shall be determined as per the provisions of the Point of Taxation Rules, 2011.

(g) The amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made or at the time of filing of the refund claim, whichever is less.

(h) The amount that is claimed as refund under rule 5 of the said rules shall be debited by the claimant from his CENVAT credit account at the time of making the claim.

(i) In case the amount of refund sanctioned is less than the amount of refund claimed, then the claimant may take back the credit of the difference between the amount claimed and amount sanctioned.

B. Procedure for filing the refund claim

1. The manufacturer/provider of output service shall submit a duly signed application in Form A to the jurisdictional Assistant Commissioner/Deputy Commissioner of Central Excise (AC/DC) along with the specified documents and enclosures before the expiry of the period specified in section 11B of the Central Excise Act.

2. The refund claim shall be accompanied by the copies of bank realization certificate and a certificate duly signed by the auditor certifying the correctness of refund claimed in respect of export of services.

3. AC/DC, after satisfying himself in respect of the correctness of the claim and the fact that goods cleared for export or services provided have actually been exported, shall allow the refund claim in full or part.

10. Refund of CENVAT credit to service providers providing services taxed on reverse charge basis [New rule 5B inserted]

A provider of service providing services notified under sub-section (2) of section 68 of the Finance Act (services taxed on reverse charge basis) and being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilised CENVAT credit subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette.

[Notification No. 28/2012-CE (NT) dated 20.06.2012]

11. Amendments in rule 6

(i) **Rate for CENVAT credit reversal for exempted goods and services raised from 5% to 6% [Rule 6(3)]**

Prior to amendment

Earlier, as per rule 6(3)(i), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, had the option to pay an amount equal to 5% of the value of the exempted goods and exempted services.

Amendment made by *Notification No. 18/2012-CE (NT) dated 17.03.2012*

Since the rate of excise duty and service tax has been increased from 10% to 12%, the aforesaid rate of CENVAT reversal for exempted goods and services has also been revised from 5% to 6% in rule 6(3)(i).

The rate has been increased to 6% in second proviso to rule 6(3) also.

Reversal of 2% in case of goods transported by rail

However, in case of transportation of goods or passengers by rail, the amount required to be paid under clause (i) shall be an amount equal to 2% of the value of the exempted services *[Notification No. 28/2012-ST dated 20.06.2012]*.

(ii) **In case of life insurance or management of ULIPs, obligation to pay every month an amount equal to 20% of the credit availed has been dispensed [Rule 6(3C)]**

Earlier, in case of services relating to life insurance or management of ULIPs, provider of output service was obligated to pay every month an amount equal to 20% of the credit availed on inputs and input services in that month.

Now, rule 6(3C) has been omitted vide ***Notification No. 18/2012-CE (NT) dated 17.03.2012*** and such obligation has been dispensed with.

Accordingly, reference to rule 6(3C) in Explanation-II and Explanation-III has also been omitted.

(iii) **Definition of Value under explanation I after rule 6(3D) substituted**

Value for the purpose of sub-rules (3) and (3A),—

(a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made thereunder or, as the case may be, the value determined under section 3, 4 or 4A of the Excise Act, read with rules made thereunder;

(b) in the case of a taxable service, when the option available under sub-rules (7),(7A),(7B) or (7C) of rule 6 of the Service Tax Rules, 1994, has been availed, shall be the value on which the rate of service tax under section 66B of the Finance Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed; or

(c) in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten per cent of the cost of goods sold, whichever is more.

(d) in case of trading of securities, shall be the difference between the sale price and the purchase price of the securities traded or 1% of the purchase price of the securities traded, whichever is more.

(e) shall not include the value of services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount

[Notification No. 28/2012-CE (NT) dated 20.06.2012]

(iv) Reference to *Notification No. 6/2006-CE* in rule 6(6) substituted with *Notification No. 12/2012-CE*

In clause (iva) and clause (vii), reference to *Notification No. 6/2006-CE dated 01.03.2006* has been substituted with *Notification No. 12/2012-CE dated 17.03.2012* because the former notification has been superseded by the latter one.

[Notification No. 25/2012-CE (NT) dated 08.05.2012]

(v) New clause (viii) to rule 6(6) inserted

The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable where the excisable goods removed without payment of duty are the supplies made for setting up of solar power generation projects or facilities [Clause (viii) to rule 6(6)].

[Notification No. 25/2012-CE (NT) dated 08.05.2012]

(vi) Sub-rule (6A) substituted with new sub-rules (7) and (8)

Prior to amendment

At present, the provisions of sub-rules (1), (2), (3) and (4) are not applicable in case the taxable services are provided, without payment of service tax, to a Unit in a Special Economic Zone (SEZ) or to a Developer of a Special Economic Zone for their authorised operations.

After the amendment

The aforesaid relaxation has also been extended in case where a service is exported.

For the purpose of this rule, a service provided or agreed to be provided shall not be an exempted service when:-

(a) the service satisfies the conditions specified under rule 6A of the Service Tax Rules, 1994 and the payment for the service is to be received in convertible foreign currency; and

(b) such payment has not been received for a period of six months or such extended period as maybe allowed from time-to-time by the Reserve Bank of India, from the date of provision.

[Notification No. 28/2012-CE (NT) dated 20.06.2012]

(vii) Other changes

S.No.	Sub-rule of rule 6	Amendment
1.	(3A)	In clauses (a), (b), (c) and (h), for the words "taxable" wherever they occur, the words, "output" have been substituted.
2.	(3B)	Reference to taxable service provided under section 65(105)(zm) has been substituted by the services by way of extending deposits, loans or advances.

[Notification No. 28/2012-CE (NT) dated 20.06.2012]

12. Revised manner of distribution of credit by input service distributor [Rule 7]

Rule 7 has been substituted with a new rule which provides as follows:-

The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely:—

(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;

(b) credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;

(c) credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit; and

(d) credit of service tax attributable to service used in more than one unit shall be distributed pro rata on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period.

Point to be noted:-

For the purposes of rule 7,

1. **Unit** includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise.
2. **Total turnover** shall be determined in the same manner as determined under rule 5.
3. **Relevant period:**
   (a) The relevant period shall be the month previous to the month during which the CENVAT credit is distributed.
   (b) In case if any of its unit pays tax or duty on quarterly basis as provided in rule 6 of Service Tax Rules, 1994 or rule 8 of Central Excise Rules, 2002 then the relevant period shall be the quarter previous to the quarter during which the CENVAT credit

is distributed.

(c) In case of an assessee who does not have any total turnover in the said period, the input service distributor shall distribute any credit only after the end of such relevant period wherein the total turnover of its units is available.

[Notification No. 18/2012-CE (NT) dated 17.03.2012 as amended by *Notification No. 28/2012-CE (NT) dated 20.06.2012]*

13. Credit availment allowed on the tax payment challan in case of payment of service tax by ALL service receivers on reverse charge [Rule 9(1)(e)]

Prior to amendment

Earlier rule 9(1)(e) provided that the CENVAT credit may be taken by the manufacturer or the provider of output service or input service distributor on the basis of a challan evidencing payment of service tax by the person liable to pay service tax under sub-clauses (iii), (iv), (v) and (vii) of rule 2(1)(d) of the Service Tax Rules, 1994. Hence, earlier, NOT All service receivers on reverse charge were included under this clause.

Amendment made by *Notification No. 18/2012-CE (NT) dated 17.03.2012*

Rule 9(1)(e) has been amended to allow availment of credit on the tax payment challan in case of payment of service tax by ALL service receivers on reverse charge.

Now, it reads under:-

CENVAT credit may be taken by the manufacturer or the provider of output service or input service distributor on the basis of a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax.

14. Transfer of CENVAT credit of SAD from one factory to another [New rule 10A inserted]

A manufacturer or producer of final products, having more than one registered premises, for each of which registration under the Central Excise Rules, 2002 has been obtained on the basis of a common Permanent Account Number under the Income-tax Act, 1961, may transfer unutilised CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises at the end of a quarter, to his other registered premises by—

(i) making an entry for such transfer in the documents maintained under rule 9;

(ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i), and such recipient premises may take CENVAT credit on the basis of the transfer challan.

However, nothing contained in this sub-rule shall apply if the transferring and recipient registered premises are availing the benefit of certain specified notifications.

The manufacturer or producer shall submit the monthly return, as specified under these rules, separately in respect of transferring and recipient registered premises.

[Notification No. 18/2012-CE (NT) dated 17.03.2012]

15. Certain procedure and facilities for LTU not applicable to unit availing exemption under *Notification No. 01/2010-CE* [Rule 12A]

Rule 12A(1) stipulates that a Large Tax Payer can transfer inputs and capital goods from any of his registered premises to his other registered premises for further use in the manufacture or production of final products in recipient premises. Third proviso to rule 12A(1) has been amended to provide that if the recipient premises is availing benefit of *Notification No.01/2010-CE dated 06.02.2010*, it will not get the benefit mentioned in this sub-rule.

Rule 12A(4) stipulates that a Large Tax Payer can transfer, CENVAT credit available with one of his registered manufacturing premises or premises providing taxable service to his other such registered premises. Fourth proviso to rule 12A(4) has been amended to provide that if the recipient premises is availing benefit of *Notification No.01/2010-CE dated 06.02.2010*, it will not get the benefit mentioned in this sub-rule.

[Notification No. 18/2012-CE (NT) dated 17.03.2012]

16. Rule 14 amended

Prior to amendment

Earlier, interest under rule 14 was payable in case where the CENVAT credit has been taken *OR* utilized wrongly or has been erroneously refunded.

After the amendment

The Supreme Court, in case of *UOI v. Ind-Swift Laboratories Ltd. 2011 (265) E.L.T. 3 (S.C.)* held that if the provision of rule 14 is read as a whole, there is no reason to read the word "OR" in between the expressions 'taken or utilized wrongly or has been erroneously refunded' as the word "AND". On the happening of any of the three circumstances, such credit becomes recoverable along with interest. However, levying interest on wrong CENVAT credit taken, even though not utilized, seem to be unjustified.

Consequently, rule 14 has been amended to provide that interest is payable in either of the following two cases:-

(i) CENVAT credit has been taken *AND* utilized wrongly

or

(ii) CENVAT credit has been erroneously refunded.

[Notification No. 18/2012-CE (NT) dated 17.03.2012]

17. Rule 12 amended

In rule 12, for the words "notwithstanding anything contained in these rules", the words "notwithstanding anything contained in these rules but subject to proviso to rule 3(1)(i)" has been substituted.

[Notification No. 01/2012-CE (N.T.) dated 09.02.2012]

18. Other changes

S.No.	Rule	Amendment
1.	Proviso to 9(2)	For the words, "provider of taxable service", the words "provider of output service" have been substituted.
2.	13	For the words "taxable service" wherever they occur, the words, "output service" have been substituted.

[Notification No. 28/2012-CE (NT) dated 20.06.2012]

II. AMENDMENTS IN THE CENTRAL EXCISE RULES, 2002

1. Option to authorize job-worker to pay duty in case of readymade garments and made-up articles of textiles withdrawn [Rule 4(1A)]

In the garment and made up industry, goods are being manufactured from several job-workers. The person getting the goods manufactured on his behalf may or may not, himself, possess any manufacturing facility.

Central Excise Rules were amended to incorporate sub-rule (1A) in rule 4 vide *Notification No. 4/2011 CE (NT) dated 01.03.2011* to prescribe that in case of readymade garments and made-up articles of textiles falling under Chapter 61 or 62 or 63 of the First Schedule to the Tariff Act, the liability to pay duty and comply with central excise procedures would be on the person on whose behalf the goods are manufactured by job-workers. Alternatively, an option was given to merchant manufacturer to authorize the job-worker to obtain registration and comply with all formalities of Central Excise including payment of duty.

Sub-rule (1A) has been further amended to withdraw the option available to merchant manufacturer to authorize the job-worker to pay duty and comply with all the procedures. Therefore, now only the merchant manufacturer can pay duty in such cases.

In a case where any merchant manufacturer has already authorized its job-worker to pay the duty under the provisions of sub-rule (1A) as it stood prior to the publication of this notification, he will have to obtain registration and comply with other related provisions within a period of 30 days from 28.07.2011.

[Notification No. 19/2011 CE (NT) dated 28.07.2011]

2. Rule 12AA of the CENVAT Credit Rules, 2004 renumbered as 12AAA and rule 12CC of the Central Excise Rules, 2002 renumbered as 12CCC

Rule 12AA of the CENVAT Credit Rules, 2004 empowering Central Government to impose restriction on utilization of CENVAT credit in certain type of case has been substituted with the new rule 12AAA. The provisions of the erstwhile rule 12AA and new rule 12AAA are same.

Further, rule 12CC of the Central Excise Rules, 2002 empowering Central Government to impose restriction in certain type of case has been substituted with the new rule 12CCC. The provisions of the erstwhile rule 12CC and new rule 12CCC are same.

[Notification No. 3& 4/2012-CE (NT) both dated 12.02.2012]

Facilities to be withdrawn and restrictions to be imposed in certain types of cases for manufacturer, first stage and second stage dealer or exporter

Consequently, *Notification No. 32/2006-CE (NT) dated 30.12.2006* issued under erstwhile rules has also been superseded by ***Notification No. 5/2012-CE (NT) dated 12.03.2012***.

A comparison between the erstwhile notification and the new notification is outlined as below:

S.No.	Particulars	*Notification No. 5/2012*
1.	Specified offences	One more offence added to the existing list of offences :- Removal of inputs as such on which CENVAT credit has been taken, without paying an amount equal to credit availed on such inputs in terms of rule 3(5) of the CENVAT Credit Rules, 2004.
2.	Facilities that would be withdrawn and restrictions that would be imposed on the commission of specified offences	Two more restrictions added:- (i) The assessee may be required to maintain records of receipt, disposal, consumption and inventory of the *principal inputs*** on which CENVAT credit has not been taken; (ii) The assessee may be required to intimate the Superintendent of Central Excise regarding receipt of principal inputs in the factory on which CENVAT credit has or has not been taken, within a period specified in the order and the said inputs shall be made available for verification upto the period specified in the order.
3.	Monetary limit	No change
4.	Procedure	No change

***"Principal inputs", means any input which is used in the manufacture of final products where the cost of such input constitutes not less that 10% of the total cost of raw materials for the manufacture of unit quantity of a given final products.*

3. Option available to job-worker to pay duty and comply with all the procedures in case of article of jewellery or other articles of precious metals withdrawn [Rule 12AA of the Central Excise Rules, 2002]

As per rule 12AA of the Central Excise Rules, 2002, in case of article of jewellery or other articles of precious metals falling under Heading 7113 or 7114 manufactured on job-work basis, merchant manufacturer would obtain registration, maintain accounts, pay duty leviable on such goods and comply with all the relevant provisions of these rules, as if he is an assessee. However, proviso to sub-rule (1) to rule 12AA provided an option available to job-worker to pay duty and comply with all the procedures.

However, now proviso to sub-rule (1) to rule 12AA has been omitted to withdraw the option available to job-worker to pay duty and comply with all the procedures. Therefore, now only the merchant manufacturer can pay duty in such cases.

Further, explanation 2 to rule 12AA explaining the meaning of article of jewellery has also been omitted.

[Notification No. 8/2012-CE (NT) dated 17.03.2012]

4. Explanation to rule 11 amended

In explanation to rule 11, "CENVAT Credit Rules, 2002" has been substituted with "CENVAT Credit Rules, 2004".

[Notification No.22/2012-CE (N.T.) dated 30.03.2012]

5. Documents to be produced on demand under rule 22(3) to Cost Accountant/ Chartered Accountant as nominated under section 14A/14AA also

Prior to amendment

Earlier under rule 22(3), assessee, first stage dealer and second stage dealer were required to produce, on demand, the records maintained by him in respect of accounting of transactions, all financial statements, etc. as required under rule 22(2), cost audit reports and income tax audit reports to the following persons:-

(i) Officer empowered under sub-rule (1) or

(ii) Audit party deputed by the Commissioner/Comptroller and Auditor General of India

for the scrutiny by the officer/audit party.

After the amendment

Now, the said documents need to be produced on demand, to the following persons:-

(i) Officer empowered under sub-rule (1) or

(ii) Audit party deputed by the Commissioner/Comptroller and Auditor General of India

(iii) Cost Accountant/ Chartered Accountant as nominated under section 14A/14AA of the Act

for the scrutiny by the officer/audit party/cost accountant/chartered accountant *within the time-limit specified by them*.

[Notification No.22/2012-CE (N.T.) dated 30.03.2012]

6. Fourth proviso to rule 12(1) amended

Prior to amendment

Where an assessee is availing the exemption under *Notification No. 1/2011-CE dated 01.03.2011* and does not manufacture any other excisable goods, he shall file a **quarterly return** in the specified form, of production and removal of goods and other relevant particulars, within 10 days after the close of the quarter to which the return relates [Fourth proviso to rule 12(1)].

After the amendment

Fourth proviso to rule 12(1) has been amended to extend the aforesaid relaxation of filing the quarterly return to an assessee availing exemption in respect of goods falling under Sl.No.67, 128, 199(I) and 200(I) [mentioned below], of *Notification No. 12/2012-CE dated 17.03.2012*.

S. No.	*Particulars*
67	*Coal, briquettes, ovoids and similar solid fuels manufactured from coal*
128	*All goods mentioned in Chapter 31 (fertilizers), other than those which are clearly not to be used as fertilisers*
199(I)	*Articles of jewellery under heading 7113*
200(I)	*Articles of goldsmiths' or silversmiths' wares of precious metal or of metal clad with precious metal, bearing a brand name under heading 7114*

[Notification No. 23/2012-CE (N.T.) dated 18.04.2012]

7. E-Filing of Excise Returns and Statements mandatory for all assessees

Central Excise Rules, 2002 have been amended to provide that the returns and statements prescribed under rule 12 will have to be filed electronically by all the assessees irrespective of the duty paid in the preceding year. Monthly Return for production and removal of goods (ER-1), Quarterly Return (ER-3), Annual Financial Information Statement (ER-4) are some of the returns and statements prescribed under Rule 12.

Assessees availing exemption under *Notification No. 49/2003 CE dated the 10.06.2003 or Notification No. 50/2003 CE dated 10.06.2003* have been exempted from the requirement of e-filing of the returns prescribed under rule 12. *Notification No. 49/2003 CE dated 10.06.2003* exempts certain goods when cleared from a unit in the State of Uttaranchal or Himachal Pradesh. *Notification No. 50/2003 CE dated 10.06.2003* exempts certain goods when cleared from a unit located in the Industrial Growth Centre or Industrial Infrastructure Development Centre or Export Promotion Industrial Park or Industrial Estate or Industrial Area or Commercial Estate or Scheme Area

Hundred per cent Export Oriented Undertakings will also be required to submit the monthly excise return (ER-2) electronically irrespective of the duty paid in the preceding year.

Similar amendment has been made in CENVAT Credit Rules, 2004 to the effect that the assessees will now have to file the annual declaration in respect of principal inputs (ER-5) and the monthly return of information relating to principal inputs (ER-6) electronically irrespective of the duty paid in the preceding year.

The amendments have become effective from 01.10.2011.

[Notification No. 21 & 22/2011 CE (NT) both dated 14.09.2011]

III. OTHER AMENDMENTS

1. CBEC notifies new Form ER 1 and ER-3

The Central Board of Excise and Customs has notified new Form ER-1 and Form ER-3.

Form ER-1 is the monthly return for production and removal of goods and other relevant particulars and CENVAT credit.

Form ER-3 is the quarterly return for production and removal of goods and other relevant particulars and CENVAT credit, by an assessee eligible to avail of the exemption under a notification based on the value of clearances in a financial year.

The new forms have been effective from 1st October, 2011. SSI unit is required to file return in Form ER-3 for the quarter beginning from the 1st October, 2011 and ending with the 31st December, 2011.

[Notification No. 16/2011- CE (NT) dated 18.07.2011 as amended by Notification No. 20/2011 CE (NT) dated 13.09.2011 & Notification No. 31/2011-CE (NT) dated 30.12.2011 and Notification No. 12/2012-CE (NT) dated 17.03.2012]

2. Application for registering a new factory after opting as large taxpayer to be made to Assistant Commissioner /Deputy Commissioner in place of Chief Commissioner

Notification No. 20/2006 - CE (N.T.) dated 30.09.2006 specifies the conditions to be satisfied and procedures to be followed by a person to be eligible to opt as large taxpayer. One of the conditions laid down by the said notification provided that where a new factory or service provider, input credit distributor or first or second stage dealer becomes liable to be registered, after opting as large taxpayer, the application for such new registration ought to be made before the Chief Commissioner of Central Excise, Large Taxpayer Unit.

The said condition has been amended so as to enable the submission of applications of such new registrations before the Assistant Commissioner /Deputy Commissioner of Central Excise, Large Taxpayer Unit, in case of registration under the Central Excise Act, 1944 and the Superintendent, Large Taxpayer Unit, in case of registration under the service tax, as the case may be.

[Notification No. 17/2011- CE (NT) dated 18.07.2011]

3. Export procedures for Nepal amended

With effect from 01.03.2012, the procedures prescribed for export under claim for rebate vide *Notification No. 19/2004 CE (NT) dated 06.09.2004* and export without payment of duty under bond vide *Notifications Nos. 42 to 44/2001 CE (NT) all dated 26.06.2001* would apply to Nepal as well. This has been done in view of the revised treaty between India and Nepal. CBEC has issued *Notifications Nos. 24-29 CE (NT) all dated*

05.12.2011 to give effect to this amendment.

As per the earlier provisions, procedures prescribed for export under claim for rebate vide *Notification No. 19/2004 CE (NT) dated 06.09.2004* and export without payment of duty under bond vide *Notifications Nos. 42 to 44/2001 CE (NT) all dated 26.06.2001* applied *to countries other than Nepal and Bhutan*. For Nepal and Bhutan separate procedures were prescribed for export under claim for rebate vide *Notification No. 20/2004 CE (NT) dated 06.09.2004* and export without payment of duty under bond vide *Notification No. 45/2001 CE (NT) dated 26.06.2001*.

[Notifications Nos. 24-29 CE (NT) all dated 05.12.2011 and *Notification No. 02/2012-CE(NT) dated 22.02.2012]*

4. Section 11AB substituted with section 11AA

Finance Act, 2011 had substituted erstwhile sections 11AA and 11AB with a new section 11AA. Hence, reference to erstwhile section 11AB at the following places has been replaced with section 11AA:-

S.No.	Rules/Notification No.s	
1.	Central Excise Rules, 2002	Rule 8(3)
		Rule 8A(3)
		Rule 12BB
		Rule 7(4)
2.	Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001	Rule 6
3.	Notification No. 45/2001-CE (NT) dated 26.06.2001	
4.	Notification No. 31/2007-CE (NT) dated 02.08.2007	
5.	Notification No. 42/2001-CE (NT) dated 26.06.2001	

[Notification No. 8,13,14,15 & 16/2012-CE (NT) all dated 17.03.2012 & Notification No.22/2012-CE (N.T.) dated 30.03.2012]

5. In respect of goods received at concessional rate of duty, instead of monthly return quarterly return needs to be filed

Rule 5 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 has been amended to, *inter alia*, provide that the manufacturer, receiving subject goods, shall submit a quarterly return instead of a monthly return.

[Notification No. 13/2012-CE (NT) dated 17.03.2012]

IV. CLARIFICATIONS

1. Arrears of duty under section 11A can be paid by utilizing the CENVAT credit which

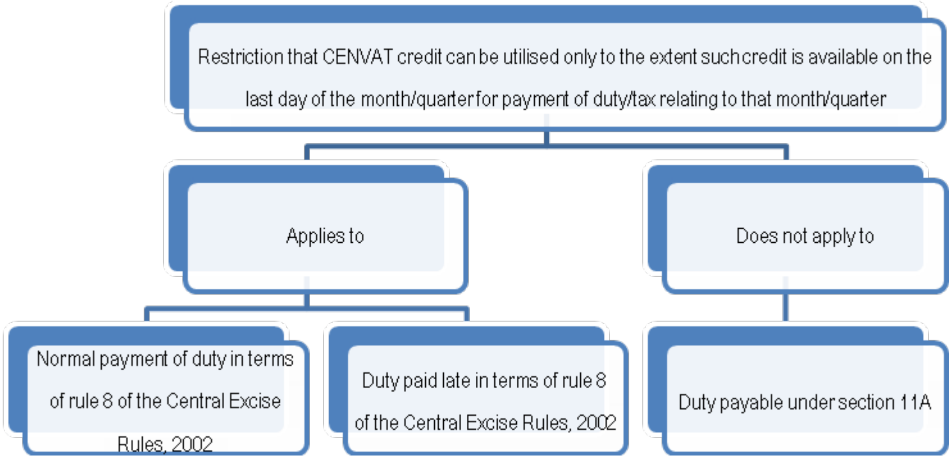
has accrued subsequent to the period to which the arrears pertained.

Query:

As per the proviso to rule 3(4) of the CENVAT Credit Rules, 2004, while paying duty of excise or service tax, as the case may be, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be.

In light of the aforesaid provisions, whether the arrears of duty can be paid by utilizing the CENVAT credit which has accrued subsequent to the period to which the arrears pertained.

Clarification:



CBEC has clarified that a harmonious reading of rule 8 of the Central Excise Rules, 2002 and first proviso to rule 3(4) of the CENVAT Credit Rules, 2004 indicates that the restriction with regard to the utilization of CENVAT credit is relating to the normal payment of duty in terms of rule 8 of the Central Excise Rules, 2002, where duty for a particular month or quarter is to be discharged by the 5th of the next month or duty paid late in terms of rule 8.

Unlike rule 8 where the duty is paid after self-determination, under section 11A, duty is determined by the Central Excise Officer and the payment is mandated after such determination. Further, there is no time limit prescribed under section 11A i.e., monthly or quarterly unlike the date prescribed under rule 8. Therefore, the restriction on the utilization of the CENVAT credit is not applicable to the demands confirmed under Section 11A of the Central Excise Act, 1944.

[Circular No. 962/05/2012-CX dated 28.03.2012]

2. Classification of structural components of Boiler and admissibility of CENVAT credit on these structural components

CBEC issued ***Circular No 964/07/2012-CX dated 02.04.2012*** wherein it was clarified that structural components of Boiler which are essentially parts of the boiler would be classified under heading 8402 and CENVAT credit would be admissible in respect of such structural components/ parts (of the Boiler) for the reason that they are not used for laying of foundation or making of structures for support of capital goods.

In view of the circular, doubts arose as to whether CENVAT credit will be available on structural components used for the support of the Capital goods.

Hence, it has been clarified by the CBEC vide ***Circular No. 966/09/2012 CX dated 18.05.2012*** that as per rule 2(k) of the CENVAT Credit Rules, 2004, CENVAT credit is available in respect of structural components if used as parts of Boiler. However, CENVAT credit would not be available in respect of structural components used for laying of foundation or making of structures for support of capital goods/ Boiler.

Whether a particular structural component is a part of the Boiler or a component to make structure for supporting the Boiler is a question of facts and needs to be examined on a case to case basis, depending on the nature and use of the said structural component as per the existing legal provisions and judicial pronouncements on the subject.

3. Monetary limits for filing appeals by the Department before CESTAT/High Courts and Supreme Court revised by CBEC

With effect from 01.09.2011, the Central Board of Excise & Customs has revised monetary limits below which appeal should not be filed in the Tribunal, High Court and the Supreme Court as under:

Sl.No.	Appellate Forum	Monetary limit
1.	CESTAT	₹ 5,00,000/-
2.	High Courts	₹ 10,00,000/-
3.	Supreme Court	₹ 25,00,000/-

The Board has clarified that for ascertaining whether a matter would be covered within or without the aforementioned limits, the determinative element would be duty/tax under dispute e.g., in a case involving duty of ₹ 5 lakh or below with equal penalty and interest, as the case may be, no appeal can be filed in the Tribunal. Similarly, no appeal would be filed in the High Court if the duty involved does not exceed ₹ 10 lakh with or without penalty and interest.

Also, the Commissionerates have been instructed not to send proposal to the Board for filing Civil Appeal or Special Leave Petition in the Supreme Court in a case involving duty up to ₹ 25 lakh, whether with penalty and interest or otherwise. However, where the imposition of penalty is the subject matter of dispute and the said penalty exceeds the limit prescribed, then the matter could be litigated further. Similarly, where the subject matter of dispute is the demand of interest and the amount of interest exceeds the prescribed limit, then the matter may require further litigation.

Adverse judgments relating to the following would have to be contested irrespective of the amount involved:

(a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.

(b) Where Notification/ Instruction/ Order or Circular has been held illegal or ultra vires.

Following queries related with application of monetary limits have been clarified by the Board as under:

Issue: Whether duty involved mentioned in the Instruction dated 20.10.2010 refers to duty outstanding to be collected or the total duty demanded for deciding the threshold limit prescribed therein?

Clarification: In a case where a part of the duty demanded is not disputed and is paid and the outstanding duty under dispute is less than the monetary limit prescribed by the Board, no appeal shall be filed. In other words, monetary limit shall apply on the disputed duty and not on the total duty demanded in a case.

Issue: Whether monetary limits would apply to cases of refund?

Clarification: It is clarified that the monetary limits being prescribed by the Board would apply to cases of refund as well.

Issue: Whether applications being filed by the Department before office of Joint Secretary (Revision Application) would also be covered under the stipulation of monetary limits?

Clarification: The limit specified herein will not be applicable to application filed before the Joint Secretary (Revision Application).

Issue: Whether exclusion of audit objections mentioned in para 6(c) of Instruction dated 20.10.2010 would cover internal audit objection cases also or whether they would be limited to cases of revenue audit alone?

Clarification: The intention was to apply the exclusion clause mentioned at para 6(c) only to disputes arising out of revenue audit objections accepted by the Department. It has now been decided to delete the said exclusion clause. Therefore, in all cases of audit objections accepted by the Department, while protective demands may continue to be issued but the same would be subjected to the monetary limits for filing appeal in the Tribunal, High Courts and the Supreme Court.

[F.No.390/Misc./163/2010-JC dated 17.08.2011]

4. Power of Adjudication Revised for Additional Commissioners

CBEC has revised the monetary limit for adjudication for Additional Commissioners under section 11A and section 33 of the Central Excise Act, 1944. They can now adjudicate the cases with a monetary limit from above ₹ 5 Lac and upto ₹ 50 Lac. Earlier the limit was above ₹ 20 Lac and upto ₹ 50 Lac. As a result of this amendment a uniform monetary limit i.e., above ₹ 5 Lac & upto ₹ 50 Lac has been fixed for both Additional Commissioners and the Joint Commissioners.

[Circular No. 957/18/2011-CX-3 dated 25.10.2011]

B. SERVICE TAX

I. NEW EXEMPTIONS/AMENDMENTS IN/WITHDRAWAL OF EXISTING EXEMPTIONS

1. Rate of service tax restored to 12%

As per section 66, the charging section under earlier regime, rate of service tax was 12% of the value of taxable services. However, the rate of service tax was reduced to 10% vide *Notification No. 8/2009 ST dated 24.02.2009.*

With effect from 01.04.2012, ***Notification No. 02/2012-ST dated 17.03.2012*** rescinded the said notification and the rate of service tax was restored to 12% for the period between 01.04.2012 to 30.06.2012.

With effect from 01.07.2012, new charging section, section 66B has come into effect. The rate of service tax is 12% as per the new charging section also.

2. Rescission of the earlier Notifications

With the introduction of negative list approach of taxation of services, a large number of earlier notifications which were either not in line with the new provisions or which have been subsumed in mega exemption or abatement notification or a new notification has been issued, have been rescinded *vide* ***Notification No. 34/2012-ST dated 20.06.2012.*** The rescinded notifications have been tabulated as under:-

S.No.	Notification No.	Description of the Notification
1.	45/2011-ST dated 12-09-2011	Exemption to the taxable services provided to any business entity, by an arbitral tribunal, in respect of arbitration.
2.	33/2011-ST dated 25-04-2011	Exemption to preschool coaching and training and coaching or training relating to educational qualifications that are recognized by law.
3.	31/2011-ST dated 25-04-2011	Exemption to accommodation services when the declared tariff for providing of such accommodation is less than ₹ 1000 per day
4.	30/2011-ST dated 25-04-2011	Exemption to health services
5.	11/2011-ST dated 01-03-2011	Exemption to works contract service provided wholly within a port/other port for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways.
6.	10/2011-ST dated 01-03-2011	Exemption to works contract service

		provided wholly within an airport and classified under erstwhile section 65(105)(zzm)
7.	09/2011-ST dated 01.03.2011	Exemption to the transport of goods by air service to the extent air freight is included in the customs value of goods.
8.	08/2011-ST dated 01-03-2011	Exemption to services of transportation of goods by air/road/rail provided to a person located in India when the goods are transported from a place outside India to a destination outside India
9.	07/2011-ST dated 01-03-2011	Exemption to the general insurance service provided under "Rashtriya Swasthya Bima Yojna"
10.	06/2011-ST dated 01-03-2011	Exemption to works contract service rendered for carrying out construction services under Jawaharlal Nehru Urban Renewable Mission (JNURM) and Rajiv Awaas Yojana
11.	05/2011-ST dated 01-03-2011	Exemption to business exhibition held outside India
12.	58/2010-ST dated 21-12-2010	Exemption to the general insurance business provided under the Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme
13.	53/2010-ST dated 21.12.2010	Exemption to packaged/canned software from service tax on specified taxable service when excise/customs duty is paid
14.	50/2010-ST dated 08-10-2010	Exemption to persons marketing lottery tickets to authorized Distributors/Selling Agents opting for the optional Composition Scheme
15.	47/2010-ST dated 03-09-2010	Exemption to outdoor Catering for Mid-Day Meal Scheme
16.	42/2010-ST dated 28-06-2010	Exemption to commercial or Industrial Construction provided wholly within the airport

17.	41/2010-ST dated 28-06-2010	Exemptions to cargo handling agency and storage or warehouse keeper in respect of agricultural produce, air transport of export goods and site formation and clearance, excavation and earthmoving and demolition and such other similar activities when provided wholly within port/airport
18.	38/2010-ST dated 28-06-2010	Exemption to commercial or industrial construction of wharves, quays, docks, stages, jetties, piers and railways within the port
19.	32/2010-ST dated 22-06-2010	Exemption to taxable services provided for distribution of electricity
20.	31/2010-ST dated 22-06-2010	Exemption to specified services provided within a port or an airport
21.	30/2010-ST dated 22-06-2010	Exemption to the sponsorship services provided for tournaments/ championships organised by specified bodies
22.	28/2010-ST dated 22-06-2010	Exemption to construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana
23.	27/2010-ST dated 22-06-2010	Exemption to air journeys originating/terminating in North-Eastern States
24.	25/2010-ST dated 22-06-2010	Exemption to air transport of persons in transit in the course of international journey who have not passed through immigration
25.	23/2010-ST dated 29-04-2010	Exemption to the commercial training or coaching centre services provided in relation to "Modular Employable Skill courses"
26.	13/2010-ST dated 27-02-2010	Exemption provided to Indian News Agencies subject to specified conditions
27.	12/2010-ST dated 27-02-2010	Exemption to certain services provided in relation to erection, commissioning

		or installation
28.	11/2010-St dated 27-02-2010	Exemption to transmission of electricity
29.	10/2010-ST dated 27-02-2010	Exemption to Central and State Seed Testing Laboratories, and Central and State Seed Certification Agencies
30.	08/2010-ST dated 27-02-2010	Exemption provided to transport of specified goods by rail
31.	42/2009-ST dated 12-11-2009	Exemption to the manufacture of parts of cycles or sewing machines in relation to specified processes subject to specified conditions
32.	41/2009-ST dated 23-10-2009	Exemption to service in relation to execution of a works contract in respect of canals, other than those primarily used for the purposes of commerce or industry
33.	39/2009-ST dated 23-09-2009	Exemption to value of inputs used for providing business auxiliary service during manufacture/processing of alcoholic beverages
34.	32/2009-ST dated 1-09-2009	Exemption to taxable service provided in relation to manufacture of specified goods charged to excise duty under Medicinal and Toilet Preparations (Excise Duties) Act, 1955.
35.	31/2009-ST dated 1-09-2009	Exemption to the business auxiliary service provided by the sub-broker to a stock-broker
36.	30/2009-ST dated 31-08-2009	Exemption to certain specified goods transported through national waterway, inland water and coastal shipping.
37.	24/2009-ST dated 27-7-2009	Exemption to management, maintenance or repair of roads service.
38.	20/2009-ST dated 07-07-2009	Exemption to tour operators with contract carriage permit for specified services.
39.	19/2009-ST dated 07-07-2009	Exemption to Money changer services provided in relation to sale and

		purchase of foreign currency when such services are provided to any bank, including a bank located outside India, or money changer, by any other bank or money changer.
40.	01/2009-ST dated 05-01-2009	Exemption to specified taxable services provided to Goods Transport Agency for use in transport of goods by road
41.	14/2008-ST dated 01-03-2008	Exemption to services provided by a person located outside India in relation to booking of accommodation for a customer located outside India in a hotel in India
42.	13/2008-ST dated 01-03-2008	Exemption to a goods transport agency of 25% of the gross amount charged for providing the said taxable service
43.	34/2007-ST dated 23-05-2007	Exemption to services provided for the personal use or the use of the family members of diplomatic agents or career consular officers posted in a foreign diplomatic mission or consular post in India
44.	33/2007-ST dated 23-05-2007	Exemption to services provided for the official use of a foreign diplomatic mission or consular post in India
45.	25/2007-ST dated 22-05-2007	Exemption to commercial or industrial construction services and works contract services provided to any person by any other person in relation to construction of port or other port
46.	12/2007-ST dated 01-03-2007	Exemption to services provided in relation to delivery of contents of a cinema in digitized encrypted form
47.	11/2007-ST dated 01-03-2007	Exemption to technical testing and analysis services of newly developed drugs on human participants by CRO
48.	10/2007-ST dated 01-03-2007	Exemption to taxable Services provided by entrepreneur in Technology Business Incubator or Science and Technology

		Entrepreneurship Park (STEP)
49.	08/2007-ST dated 01-03-2007	Exemption to service provided to an individual member by a resident welfare association in case total consideration received from such member does not exceed ` 3,000 per month
50.	22/2006-ST dated 31-05-2006	Exemption to services provided by or to the Reserve Bank of India
51.	06/2006-ST dated 01-03-2006	Exemption to testing and analysis of water quality by Government owned State/ District level laboratory
52.	04/2006-ST dated 01-03-2006	Exemption to financial leasing services including equipment leasing and hire purchase equivalent to service tax calculated on 90% of interest
53.	01/2006-ST dated 01-03-2006	Abatement granted to various specified services
54.	29/2005-ST dated 15-07-2005	Exemption to service provided to any person, by an aircraft operator, in relation to transport of export goods by aircraft
55.	21/2005-ST dated 07-06-2005	Exemption to job work in relation to manufacture of diamonds, gem stones and jewellery
56.	17/2005-ST dated 07-06-2005	Exemption to aforesaid services provided for construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, ports or other ports
57.	08/2005-ST dated 01-03-2005	Exemption to job-worker for the goods produced on behalf of client
58.	34/2004-ST dated 03-12-2004	Exemption to consignments transported by road when gross amount charged is upto ₹ 1,500/- or when gross amount charged for an individual consignment is upto ₹ 750/-
59.	33/2004-ST dated 3-12-2004	Exemption to transport of fruits, vegetables, eggs, food grains, pulses or milk by road in a goods carriage
60.	29/2004-ST dated 22-09-2004	Exemption for providing services of

		overdraft, cash credit or discounting of bills on value of interest or discount
61.	24/2004-ST dated 10-09-2004	Exemption to commercial training or coaching services provided by vocational/recreational training institute
62.	17/2004-ST dated 10-09-2004	Exemption from service tax on holder of intellectual property right of cess paid towards the import of technology under the provisions of section 3 of the Research and Development Cess Act
63.	14/2004-ST dated 10-09-2004	Exemption to specified services in relation to business auxiliary service
64.	13/2004-ST dated 10-09-2004	Exemption to banking company or a financial institution, providing service in relation to collection of duties or taxes levied by Government
65.	16/2003-ST dated 11-07-2003	Exemption to service provided by Insurer of General Insurance to Policy Holder under Universal Health Insurance Scheme
66.	14/2003-ST dated 20-06-2003	Exemption to the use of the precincts of a religious place as a mandap
67.	13/2003-ST dated 20-06-2003	Exemption to commission agent in relation to sale or purchase of agricultural produce
68.	12/2003-ST dated 20-06-2003	Exemption to the value of the goods and materials sold by service provider to recipient of service subject to the documentary evidence being available
69.	10/2003-ST dated 20-06-2003	Exemption to commercial training or coaching services forming an essential part of a course or curriculum of any other institute or establishment
70.	18/2002-ST dated 16-12-2002	Exemption from service tax on consulting engineering services of cess paid on transfer of technology under the Research and Development Cess Act, 1986
71.	16/2002-ST dated 02-08-2002	Exemption to all services provided to

		United Nations or International Organisation
72.	10/2002-ST dated 01-08-2002	Exemption to cargo handling agency service provided in relation to agricultural produce or goods intended to be stored in a cold storage
73.	4/2000-ST dated 31-07-2000	Exemption to cattle insurance services provided under the Central Sector Scheme on Cattle Insurance
74.	3/2000-ST dated 06-07-2000	Exemption to National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana) or the Pilot Scheme on Seed Crop Insurance
75.	2/2000-ST dated 01-03-2000	Exemption to mechanised slaughter house in relation to the slaughtering of bovine animals
76.	22/1997-ST dated 26-06-1997	Exemption from service tax on the value of taxable service which is in excess of the commission received by the air travel agent from the airline for booking of passage for travel by air
77.	12/1997-ST dated 14-02-1997	Exemption to Jan Arogya Bima Policy
78.	03/1994-ST dated 30-06-1994	Exemption to following insurance schemes:- (1) Personal Accident Social Security and Hut Insurance Scheme. (2) Comprehensive Crop Insurance Scheme (3) Cattle Insurance under Integrated Rural Development Programme (4) Scheme for Insurance of Tribals (5) Janata Personal Accident Policy and Gramin Accident Policy (6) Group Personal Accident Policy for Self-Employed Women (7) Agricultural Pumpset and Failed Well Insurance (8) Premia collected on insurance of export of goods from India and export credit insurance (9) Small transactions involving

		premium of less than Rs. 50 except motor insurance

3. Refund of service tax paid on the services used in the export of the goods

With the introduction of the negative list approach with effect from July 1, 2012, notifications granting exemption to the exporters of goods have also been suitably amended as under:

A. *Notification No. 18/2009-ST dated 07.07.2009* rescinded-Refund of service tax where service tax is paid by exporter under reverse charge mechanism

Notification No. 18/2009-ST dated 07.07.2009, providing exemption to the Goods Transport Agency service and Foreign Commission Agent service received by exporters and used in export of goods, has been rescinded by *Notification No. 31/2012 dated 20.06.2012*. Further, *Notification No. 42/2012-ST dated 29.06.2012* has been issued.

The exemption which was earlier available to both goods transport agency service and the foreign commission agent service used for export of goods under the same Notification (NN 18/2009) has now been provided under two separate notifications. NN 31/2012 provides exemption to goods transport agency service and NN 42/2012 provides exemption to foreign commission agent service.

A comparative analysis of the erstwhile notification and the two newly issued notifications is as follows:-

Notification No.	Exemption granted to	Conditions	Procedure
18/2009-ST dated 07.07.2009	both goods transport agency (GTA) service and the foreign commission agent (FCA) service used for export of goods	Prescribed conditions for both GTA and FCA service.	Prescribed the procedure for both GTA and FCA service.
31/2012 dated 20.06.2012	goods transport agency service used for export of goods	All conditions for GTA service are same.	Procedure is the same.
42/2012-ST dated 29.06.2012	foreign commission agent service used for export of goods	All conditions for FCA service are same. The only difference is that earlier the exemption was limited to 1% of the free on board value of export goods.	Procedure is the same except that the exporter has to file return in Form EXP4 instead of EXP2.

		Now, it's restricted to the service tax calculated on a value of 10% of the free on board value of export goods for which the said service has been used.	

Further, reference to the erstwhile section 65(105)(zzp) (Goods Transport Agency service) and section 65(105)(zzb) (Commission Agent service) has been omitted under the respective new notifications.

[Effective from 01.07.2012]

B. *Notification No. 17/2009-ST dated 07.07.2009* rescinded-Rebate of service tax paid on specified services used in the export of goods

With effect from 03.01.2012, the old procedure for grant of refund prescribed vide *Notification 17/2009-ST dated 07.07.2009* was dispensed with and a new scheme for refund of the service tax paid on the services received by an exporter and used for export of goods was prescribed vide *Notification No. 52/2011 dated 30.12.2011*.

Under the simplified scheme, the exporters were provided with an option to claim refund electronically through ICES scheme. Otherwise, they could claim refund on the basis of documents. Refund, however, continued to be restricted to specified 18 taxable services as before.

With the advent of the negative list approach and section 65 ceasing to exist, *Notification No. 52/2011 dated 30.12.2011* has also been superseded vide *Notification No. 41/2012 dated 29.06.2012* thereby omitting the reference to various sub-clauses of erstwhile section 65(105). The provisions of new rebate scheme, effective from 01.07.2012, have been enumerated below:-

The rebate shall be granted by way of refund of service tax paid on the specified services.

> Meaning of specified services
>
> "Specified services" means-
>
> (i) in the case of excisable goods, taxable services that have been used beyond the place of removal, for the export of said goods;
>
> (ii) in the case of goods other than (i) above, taxable services used for the export of said goods;
>
> but shall not include any service mentioned in sub-clauses (A), (B), (BA) and (C) of rule 2(l) of the CENVAT Credit Rules, 2004.

Manner of claiming rebate

The exporters now have a choice to opt either of the following options:

A. **Electronic rebate through ICES system**, which is based on the notified 'schedule of rates' on the lines of duty drawback, or

B. **Rebate on the basis of documents**, by approaching the Central Excise/Service Tax formations.

It may be noted that the rebate on the basis of documents shall not be claimed wherever the difference between the amount of rebate under ICES system and amount of rebate on the basis of documents is less than 20% of the rebate under ICES system.

A. Procedure for electronic rebate through ICES system

(a) An exporter should

(i) have a bank account and also a central excise registration or service tax code number** and the same should be registered with Customs ICES, and

(ii) declare his option to avail service tax rebate on the electronic shipping bill/bill of export while presenting the same to the proper officer of Customs.

**Note: If the exporter does not have Service tax code number referred to in clause (i) above, it should be obtained by filing a declaration in Form A-2 to the jurisdictional Assistant Commissioner / Deputy Commissioner of Central Excise.

(b) Service tax paid on the specified services eligible as rebate under this exemption shall be calculated electronically by the ICES system, by applying the rate specified in the schedule against the said goods, as a percentage of the FOB value.

(c) Rebate shall be deposited in the bank account of the exporter.

(d) An exporter who has claimed the rebate electronically cannot claim the refund again on the basis of documents.

(e) Minimum service tax rebate for an electronic shipping bill is ₹ 50.

B. Procedure for refund on the basis of documents

(a) **Actual payment of service tax:** For claiming rebate, the exporter has to actually pay the service tax on the specified service used for export of goods.

(b) **No rebate to service receiver:** In case the service tax has been paid on the specified service under reverse charge mechanism, service receiver will not be eligible to claim rebate.

(c) **Time-limit for filing the rebate claim:** Time-limit for filing the rebate claim shall be one year from the date of export of the said goods.

The **date of export** shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962.

(d) **Minimum amount of rebate:** is ₹ 500.

(e) **Realization of export proceeds:** Sale proceeds in respect of exported goods must be received by or on behalf of the exporter, in India, within the period allowed by the RBI, including any extension thereof.

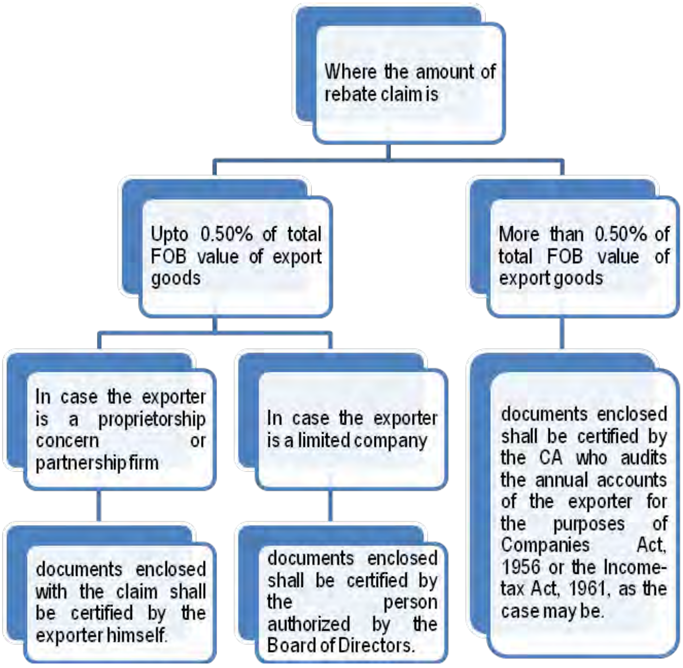
(f) **Documents to be submitted for rebate claim**

1. Exporter registered under Central Excise Act, 1944 shall file a claim for rebate of service tax in Form A-1 to the jurisdictional Assistant Commissioner/Deputy Commissioner of Central Excise. Where the exporter is not so registered, he shall first file a declaration in Form A-2, seeking allotment of service tax code to the jurisdictional Assistant Commissioner/Deputy Commissioner of Central Excise and on obtaining the service tax code, file refund claim in Form A-1.

2. Relevant invoice/ bill/ challan/ any other document for each specified service, in original, evidencing payment for the specified service used for export of the said goods and the service tax payable needs to be attached with the application.

(g) **Certification of the documents enclosed with the rebate claim [mentioned in clause 2. of point (f) above]**

The documents enclosed with the rebate claim have to be certified in the following manner:-



(h) Grant of refund

Assistant Commissioner/Deputy Commissioner of Central Excise, shall, after satisfying himself, shall grant the rebate to the exporter within a period of one month from the receipt of the said claim.

(i) No rebate in case sale proceeds not realized within the period allowed by RBI

Where any rebate of service tax paid on specified service utilized for export of said goods has been allowed to an exporter but the sale proceeds in respect of said goods are not received by or on behalf of the exporter, in India, within the period allowed by the Reserve Bank of India including any extension thereof, such rebate shall be deemed never to have been allowed and recovered under the provisions of the said Act and the rules made thereunder.

Points to be noted:-

(a) No CENVAT credit on the specified services used for export

No CENVAT credit of service tax paid on the specified services used for export of the said goods can be taken under the CENVAT Credit Rules, 2004.

(b) No exemption to SEZ

The aforesaid exemption cannot be claimed by a Unit or Developer of a Special Economic Zone.

4. Small service provider's (SSP) exemption

Prior to amendment

Earlier, *Notification No. 6/2005-ST dated 01.03.2005* granted exemption to a small service provider who provided taxable services not exceeding ₹ 10 lakh in the preceding financial year.

Hence, where the aggregate value of taxable services provided by a service provider did not exceed ₹10 lakhs in the previous financial year, the concerned service provider was not required to pay service tax upto aggregate value not exceeding ₹ 10 lakh in the current financial year.

After the amendment made by *Notification No. 33/2012 – ST dated 20.06.2012*

With effect from 01.07.2012, the aforesaid notification has been rescinded and a new notification grating exemption to small service providers has been issued to align it with the concept of negative list approach.

Central Government has exempted the taxable services of aggregate value not exceeding ₹10 lakh in any financial year from the whole of the service tax leviable thereon under section 66B of the Finance Act, 1994 in case the aggregate value of taxable services rendered by the service provider from one or more premises, does not exceed ₹ 10 lakh in the preceding financial year.

A. Services in respect of which SSP exemption is not available

(i) Taxable services provided under brand name

SSP exemption is not available to the taxable services provided by a person under a brand name or trade name, whether registered or not, of another person.

(ii) Services taxed under reverse charge mechanism

SSP exemption is not available to such value of taxable services in respect of which service tax is payable on reverse charge mechanism by a person.

B. Availability of the CENVAT credit on inputs, input services and capital goods

(i) CENVAT credit on input services

(a) The provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services used for providing the said taxable service, for which SSP exemption is availed of. The said restriction is applicable to service tax paid under rule 3 and rule 13 of the CENVAT Credit Rules, 2004.

(b) The provider of taxable service shall avail the CENVAT credit only on such input services received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable.

(ii) CENVAT credit on inputs

(a) Service provider shall avail the CENVAT credit only on such inputs received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable.

(b) A service provider who starts availing SSP exemption shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which he starts availing the said exemption. Balance credit shall not be utilised in terms of rule 3(4) of the CENVAT Credit Rules, 2004 and shall lapse on the day such service provider starts availing SSP exemption.

(iii) CENVAT credit on capital goods

Service provider shall not avail the CENVAT credit on capital goods received, during the period in which the service provider avails SSP exemption.

C. Other points which merit consideration

(i) Exemption is optional

Service provider has an option not to avail the SSP exemption and pay service tax. Option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year.

(ii) Aggregate value of all taxable services provided from all premises to be considered

Where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services.

D. Aggregate value of taxable services in case of Goods Transport Agency

In case of goods transport agency (GTA), for the purposes of determining the aggregate value not exceeding ₹ 10 lakh, to avail exemption under this notification, the payment received towards the gross amount charged by the GTA under section 67 of the said Finance Act for which the person liable for paying service tax is the consignor or consignee shall not be taken into account.

Meaning of important terms

1. Brand name or trade name means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, logo, label, signature, or invented word or writing which is used in relation to such specified services for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified services and some person using such name or mark with or without any indication of the identity of that person.
2. Aggregate value means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification.

5. MEGA EXEMPTION NOTIFICATION

With effect from 01.07.2012, *Notification No. 25/2012-ST dated 20.06.2012* grants exemption from service tax to the following taxable services:-

1. Services provided to the United Nations or a specified international organization.
2. Health care services by a clinical establishment, an authorized medical practitioner or para-medics.
3. Services by a veterinary clinic in relation to health care of animals or birds.
4. Services by an entity registered under section 12AA of the Income tax Act, 1961 by way of charitable activities.
5. Services by a person by way of-
   (a) renting of precincts of a religious place meant for general public; or
   (b) conduct of any religious ceremony.
6. Services provided by-
   (a) an arbitral tribunal to -
      (i) any person other than a business entity; or
      (ii) a business entity with a turnover up to `10 lakh in the preceding financial year;
   (b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-
      (i) an advocate or partnership firm of advocates providing legal services ;

(ii) any person other than a business entity; or

(iii) a business entity with a turnover up to `10 lakh in the preceding financial year; or

(c) a person represented on an arbitral tribunal to an arbitral tribunal.

7. Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India.

8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;

9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-

(a) auxiliary educational services; or

(b) renting of immovable property.

10. Services provided to a recognized sports body by-

(a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;

(b) another recognized sports body.

11. Services by way of sponsorship of sporting events organised,-

(a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;

(b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;

(c) by Central Civil Services Cultural and Sports Board;

(d) as part of national games, by Indian Olympic Association; or

(e) under Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme.

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958;

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or

(iii) an art or cultural establishment;

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation* 1 to clause 44 of section 65B of the said Act;

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

(c) a building owned by an entity registered under section 12AA of the Income tax Act, 1961 and meant predominantly for religious use by general public;

(d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(a) an airport, port or railways, including monorail or metro;

(b) a single residential unit otherwise than as a part of a residential complex;

(c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

(d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

(e) mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

15. Temporary transfer or permitting the use or enjoyment of a copyright covered under clauses (a) or (b) of section 13(1) of the Indian Copyright Act, 1957, relating to original literary, dramatic, musical, artistic works or cinematograph films;

16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;

17. Services by way of collecting or providing news by an independent journalist, Press

Trust of India or United News of India;

18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;

19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and (ii) a licence to serve alcoholic beverages;

20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods -
    (a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985;
    (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
    (c) defence or military equipments;
    (d) postal mail or mail bags;
    (e) household effects;
    (f) newspaper or magazines registered with the Registrar of Newspapers;
    (g) railway equipments or materials;
    (h) agricultural produce;
    (i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or
    (j) chemical fertilizer and oilcakes;

21. Services provided by a goods transport agency by way of transportation of -
    (a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
    (b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or
    (c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;

22. Services by way of giving on hire -
    (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
    (b) to a goods transport agency, a means of transportation of goods;

23. Transport of passengers, with or without accompanied belongings, by -

(a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;

(b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or

(c) ropeway, cable car or aerial tramway;

24. Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;

25. Services provided to Government, a local authority or a governmental authority by way of -

 (a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or

 (b) repair or maintenance of a vessel or an aircraft;

26. Services of general insurance business provided under following schemes -

 (a) Hut Insurance Scheme;

 (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);

 (c) Scheme for Insurance of Tribals;

 (d) Janata Personal Accident Policy and Gramin Accident Policy;

 (e) Group Personal Accident Policy for Self-Employed Women;

 (f) Agricultural Pumpset and Failed Well Insurance;

 (g) premia collected on export credit insurance;

 (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;

 (i) Jan Arogya Bima Policy;

 (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);

 (k) Pilot Scheme on Seed Crop Insurance;

 (l) Central Sector Scheme on Cattle Insurance;

 (m) Universal Health Insurance Scheme;

 (n) Rashtriya Swasthya Bima Yojana; or

 (o) Coconut Palm Insurance Scheme;

27. Services provided by an incubatee up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-

(a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and

(b) a period of three years has not been elapsed from the date of entering into an agreement as an incubate.

28. Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -

(a) as a trade union;

(b) for the provision of carrying out any activity which is exempt from the levy of service tax; or

(c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.

29. Services by the following persons in respective capacities -

(a) sub-broker or an authorised person to a stock broker;

(b) authorised person to a member of a commodity exchange;

(c) mutual fund agent to a mutual fund or asset management company;

(d) distributor to a mutual fund or asset management company;

(e) selling or marketing agent of lottery tickets to a distributer or a selling agent;

(f) selling agent or a distributer of SIM cards or recharge coupon vouchers;

(g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt.

30. Carrying out an intermediate production process as job work in relation to -

(a) agriculture, printing or textile processing;

(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act ,1985;

(c) any goods on which appropriate duty is payable by the principal manufacturer; or

(d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black,during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of ` 150 lakh in a financial year subject to the condition that such aggregate value had not exceeded ` 150 lakh rupees during the preceding financial year.

31. Services by an organizer to any person in respect of a business exhibition held outside India.
32. Services by way of making telephone calls from -
    (a) departmentally run public telephone;
    (b) guaranteed public telephone operating only for local calls; or
    (c) free telephone at airport and hospital where no bills are being issued.
33. Services by way of slaughtering of bovine animals.
34. Services received from a provider of service located in a non- taxable territory by -
    (a) Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
    (b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or
    (c) a person located in a non-taxable territory.
35. Services of public libraries by way of lending of books, publications or any other knowledge- enhancing content or material.
36. Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948.
37. Services by way of transfer of a going concern, as a whole or an independent part thereof.
38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;
39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution.

Definitions

For the purpose of mega exemption notification, unless the context otherwise requires, –

1. Advocate: "Advocate" means an advocate entered in any roll under the provisions of the Advocates Act, 1961.
2. Appropriate duty: "Appropriate duty" means duty payable on manufacture or production under a Central Act or a State Act, but shall not include 'Nil' rate of duty or duty wholly exempt.
3. Arbitral Tribunal: "Arbitral tribunal" means a sole arbitrator or a panel of arbitrators.
4. Authorised medical practitioner: "Authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognized system of medicines established or recognized by law in India and includes a medical professional having the

requisite qualification to practice in any recognized system of medicines in India as per any law for the time being in force.

5. Authorised person: "Authorised person" means any person who is appointed as such either by a stock broker (including trading member) or by a member of a commodity exchange and who provides access to trading platform of a stock exchange or a commodity exchange as an agent of such stock broker or member of a commodity exchange.

6. Auxiliary educational services: "Auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other

   services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution.

7. Banking company: "Banking company" means a banking company as defined in section 5 of the Banking Regulation Act, 1949, and

   includes the State Bank of India any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, any corresponding new bank constituted by section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and any other financial institution notified by the Central Government in this behalf.

   As per section 5 of the Banking Regulation Act, 1949, "banking company" means any company which transacts the business of banking in India;

   Explanation. — Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause.

8. Brand ambassador: "Brand ambassador" means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person.

9. Business facilitator or business correspondent: "Business facilitator or business correspondent" means an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by Reserve Bank of India.

10. Clinical establishment: "Clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.

11. Charitable activities: "Charitable activities" means activities relating to -

(i) public health by way of -

(a) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(b) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion or spirituality;

(iii) advancement of educational programmes or skill development relating to,-

(a) abandoned, orphaned or homeless children;

(b) physically or mentally abused and traumatized persons;

(c) prisoners; or

(d) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife; or

(v) advancement of any other object of general public utility up to a value of,-

(a) eighteen lakh and seventy five thousand rupees for the year 2012-13 subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during 2011-12;

(b) twenty five lakh rupees in any other financial year subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during the preceding financial year.

12. Commodity exchange: "Commodity exchange" means an association an association to which recognition for the time being has been granted by the Central Government under section 6 of the Forward Contracts (Regulation) Act, 1952 in respect of goods or classes of goods specified in such recognition.

13. Contract carriage: "Contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum-

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes-

(i) a maxicab; and

(ii) a motorcar notwithstanding the separate fares are charged for its passengers

14. Declared tariff: "Declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.

15. Distributor or selling agent: “Distributor or selling agent” means an individual or a firm or a body corporate or other legal entity under law so appointed by the Organising State through an agreement to market and sell lotteries on behalf of the Organising State and

    shall include distributor or selling agent authorised by the lottery-organising State;

16. General insurance business: "General insurance business" means fire marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them, but does not include capital redemption business and annuity certain business.

17. General public: “General public” means the body of people at large sufficiently defined by some common quality of public or impersonal nature.

18. Goods carriage: “Goods carriage” any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

19. Governmental authority: “Governmental authority’’ means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution.

20. Health care services: “Health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

21. Incubatee: “Incubatee” means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to develop and produce hi-tech and innovative products.

22. Insurance company: “Insurance company” means a company carrying on life insurance business or general insurance business.

23. Legal service: “Legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.

24. Life insurance business: “Life insurance business” means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any.

25. Original works: Original works means

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

26. Principal manufacturer: “Principal manufacturer” means any person who gets goods manufactured or processed on his account from another person;

27. Recognized sports body: “Recognized sports body” means –

(i) the Indian Olympic Association,

(ii) Sports Authority of India,

(iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations,

(iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government,

(v) the International Olympic Association or a federation recognised by the International Olympic Association or

(vi) a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India;

28. Religious place: “Religious place” means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality;

29. Residential complex: “Residential complex” means any complex comprising of a building or buildings, having more than one single residential unit;

30. Rural area: “Rural area” means the area comprised in a village as defined in land revenue records, excluding-

(a) the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or

(b) any area that may be notified as an urban area by the Central Government or a State Government;

31. Single residential unit: “Single residential unit” means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;

32. Specified International Organization: "Specified International Organization" means an international organization declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947, to which the provisions of the Schedule to the said Act apply.

33. State transport undertaking: "State transport undertaking" means any undertaking providing road transport service, where such undertaking is carried on by,-

(i) the Central Government or a State Government;

(ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950 (64 of 1950);

(iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments.

(iv) Zila Parishad or any other similar local authority.

Explanation.-For the purposes of this clause, "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward

34. Sub-broker: "Sub-broker" any person not being a member of stock exchange who acts on behalf of a stock broker as an agent or otherwise for assisting the investors in buying, selling or dealing in securities through such stock brokers.

35. Trade union: "Trade union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions.

6. Abatements in respect of various taxable services

Earlier, the abatement in respect of various taxable services was provided vide *Notification No. 01/2006-ST dated 01.03.2006, Notification No. 09/2010-ST dated 27.02.2010* and *Notification No. 06/2012-ST dated 17.03.2012.* The said notifications have been rescinded.

With effect from 01.07.2012, following taxable services are eligible for abatement from the gross amount in the following manner:-

S.No.	Description of taxable service	Percentage of abatement	Conditions
1	Services in relation to financial leasing including hire purchase	90	Nil.
2	Transport of goods by rail	70	Nil.
3	Transport of passengers, with or without accompanied belongings by rail	70	Nil.
4	Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place,	30	CENVAT credit on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 used for providing the taxable service, has not been taken under the

	specially arranged for organizing a function) together with renting of such premises		provisions of the CENVAT Credit Rules, 2004.
5	Transport of passengers by air, with or without accompanied belongings	60	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	40	Same as above.
7	Services of goods transport agency in relation to transportation of goods.	75	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
8	Services provided in relation to chit	30	Same as above.
9	Renting of any motor vehicle designed to carry passengers	60	Same as above.
10	Transport of goods in a vessel	50	Same as above.
11	Services by a tour operator in relation to,- (i) a package tour	75	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour.
	(ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour	90	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the

			provisions of the CENVAT Credit Rules, 2004. (ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation. (iii) This exemption shall not apply in such cases where the invoice, bill or challanissued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.
	(iii) any services other than specified at (i) and (ii) above.	60	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii)The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.
12.	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority	75	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii)The value of land is included in the amount charged from the service receiver.

Notes:

A. For the purpose of exemption under S.No. 1. above:-

(i) Amount charged is an amount, forming or representing as interest.

Amount charged	=	Installments paid towards repayment of the lease amount	—	Principal amount contained in such installments

(ii) The exemption shall not apply to an amount other than an amount forming or representing as interest, charged by the service provider such as:-

- lease management fee
- processing fee
- documentation charges
- administrative fee

which shall be added to the amount calculated in terms of (i) above.

B. For the purposes of exemption at S.No. 4, the amount charged shall be computed as follows:-

Particulars			Amount
Gross amount charged			xxxx
Add: Value of all goods & services supplied in or in relation to the supply of food or any other article of human consumption or any drink (whether or not intoxicating) and whether or not supplied under the same contract or any other contract	FMV of such goods & services (determined in accordance with generally accepted accounting principles)	xxxx	
	Less:		
	(i) the amount charged for such goods or services supplied to the service provider, if any; and	xxxx	
	(ii) VAT/sales tax, if any, levied thereon	xxxx	xxxx
Amount charged			xxxx

C. For the purposes of exemption at S.No. 12, the amount charged shall be computed as follows:-

Particulars			Amount
Amount charged for the construction service			xxxx
Add: Value of all goods & services supplied by the recipient(s) in/in relation to the service, whether or not supplied under the same contract or any other contract	FMV of such goods & services (determined in accordance with the generally accepted accounting principles)	xxxx	
	Less:		
	(i) the amount charged for such goods or		

	services, if any; and (ii) VAT/sales tax, if any, levied thereon	xxxx xxxx	 xxxx
Amount charged			xxxx

Important definitions

For the purposes of this notification, unless the context otherwise requires,-

1. **Chit** means a transaction whether called chit, chit fund, chitty, kuri, or by whatever name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical installments over a definite period and that each subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to a prize amount,
2. **Package tour** means a tour wherein transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour,
3. **Tour operator** means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours.

[Notification No. 26/2012-ST dated 20.06.2012]

7. **Deduction of Research and development cess payable on import of technology allowed from service tax subject to specified conditions being fulfilled**

With effect from 01.07.2012, the amount of Research and development cess payable shall be allowed as a deduction from the service tax payable on the taxable service involving the import of technology.

Conditions to be fulfilled:-

(a) The Research & Development Cess is paid at the time or before payment for the service subject to maximum of 6 months period from the **date of invoice** *.

**In case of associated enterprises, the date of credit in the books of account.*

(b) Necessary records will have to be maintained so as to establish a linkage between the invoice or the credit entry (as the case may be) and the cess payment challan.

Research and development cess

Research and Development cess is levied, on the payment of technical fees/consultancy/ royalty or know-how etc. involving the `import of technology', under section 3 of the Research & Development Act, 1986. The purpose of levying this cess is to encourage the commercial application of indigenously developed technology.

Rate of cess: Rate of research and development cess is 5%.

Reason for exemption from Research and development cess: All the aforesaid payments also attract service tax. Hence, there would be a double taxation in such a case. In order to counter double taxation, this exemption has been provided.

Note: Students may note that earlier also, under selective approach of taxation of services, this exemption was available vide separate notifications to the services provided by a consulting engineer and by a holder of intellectual property rights. These notifications have now been rescinded and the said exemption has been aligned with the negative list approach of taxation of services.

[Notification No.14/2012 – ST dated 17.03.2012]

8. **Exemption to services for use of foreign Diplomatic Mission/consular post in India or family members of diplomatic agents or career consular officers posted therein**

Prior to amendment

Earlier, exemption to services provided for the official use of a foreign diplomatic mission or consular post in India, or for personal use/for the use of the family members of diplomatic agents or career consular officers posted therein was granted by *Notification No. 33 & 34/2007-ST both dated 23-05-2007*. With the introduction of the negative list, these notifications have been rescinded.

After the amendment

With effect from 01.07.2012, the exemption to the aforesaid persons is granted by ***Notification No. 27/2012-ST dated 20.06.2012.*** The provisions of the erstwhile and the new notification are largely the same. As per the new notification, following services are exempt from service tax:-

(i) Exemption on services provided to foreign diplomatic missions or consular posts in India for their **official use.**

(ii) Exemption on services provided for **personal use** or for the use of the family members of diplomatic agents or career consular officers posted therein.

The Notification also prescribes the procedure for availing the said exemption.

Note: Services provided BY a foreign diplomatic mission located in India are not taxable as they have been included in the negative list.

9. **Property tax allowed as deduction from the gross amount charged for renting of immovable property services**

Earlier, in case of taxable service of renting of an immovable property, the taxes on such property, namely property tax levied and collected by local bodies were allowed as deduction from the gross amount charged for renting of such immovable property *vide Notification No. 24/2007 dated 22.05.2007*.

The said notification had a reference to the erstwhile section 65(105)(zzzz) which has now ceased to exist. Consequently, with effect from 01.07.2012, *Notification No. 24/2007* has been rescinded and the exemption in respect of property tax from gross amount charged for renting of the immovable property service has been granted ***vide Notification No. 29/2012 dated 20.06.2012***. The provisions of the erstwhile and the new notification are largely the same.

10. Exemption to services provided by Technology Business Incubator / Science and Technology Entrepreneurship Park

Earlier, exemption to all taxable services provided or to be provided by Technology Business Incubators (TBI)/Science and Technology Entrepreneurship Parks (STEP) recognized by National Science and Technology Entrepreneurship Board (NSTEBD) of the Department of Science & Technology was provided *vide Notification No. 9/2007 dated 01.03.2007*.

Since, the said notification has reference to the erstwhile charging section 66 which has now ceased to exist, with effect from 01.07.2012; *Notification No. 9/2007* has been rescinded. ***Notification No. 32/2012 dated 20.06.2012*** has been issued to grant exemption to TBI and STEP. The provisions of the erstwhile and the new notification are largely the same.

11. Exemption to services received by a developer or units of a Special Economic Zone

Exemption to services received by a developer or units of a special economic zone, earlier provided vide *Notification No. 17/2011 ST dated 01.03.2011,* has now been granted vide ***Notification No. 40/2012-ST dated 20.06.2012.*** The said notification provides as follows:-

(A) <u>Eligibility for exemption</u>

The taxable services received by any of the following are eligible for exemption under this notification:-

- a unit located in a Special Economic Zone (hereinafter referred to as SEZ)
- developer of SEZ

and used for the authorized operations

(B) <u>Refund route/upfront exemption</u>

(i) Option not to pay service tax ab-intio in case the specified services wholly consumed within the SEZ

Where the services are received in SEZ and used in authorized operations are wholly consumed within SEZ, the person liable to pay service tax has the option not to pay the service tax. Hence, under this option, instead of the Unit or Developer claiming exemption by way of refund, service tax may not be paid ab intio.

(ii) Refund route available where the specified services are not wholly consumed within the SEZ

Where the specified services received and used for authorised operations are partially consumed within the SEZ and partially outside SEZ, i.e. shared services, the exemption shall be provided only by way of refund of service tax paid on the specified services received for the authorised operations in a SEZ. Hence, the option of not paying the service tax ab-intio is not available here.

(C) <u>Restricted amount of refund in case the specified services are not wholly consumed within the SEZ</u>

Where the specified services received by Unit or Developer, are not wholly consumed within SEZ, i.e., shared between authorised operations in SEZ Unit and Domestic Tariff Area (DTA) Unit, maximum refund shall be restricted to the extent of the ratio of export turnover of goods and services multiplied by the service tax paid on services other than wholly consumed services to the total turnover for the given period to which the claim relates.

$$\text{Maximum refund} = \frac{ST \times ET}{TT}$$

where

ST stands for service tax paid on services other than wholly consumed services (used for both SEZ and DTA Unit)

ET stands for Export turnover of goods and services of SEZ Unit/Developer

TT stands for Total turnover for the period

Meaning of important terms

(a) **Refund amount** means the maximum refund that is admissible for the period.

(b) **Export turnover of goods** means the value of final products and intermediate products cleared during the relevant period and exported.

(c) **Export turnover of services** means the value of the export service calculated in the following manner, namely:-

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period

(d) **Total turnover** means the sum total of the value of:-

(i) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported.

(ii) export turnover of services [determined in terms of clause (c) above] and the value of all other services, during the relevant period.

(e) **Wholly consumed services** refers to such specified services received by the unit of a SEZ or the developer and used for the authorised operations, where the place of provision determinable in accordance with the Place of Provision of Services Rules, 2012(hereinafter referred as the POP Rules) is as under:-

(i) in respect of services specified in rule 4 of the POP Rules, the place where the services are actually performed is within the SEZ; or

(ii) in respect of services specified in rule 5 of the POP Rules, the place where the property is located or intended to be located is within the SEZ; or

(iii) in respect of services other than those falling under clauses (i) and (ii), the recipient does not own or carry on any business other than the operations in SEZ.

Points to be noted:-

1. CENVAT credit of service tax paid on the specified services cannot be taken.
2. The developer or unit of a SEZ, shall maintain proper account of receipt and use of the specified services on which exemption is claimed, for authorised operations in the SEZ.

The Notification also prescribes the procedure for availing the said exemption.

B. COMPOSITION SCHEME UNDER WORKS CONTRACT DISPENSED WITH

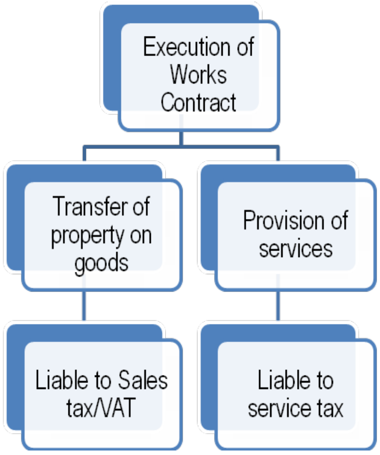
With effect from 01.07.2012, optional composition scheme under works contract has been dispensed with and consequently, notification issuing Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 has been rescinded *vide Notification No. 35/2012-ST dated 20.06.2012.*

Note: The optional composition rate was raised from 4% to 4.8% with effect from 01.04.2012. Hence, optional composition rate for works contract service for the period till 31.03.2012 was 4% and rate for the period between 01.04.2012 and 30.06.2012 was 4.8%.

C. AMENDMENTS IN THE SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006

The amendments in the Service Tax (Determination of Value) Rules, 2006 have been made vide *Notification No. 24/2012 dated 06.06.2012* effective from 01.07.2012.

1. More comprehensive manner of determination of value of service portion in the execution of a works contract prescribed [Rule 2A]



Works contract is a contract for the provision of service as well as supply of materials. As decided by Apex Court in *BSNL v. UOI 2006 (2) S.T.R. 161 (S.C.)*, a works contract can be segregated into a contract of sale of goods and contract of provision of service. With a view to bring certainty and simplicity, the manner of determining the value of service portion in works contracts was provided in the erstwhile rule 2A of the Service Tax (Determination of Value) Rules, 2006. In order to align this rule with the new system of taxation of services based on the negative list, the erstwhile rule 2A has been replaced by a new rule 2A which provides as follows:-.

Subject to the provisions of section 67, the value of service portion in the execution of a works contract shall be determined in the following manner, namely:-

A. Determination of value on the basis of value of transfer of property in goods transferred, adopted for State VAT purposes

Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Particulars	Amount (₹)
Gross amount charged for the works contract	xxxx
Less: Value of transfer of property in goods transferred, computed for State VAT purpose**	xxxx
Less: VAT/Sales tax, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract.	xxxx
Value of the works contract service	xxxx

**Note: Value of transfer of property in goods involved in the execution of the said works contract in case VAT/sales tax is paid/payable on their actual value

Where VAT/sales tax has been paid/payable on the actual value of property in goods transferred in the execution of the works contract (and not using standard rate of deduction) then, such value adopted for the purposes of payment of VAT/sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

Inclusions

Value of works contract service shall include -

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relatable to supply of labour and services;

(vii) other similar expenses relatable to supply of labour and services; and

(viii) profit earned by the service provider relatable to supply of labour and services.

B. Simplified scheme for determining the value of service portion in a works contract

Where the value has not been determined as per the aforementioned method, the person liable to pay tax on the taxable service involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

S.No.	In case of	Value of service portion shall be ______ of the total amount charged for the works contract
1.	works contracts entered into for execution of original works	40%
2.	works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods	70%
3.	other works contracts, not covered under in above two cases, including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property	60%

Points which merit consideration

1. Meaning of original works

Original works means

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

2. Meaning of total amount

<table>
<tr><th colspan="2">Particulars</th><th>Amount</th><th>Amount</th></tr>
<tr><td colspan="2">Gross amount charged for the works contract</td><td></td><td>xxxx</td></tr>
<tr><td rowspan="3">Add: Value of all goods and services supplied by the service receiver in/in relation to the execution of the works contract (whether or not supplied under the same contract or any other contract)</td><td>FMV of such goods & services (determined in accordance with the generally accepted accounting principles)</td><td>xxxx</td><td></td></tr>
<tr><td>Less:
(i) the amount charged for such goods or services, if any, by service receiver; and</td><td>xxxx</td><td></td></tr>
<tr><td>(ii) VAT/sales tax, if any, levied thereon</td><td>xxxx</td><td>xxxx</td></tr>
<tr><td colspan="2">Total amount</td><td></td><td>xxxx</td></tr>
</table>

3. It is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

Illustration: Mahavir Enterprises (ME) has entered into a contract for construction of a building with Sambhav Constructions Ltd (SCL). As per the agreement, the amount payable (excluding all taxes) by ME to SCL is ₹ 95,00,000 in addition to the steel and cement to be supplied by ME for which it charged ₹ 5,00,000 from SCL. Fair market value of the steel and cement (excluding VAT) is ₹ 10,00,000. Compute the 'total amount charged' pertaining to the said works contract for execution of 'original works'.

S. No.	*Particulars*	*Amount (₹)*
1.	*Gross amount received excluding taxes*	*95,00,000*
2.	*Fair market value of steel and cement supplied by ME excluding taxes*	*10,00,000*

3.	*Amount charged by service receiver for steel and cement*	*5,00,000*
4.	*Total amount charged (1.+2.-3.)*	*1,00,00,000*
5.	*Value of service portion (40% of 4. in case of original works)*	*40,00,000*

Note: When the service provider pays partially or fully for the materials supplied by the service receiver, gross amount charged would inevitably go higher by that much amount.

2. Valuation of money changing service-Rule 2B amended

With the introduction of negative list of services, provisions of section 65 have ceased to exist. Therefore, the reference to sub-clauses (zm) and (zzk) of clause (105) of section 65 has been removed from rule 2B.

3. Determination of value of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering [Rule 2C inserted]

Subject to the provisions of section 67, the value of service portion, in an activity wherein goods being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity at a restaurant or as outdoor catering, shall be the specified percentage of the total amount charged for such supply, in terms of the following table, namely:-

S.No.	Description	Value of taxable service shall be ____ of the total amount
1.	Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity, at a restaurant	40%
2.	Service portion in outdoor catering wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of such outdoor catering	60%

1. Meaning of total amount

Particulars			Amount
Gross amount charged			xxxx
Add: Value of all goods and services supplied in or in relation to the supply of food	FMV of all goods & services supplied by the service receiver		

or any other article of human consumption or any drink (whether or not intoxicating), whether or not supplied under the same contract or any other contract	(determined in accordance with the generally accepted accounting principles) Less: (i) the amount charged for such goods or services, if any, by the service receiver; and (ii) VAT/sales tax, if any, levied thereon	xxxx xxxx xxxx	 <u>xxxx</u>
Total amount			<u>xxxx</u>

2. It is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985.

4. Rule 3 relating to manner of determination of value amended

Prior to amendment

Earlier in rule 3, "prescribed manner" provided for determination of the value of taxable service was inadvertently made applicable to the situation where the consideration received is not wholly or partly consisting of money. However, such a situation was fully covered by section 67(2) of the Finance Act, 1994.

After the amendment

Consequently, rule 3 has been suitably amended. Hence, now the prescribed manner for determination of the value of taxable service is applicable only in a situation where such value is not ascertainable.

5. Reference to section 65(105)(zzzx) substituted by the words "telecommunication service"

With the introduction of negative list of services, provisions of section 65 have ceased to exist. Therefore, the reference to sub-clauses (zzzx) of clause (105) of section 65 has been substituted with the telecommunication service.

6. Amendments in rule 6 relating to cases in which the commission, costs, etc., will be included or excluded

(a) Sub-rule (1)-Inclusions to taxable value-Clause (x) inserted

Clause (x) has been inserted in sub-rule (1) which provides as follows:-

The amount realised as demurrage or by any other name whatever called for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service.

This change is relevant in the context of negative list where such amounts may be collected in the name of demurrage, but will actually be in all respects a service.

(b) Sub-rule (2)-Exclusions to taxable value

(i) Clause (iv) substituted with the new clause

Prior to amendment

Earlier, interest on loans was excluded from the value of taxable service by virtue of rule 6(2).

Amendment made by Notification No. 24/2012-ST dated 06.06.2012

Clause (iv) has been substituted with a new clause which excludes interest on delayed payment of any consideration for the provision of services or sale of property, whether moveable or immoveable.

(ii) Clause (vi) and (vii) inserted

As per newly inserted clause (vi) and (vii), following expenses have been excluded from the value of taxable services:-

Clause (vi)

Accidental damages due to unforeseen actions not relatable to the provision of service.

Clause (vii)

Subsidies and grants disbursed by the Government, not directly affecting the value of service.

(c) Rule 7 providing that actual consideration would be the value of taxable service provided from outside India omitted

In the Negative List approach, rule 7 may not be required; therefore it is has been omitted.

D. AMENDMENTS IN THE SERVICE TAX RULES, 1994

1. All assessees to file Service Tax Returns electronically

Service Tax Rules, 1994 have been amended to provide that every assessee will have to submit half-yearly service tax return electronically, irrespective of the amount of service tax paid by him in the preceding financial year. The amendment has been made effective from October 1, 2011.

Earlier, electronic filing of service tax returns was mandatory for the assessees who had paid service tax of ₹ 10 lakh or more including the amount of service tax paid by utilization of CENVAT credit in the preceding financial year.

[Notification No. 43/2011 ST dated 25.08.2011]

Procedure for electronic filing of Central Excise and Service Tax returns and for electronic payment of excise duty and service tax

Central Excise and Service Tax returns, the DG (Systems) has issued comprehensive instructions outlining the procedure for electronic filing of Central Excise duty and Service Tax returns and electronic payment of taxes under ACES. The said instructions outline the registration process for new assessees, existing assessees, non–assessees and for Large Taxpayers Units, steps for preparing and filing of return, use of XML Schema for filing dealer's return, procedure for obtaining acknowledgement of e-filed return, procedure for e-payment etc.

[Circular No. 956/17/2011 CX dated 28.09.2011]

2. **Amendments made by** *Notification No. 3/2012-ST dated 17.03.2012* **(effective from 01.04.2012)**

   (a) **Partnership firm defined [Rule 2(cd)]**

   Rule 2(cd) defines partnership firm as follows:-

   Partnership firm includes limited liability partnership.

   (b) **Amendments in rule 4A**

   (i) **Time limit for issue of invoice/ bill/ challan raised to 30 days [Sub-rule (1)]**

   Prior to amendment

   Earlier, under rule 4A(1), an invoice has to be issued within **14 days** from the date of:-

   (i) completion of such taxable service

   or

   (ii) receipt of any payment towards the value of such taxable service

   whichever is earlier.

   After the amendment

   Rule 4A(1) has been amended to increase the time-limit for issuance of invoice from **14 days to 30 days.**

   (ii) **Invoice to be issued within 45 days in case of banking and other financial institution including NBFC [Fourth proviso to rule 4A inserted*]**

   The time-limit for issuance of invoice, bill or challan, as the case may be, shall be 45 days in case where the **service provider is:**

   (i) A banking company

   (ii) A financial institution including a non-banking financial company

   providing service in relation to any person.

   *(*as amended by Notification No. 36/2012 dated 20.06.2012)*

(c) Amendments in rule 6

(i) Individuals/partnership firms with aggregate value of taxable services of ₹ 50 lakh or less in previous year allowed to pay service tax on payment basis in current year upto a total of ₹ 50 lakh [Fourth proviso to sub-rule (1) inserted]

In case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is ₹ 50 lakh or less in the previous financial year, the due dates for payment of service tax on taxable services provided or *agreed* to be provided by him up to a total of ₹ 50 lakh in the current financial year, at the option of service provider, is as follows:-

S.No.	Particulars	Due date for payment of service tax
1.	If the service tax is paid electronically through internet banking	6th day of the following quarter in which the payment is received
2.	In any other case	5th day of the following quarter in which the payment is received
3.	In the case payment is received in the quarter ending in March	31st day of March

(ii) Restrictions in rule 6(4B) omitted thereby allowing unlimited amount of permissible adjustment of excess service tax paid

Prior to amendment

Earlier the excess amount of service tax paid on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification was allowed subject to the following conditions:-

(a) The excess payment shall be utilized for the payment of service tax for the subsequent month liability subject to maximum of ₹ 2,00,000/- for a relevant month or quarter, as the case may be.

(b) The excess amount paid by a registered assessee, on account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit.

(c) The adjustment shall be intimated to the jurisdictional superintendent of Central Excise within 15 days from such adjustment.

After the amendment

All the three aforesaid conditions [mentioned in point (a) to (c) above] have now been dispensed with. Consequently, sub-rule (4B) now provides as under:-

The adjustment of excess amount paid, under sub-rule (4A), shall be subject to the condition that the excess amount paid is on account of reasons not involving interpretation of law, taxability, valuation or applicability of any exemption notification.

(iv) Changes in the composition rates

A. In case of insurer carrying on life insurance business [Sub-rule (7A)]

Where amount of the gross premium allocated for investment or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service:-

	Rate of service tax	
	Prior to amendment (Till 31.03.2012)	After amendment (With effect from 01.04.2012)
First	1.5% of the gross amount of premium charged	3% of the gross amount of premium charged
Subsequent year	1.5% of the gross amount of premium charged	1.5% of the gross amount of premium charged

B. In case of sale/purchase of foreign currency including money changing [Sub-rule (7B)]

S.No.	For an amount	Rate of service tax	
		Prior to amendment (Till 31.03.2012)	After amendment (With effect from 01.04.2012)
1.	Upto ₹ 100,000	0.1 % of the gross amount of currency exchanged or ₹ 25 whichever is higher	0.12 % of the gross amount of currency exchanged or ₹ 30 whichever is higher
2.	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 100 + 0.05 % of the gross amount of currency exchanged	₹ 120 + 0.06 % of the gross amount of currency exchanged
3.	Exceeding ₹ 10,00,000	₹ 550 + 0.01 % of the gross amount of currency exchanged or ₹ 5,000 whichever is	₹ 660 + 0.012 % of the gross amount of currency exchanged or ₹ 6,000 whichever is

		lower	lower

C. In case of Distributor or Selling Agents of Lotteries [Sub-rule (7C)] :

Guaranteed lottery prize payout	Amount of service tax payable on every ₹ 10 Lakh (or part of ₹ 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	
	Prior to amendment (Till 31.03.2012)	After amendment (With effect from 01.04.2012)
More than 80%	₹ 6000/-.	₹ 7000/-
Less than 80%	₹ 9000/-	₹ 11000/-

3. Amendments made by *Notification No. 36/2012 dated 20.06.2012* (effective from 01.07.2012)

(a) New definitions inserted in rule 2(1)

(i) Banking company: "Banking company" means a banking company as defined in section 5 of the Banking Regulation Act, 1949, and

includes the State Bank of India any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, any corresponding new bank constituted by section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and any other financial institution notified by the Central Government in this behalf [Sub-clause (bb)].

> As per section 5 of the Banking Regulation Act, 1949, "banking company" means any company which transacts the business of banking in India;
>
> Explanation. — Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause.

(ii) Body corporate: includes a company incorporated outside India but

does not include-

(a) a corporation sole;

(b) a co-operative society registered under any law relating to co-operative societies; and

(c) any other body corporate (not being a company as defined in this Act) which the Central Government may, by notification in the Official Gazette, specify in this behalf [Sub-clause (bc)].

(iii) Financial institution: Financial institution means any non-banking institution which carries on as its business or part of its business any of the following activities, namely:–

(i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own:

(ii) the acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature:

(iii) letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in clause (c) of section 2 of the Hire-Purchase Act, 1972:

(iv) the carrying on of any class of insurance business;

(v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;

(vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lumpsum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person,

but does not include any institution, which carries on as its principal business,–

(a) agricultural operations; or

(aa) industrial activity; or

(b) the purchase or sale of any goods (other than securities) or the providing of any services; or

(c) the purchase, construction or sale of immovable property, so however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons [Sub-clause (bd)].

(iv) Goods carriage: Goods carriage means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods [Sub-clause (c1a)].

(v) Insurance agent: Insurance agent means an insurance agent licensed under Section 42 of the Insurance Act, 1938 who receives agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance [Sub-clause (cba)]

(vi) Legal service: means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority [Sub-clause (cca)].

(vii) **Life insurance business:** means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any [Sub-clause (ccb)].

(viii) **Non-banking financial company:** Non-banking financial company means–

(i) a financial institution which is a company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;

(iii) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify [Sub-clause (ccc)].

(ix) **Place of provision:** shall be the place as determined by Place of Provision of Services Rules 2012 [Sub-clause (dd)].

(x) **Renting of immovable property:** means any service provided or agreed to be provided by renting of immovable property or any other service in relation to such renting [Sub-clause (f)].

(xi) **Supply of manpower:** means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control [Sub-clause (g)].

(b) **Sub-clause (d) to rule 2(1) defining person liable to pay service tax substituted with new sub-clause**

Person liable to pay service tax means the person providing the service. However, in respect of the taxable services notified under sub-section (2) of section 68 of the Act, person liable to pay service tax means,-

(A) in relation to service provided or agreed to be provided by an **insurance agent** to any person carrying on the insurance business, the recipient of the service.

(B) in relation to service provided or agreed to be provided by a **goods transport agency** in respect of transportation of goods by road, where the person liable to pay freight is,—

- any factory registered under or governed by the Factories Act, 1948;
- any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India;
- any co-operative society established by or under any law;
- any dealer of excisable goods, who is registered under the Central Excise Act, 1944 or the rules made thereunder;
- any body corporate established, by or under any law; or

- any partnership firm whether registered or not under any law including association of persons;

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage:

However, when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

(C) in relation to service provided or agreed to be provided by way of **sponsorship** to anybody corporate or partnership firm located in the taxable territory, the recipient of such service;

(D) in relation to service provided or agreed to be provided by,-

- an **arbitral tribunal**, or
- an **individual advocate or a firm of advocates** by way of legal services,

to any business entity located in the taxable territory, the recipient of such service;

(E) in relation to **support services** provided or agreed to be provided by Government or local authority except,-

(a) renting of immovable property, and

(b) services specified sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act,1994,

to any business entity located in the taxable territory, the recipient of such service;

(F) in relation to services provided or agreed to be provided by way of :-

(a) renting of a motor vehicle designed to carry passengers, to any person who is not engaged in a similar business; or

(b) supply of manpower for any purpose; or

(c) service portion in execution of a works contract-

by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as a body corporate, located in the taxable territory, both the service provider and the service recipient to the extent notified under sub-section (2) of section 68 of the Act, for each respectively.

(G) in relation to any taxable service provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory, the recipient of such service.

(c) Provisions relating to the invoice under rule 4A amended

(i) Clause (iii) to sub-rule (1)

Prior to amendment

Earlier, in clause (iii) of rule 4A(1), the invoice must contain the description, classification and value of taxable service provided or to be provided.

After the amendment

With the negative list approach of taxation of services, classification of service is not required to be mentioned on the invoice now and the words "provided or to be provided" in rule 4A(1) have been substituted with the words "provided or agreed to be provided".

(ii) First proviso to sub-rule (1) and first proviso to sub-rule (2) substituted with new provisos

(a) First proviso to sub-rule (1)

Now, the relaxation that invoice may not be serially numbered and may not contain the address of the service receiver has been restricted to a banking company or a financial institution including non-banking financial company.

Earlier, the said relaxation was also available to any other body corporate or any other person providing banking and other financial services.

(b) First proviso to sub-rule (2)

Similarly, the said relaxation has also been so restricted in the aforesaid manner in case of the input service distributor.

(iii) Fifth proviso to sub-rule (1) substituted with a new proviso

Earlier, the relaxation that invoice would include ticket in any form by whatever name called and it may not contain the registration number of the service provider and service recipient was available in case of service of transport of passengers by air.

Now the said relaxation has been extended in case of service of transport of passengers by any mode of transport.

(d) New rule 6A relating to the export of services inserted

(i) Conditions to be fulfilled for service to be treated as export of service [Sub-rule (1)]:-

The provision of any service provided or agreed to be provided shall be treated as export of service when,-

(a) the service provider is located in the taxable territory,

(b) the service receiver is located outside India and the place of provision of the service is outside India,

(c) the service is not a service specified in the negative list (Section 66D) of the Act,

(d) the payment for such service has been received by the service provider in convertible foreign exchange, and

(e) the service provider and service receiver are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act.

> As per item (b) of Explanation 3 of clause (44) of section 65B an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

(ii) Central Government empowered to grant rebate on inputs/input services used in providing service exported [Sub-rule (2)]

Where any service is exported [in terms of sub-rule (1) above], the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.

Safeguards, conditions and limitations for claiming rebate on inputs and input services

In exercise of this power, the Central Government has issued *Notification No. 39/2012-ST dated 20.06.2012* providing the safeguards, conditions and limitations for claiming rebate on inputs and input services:-

(i) Conditions and limitations:-

1. Service has been exported in terms of rule 6A.
2. Duty on the inputs/service tax on input services, rebate of which has been claimed, has been paid to the supplier/service provider respectively.

   If the exporter himself is liable to pay for any input services; he should have paid the service tax and cess to the Central Government.
3. No CENVAT credit has been availed of on inputs and input services on which rebate has been claimed.
4. In case any of the aforesaid conditions is not fulfilled, rebate paid, if any, shall be recoverable with interest in accordance with the provisions of section 73 and section 75 of the Finance Act, 1994.
5. Amount of rebate claimed is not less than ₹ 1,000.

The Notification also prescribes the procedure for claiming the rebate on inputs and input services.

> Meaning of important terms
>
> 1. **Service tax and cess:** means,-
>
>   (a) Service tax leviable under section 66 or section 66B of the Finance Act,

1994;

(b) Education cess on taxable service levied under section 91 read with section 95 of the Finance (No.2) Act, 2004; and

(c) Secondary and Higher Education Cess on taxable services levied under section 136 read with section 140 of the Finance Act, 2007.

2. **Duty:** means, duties of excise leviable under the following enactments, namely:-

(a) Central Excise Act, 1944.

(b) Additional Duties of Excise (Goods of Special Importance) Act, 1957.

(c) Additional Duties of Excise (Textiles and Textile Articles) Act, 1978.

(d) National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001, as amended by section 169 of the Finance Act, 2003, section 3 of the Finance Act, 2004 and further amended by section 123 of the Finance Act, 2005.

(e) Special duty of excise collected under a Finance Act.

(f) Additional duty of excise as levied under section 157 of the Finance Act, 2003.

(g) Education Cess on excisable goods as levied under section 91 read with section 93 of the Finance (No.2) Act, 2004.

(h) Additional duty of excise leviable under section 85 of the Finance Act, 2005.

(i) Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007.

(f) Other changes

S.No.	Rule	Amendment
1.	4(1)	Reference to erstwhile charging section 66 has been substituted with the new charging section 66B.
2.	5(2)(i)	Sub-clause (a) has been substituted with the following sub-clause:- (a) providing of any service
3.	5B	Rule 5B has been omitted.
4.	6(7)	Reference to erstwhile charging section 66 has been substituted with the new charging section 66B.
5.	6(7A)	Reference to erstwhile charging section 66 has been substituted with the new charging section 66B.

6.	6(7B)	Reference to erstwhile sub-clauses (zm) and (zzk) of clause (105) of section 65 has been omitted.
7.	6(7C)	Reference to erstwhile sub-clause (zzzzn) of clause (105) of section 65 of the said Act has been omitted.

E. AMENDMENTS/CLARIFICATIONS IN THE POINT OF TAXATION RULES, 2011

CLARIFICATION

1. Service to be treated as "completed" on completion of all the auxiliary activities enabling the service provider to issue the invoice

CBEC has clarified that the test for the determination whether a service has been completed would be the completion of all the related activities that place the service provider in a situation to be able to issue an invoice. The Service Tax Rules, 1994 require that invoice should be issued within a period of 30 days from the completion of the taxable service. The invoice needs to indicate *inter alia* the value of service so completed. Thus, it is important to identify the service so completed. This would include not only the physical part of providing the service but also the completion of all other auxiliary activities that enable the service provider to be in a position to issue the invoice. Such auxiliary activities could include activities like measurement, quality testing etc. which may be essential pre-requisites for identification of completion of service. However, it has been clarified that such activities do not include flimsy or irrelevant grounds for delay in issuance of invoice.

The Board has elucidated that the above interpretation also applies to determination of the date of completion of provision of service in case of "continuous supply of service".

[Circular No. 144/13/2011- ST dated 18.07.2011]

AMENDMENTS

1. Date of payment [Rule 2A]

Rule 2A has been inserted to define the date of payment.

For the purposes of these rules, "date of payment" shall be:-

(a) date on which the payment is entered in the books of accounts

or

(b) date on which payment is credited to the bank account of the person liable to pay tax

whichever is earlier.

(A) Date of payment in case of change in effective rate of tax or a new levy between the above two dates

In case,

(i) there is a change in effective rate of tax or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account;

(ii) the bank account is credited **after four working days** from the date when there is change in effective rate of tax or a service is taxed for the first time; and

(iii) the payment is made by way of an instrument which is credited to a bank account,

the date of payment shall be the date of credit in the bank account instead of the date of recording of payment in the books of accounts.

Analysis

Since rate of service tax has been changed from 10% to 12% with effect from 01.04.2012,

(i) In case where service has been provided before 01.04.2012 and the cheque / demand draft etc. has been received upto March 31, 2012, applicable rate of service tax would be 10% provided cheque / demand draft is credited in the bank account by April 5, 2012. Otherwise, the date of payment would be date of credit in the bank account [viz. after April 5, 2012] and consequently, new rate of 12% would be applicable.

(ii) In case where date of issuance of invoice and receipt of payment by cheque / demand draft etc. is received before 01.04.2012, applicable rate of service tax would be 10% provided cheque / demand draft etc. is credited in the bank account by April 5, 2012. Otherwise, the date of payment would be date of credit in the bank account [viz. after April 5, 2012] and consequently, new rate of 12% would be applicable.

(B) **If any rule requires determination of the time or date of payment received:** the expression "date of payment" shall be construed to mean such date on which the payment is received.

[Effective from 01.04.2012]

[Notification No. 04/2012-ST dated 17.03.2012]

2. **Amendments in rule 3 relating to determination of point of taxation**

(a) **Proviso to clause (a) amended**

Prior to amendment

In case the invoice is not issued within 14 days of the completion of the provision of the service, the point of taxation shall be date of such completion.

After the amendment

In order to align the aforesaid proviso with increased time-limit for issuance of invoice from 14 days to 30 days (45 days in case of banks and financial institutions including NBFCs) in rule 4A of the Service Tax Rules, 1994, proviso to clause (a) of rule 3 has been substituted with the following proviso:-

In case the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994 (30 or 45 days, as the case may be) of the completion of the provision of the service, the point of taxation shall be date of such completion.

(b) Proviso to rule 3 inserted

For the purposes of clauses (a) and (b), —

(i) Date of completion of provision of service in case of continuous supply of service: In case of continuous supply of service 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 receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

(ii) Point of taxation in case where payment upto ₹ 1,000 received in excess of the invoiced amount

Wherever the provider of taxable service receives a payment up to ₹ 1,000 in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined on the basis of invoice or completion of service, as the case may be, rather than payment.

Simultaneously, an amendment has also been made in the Service Tax Rules, 1994 which provides that service provider is not required to issue an invoice in the aforementioned case for such excess amount upto 1,000.

Purpose of the aforesaid provision:-

As a measure of added facilitation, an option has been provided to determine the point of taxation in respect of small advances up to ₹ 1000, in excess of the amount indicated in the invoice, on the basis of invoice or completion of service rather than payment. Such provision is expected to address the accounting problems faced by service providers in telecommunications, credit card businesses who regularly receive minor excess payments from their customers.

[Effective from 01.04.2012]

[Notification No. 04/2012-ST dated 17.03.2012]

3. Rule 5 relating to payment of tax on new services substituted with the new rule

Rule 5 has been substituted with a new rule which provides as follows:-

Where a service is taxed for the first time, then,—

(a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;

(b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within 14 days** of the date when the service is taxed for the first time.

**It is important to note that time-period available in case of new levy for the issuance of the invoice has still been restricted to 14 days as against normal time-period for issuance of invoice been extended to 30 days.

[Effective from 01.04.2012]

[Notification No. 04/2012-ST dated 17.03.2012]

4. Omission of rule 6 relating to determination of point of taxation in case of continuous supply of service

Since the essence of the rule applicable in case of continuous supply of service is the same as the main rule-rule 3, the separate rule for continuous supply of service has been omitted and merged with the main rule.

[Effective from 01.04.2012]

[Notification No. 04/2012-ST dated 17.03.2012]

5. Rule 7 substituted with a new rule

Prior to amendment

Earlier, rule 7 provided that in the following cases, subject to specified conditions, date of receipt or payment of consideration would be the point of taxation:-

(a) Person liable to pay service tax under reverse charge mechanism

(b) Services covered by rule 3(1) of the Export of Services Rules, 2005

*(c) Individuals or proprietary firms or partnership firms providing the eight specified services***

Further, in case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be:-

(a) the date of credit in the books of account of the person receiving the service

or

(b) date of making the payment

whichever is earlier.

After the amendment

Category (b) has been omitted now.

Further, the benefit of payment of service tax on receipt basis earlier provided to eight specified services has also been withdrawn. However, in case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is ₹ 50 lakh or less in the previous financial year, service tax on taxable services provided or to be provided by him up to a total of ₹ 50 lakh in the current financial year is payable on receipt basis (provided in Service Tax Rules, 1994).

New rule 7 reads as under:-

Notwithstanding anything contained in these rules, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made:

However, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist.

Further, in case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

***Note: CBEC vide Circular No. 154/5/ 2012 – ST dated 28.03.2012 has clarified that, in respect of the specified eight services, for invoices issued on or before 31st March 2012, the point of taxation shall be the date of payment.*

Further, Board has clarified vide Circular No. 158/9/2012-ST dated 08.05.2012 that the rate of service tax prevalent on the date when point of taxation occurs is the rate of service tax applicable on any taxable service. Therefore, in the abovementioned cases where the point of taxation is the date of payment, service tax should be charged @ 12% on these services, if the payment is received on or after 1st April, 2012 even though the invoices have been issued before 1st April, 2012.

Further, the supplementary invoices may be issued to reflect the new rate of tax, if required to recover the differential amount and that CENVAT credit can be availed on such supplementary invoices and tax payment challans (in case of reverse charge).

[Effective from 01.04.2012]

[Notification No. 04/2012-ST dated 17.03.2012]

6. Determination of point of taxation in other cases [Rule 8A inserted]

A residual rule-rule 8A has been inserted to determine the point of taxation by way of best judgment to handle situations where the tax-payer is unable to furnish one or more of the details needed i.e. date of payment or date of invoice or both to determine point of taxation. It provides as follows:-

Where the point of taxation cannot be determined as per these rules as the date of invoice or the date of payment or both are not available, the Central Excise officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.

[Effective from 01.04.2012]

[Notification No. 04/2012-ST dated 17.03.2012]

Definitions inserted / amended [Rule 2]

Following definitions have been inserted / amended:-

1. Definition of change in effective rate of tax inserted [Section 2(ba)]

"Change in effective rate of tax" shall include a change in the portion of value on which tax is payable in terms of a notification issued in the Official Gazette under the provisions of the Act, or rules made thereunder.

Earlier, this definition was provided as an explanation to rule 4 which has been omitted now.

2. Definition of continuous supply of service amended [Section 2(c)]

Prior to amendment

Earlier, continuous supply of service means any service which is provided, or to be provided continuously, under a contract, for a period exceeding three months or any other notified service.

After the amendment

Amended definition reads as follows:-

Continuous supply of service means

(i) any service which is provided, or to be provided continuously *or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time*,

or

(ii) where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition.

Implication of the amendment

The definition of continuous supply of service has been amended to capture the concept in a more wholesome manner. Consequently, in case of continuous supply of services, the condition of making payment periodically or from time-to-time has been inserted. Moreover, the services provided on a recurrent basis shall also be considered as continuous supply of service.

Services notified by the Central Government

Earlier, Central Government had notified following services to be continuous supply of service:-

(i) Construction in respect of Commercial or Industrial Buildings or Civil Structures

(ii) Construction Services of Residential Complexes

(iii) Telecommunication Services

(iv) Internet Telecommunication Services

(v) Works Contract Services

With effect from 01.07.2012, only telecommunication service and service portion in execution of a works contract are the services notified as the continuous supply of services. *[Notification No. 38/2012-ST dated 20.06.2012]*.

3. Definition of associated enterprises and taxable service omitted

Definition of associated enterprises and taxable service provided under clause (b) and (f) is omitted.

7. For the words, "provided or to be provided" wherever they occur, the words "provided or agreed to be provided" has been substituted.

[Effective from 01.07.2012]

[Notification No. 37/2012-ST dated 20.06.2012]

F. CHANGES IN THE REVERSE CHARGE MECHANISM

A number of changes have been made in the reverse charge provisions. In three of services namely hiring of means of transport, works contract and man power supply, both service receivers and service providers have been made liable to pay service tax in the prescribed percentages. In few other services, service receiver has been made liable to pay the entire service tax.

Section 68(2) of the Finance Act, 1994 has been suitably amended by the Finance Act, 2012 whereby a proviso has been added to the said section authorising Central Government to notify the service and extent of service tax payable each by the service provider and service receiver.

In view of the above amendment, *Notification No. 30/2012 dated 20.06.2012* has been issued which provides as follows:

Services where entire service tax is payable by the service receiver:-

1. **Insurance agent services:** The taxable services provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;
2. **Goods transport agency services:** The taxable services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—
   (a) any factory registered under or governed by the Factories Act, 1948.
   (b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India.
   (c) any co-operative society established by or under any law.
   (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 or the rules made thereunder.
   (e) any body corporate established, by or under any law, or
   (f) any partnership firm whether registered or not under any law including association of persons.

   > **Note:** The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.
3. **Sponsorship services:** The taxable services provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory.
4. **Legal services:** The taxable services provided or agreed to be provided to any business entity located in the taxable territory by,-
   (a) an arbitral tribunal, or
   (b) an individual advocate or a firm of advocates by way of support services, or

(c) Government or local authority by way of support services excluding,-

   (i) renting of immovable property, and

   (ii) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act,1994.

5. Renting of a motor vehicle: The taxable services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business by any individual/HUF/partnership firm (whether registered or not) including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory.

6. Services provided by a person located in non-taxable territory: The taxable services provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory.

   Services where service tax is jointly payable by the both service provider and service receiver:-

S.No.	Description of a service	Percentage payable by the service provider	Percentage payable by the service receiver
1	In respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business by any individual/HUF/partnership firm (whether registered or not) including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory	60%	40%
2	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose by any individual/HUF/partnership firm (whether registered or not) including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory	25%	75 %
3	in respect of services provided or agreed to be provided in service portion in execution of works contract by any	50%	50%

	individual/HUF/partnership firm (whether registered or not) including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory		

Note: In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

[Effective from 01.07.2012]

G. PLACE OF PROVISION OF SERVICES RULES, 2012

Service tax is a consumption based tax. A service should be taxed in the jurisdiction of its consumption. However, it is not easy to determine the jurisdiction of consumption of services. There could be a case where services are provided by a person located at one location, actually performed at another while being delivered to a person located at a third location, and occasionally actually consumed at a third location or over a larger geographical territory, falling in more than one taxable jurisdiction.

With effect from 1st July, 2012, Place of Provision of Services Rules, 2012 have been notified vide *Notification No. 28/2012-S.T. dated 20.06.2012* which prescribe the manner to determine the taxing jurisdiction for a service. Earlier, the provisions relating to import and export of services were contained in the 'Taxation of Services (Provided from outside India and received in India) Rules, 2006 and the Export of Services, Rules, 2005 respectively. These erstwhile rules used to handle the subject of place of provision of services indirectly, confining to define the circumstances in which a provision of service would constitute import or export.

Place of Provision of Services Rules determine the place where a service shall be deemed to be provided, in terms of section 66C of the Finance Act, 2012, read with section 94(hhh) of Chapter V of the Finance Act, 1994. They are primarily meant for the persons who deal in cross border services. These rules are also applicable for those who have operations with suppliers or customers in the State of Jammu and Kashmir. Moreover, service providers operating within India from multiple locations, without having centralized registration would find these rules useful in determining the precise taxable jurisdiction applicable to their operations. The rules will be equally relevant for determining services that are wholly consumed within a SEZ, to avail the outright exemption.

Need for these rules

As per the new charging section-Section 66B, service tax shall be levied on the services, provided or agreed to be provided in the taxable territory. Hence, only those services which are provided in the taxable territory would be liable to service tax and the services provided in the non-taxable territory would not be taxed.

In the given scenario, it is of paramount importance to determine the place of provision of a service as the taxability of the service would be determined based on the place of its provision.

1. Rule 3 - Main rule-Location of the receiver

The place of provision of a service shall be the location of service receiver.

However, in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the service provider.

(a) Analysis of the main rule

The default rule provides that a service shall be deemed to be provided where the service receiver is located. *The main rule would apply when none of the later rules apply.* Thus, if a service is not covered by an exception under one of the later rules, and is consequently covered under this default rule, then the receiver's location will determine whether the service is leviable to tax in the taxable territory.

Where the location of receiver is not ascertainable in the ordinary course of business:

Generally, in case of a service provided to a person who is in business, the service provider will have the location of the recipient's registered location, or his business establishment, or his fixed establishment etc, as the case may be.

However, in case of certain services (which are not covered by the exceptions to the main rule), the service provider may not have the location of the service receiver, in the ordinary course of his business. This will also be the case where a service is provided to an individual customer who comes to the premises of the service provider for availing the service and the provider has to, more often than not, rely on the declared location of the customer. In such cases the place of provision will be the location of the service provider.

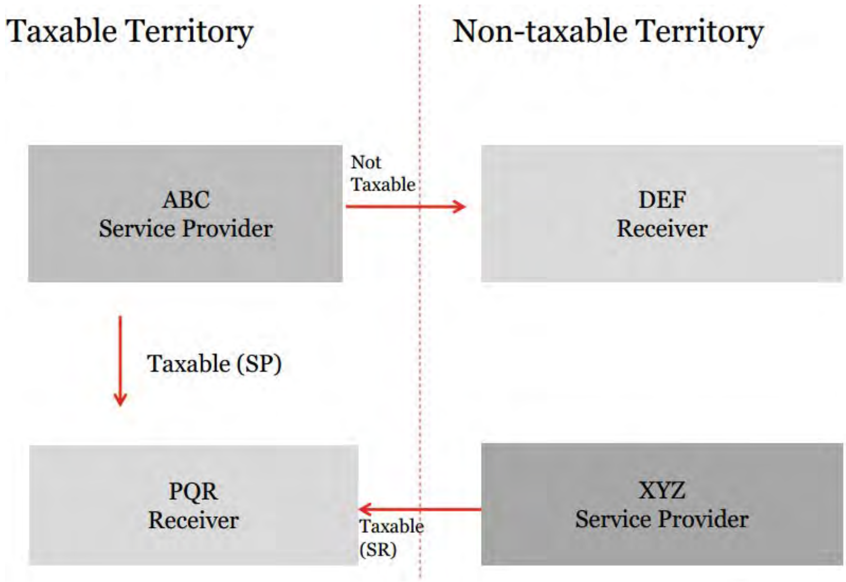
It may be noted that address of the service receiver should be available in the ordinary course of business and the service provider is not required to make any extraordinary efforts to trace his address.

(b) Implication of the rule

(i) Where the location of receiver of a service is in the taxable territory, such service will be deemed to be provided in the taxable territory and service tax will be payable.

(ii) Where the location of receiver of a service is outside the taxable territory, no service tax will be payable on the said service.

Under normal circumstances, a service provider is liable to pay service tax. However, if he is located outside the taxable territory and the place of provision of service is in the taxable territory, the person liable to pay service tax is service receiver in the taxable territory.



DETERMINATION OF THE LOCATION OF THE SERVICE RECEIVER/SERVICE PROVIDER

"Location of the service provider/service receiver" is determined by applying the following steps sequentially-

A. Where the service provider/service receiver has obtained a **single registration**, whether centralized or otherwise, the premises for which such registration has been obtained.

It implies that in case the service provider/receiver has more than one unit, he must have obtained centralized registration in order to be covered under this clause.

B. Where the service provider/service receiver is **not covered under point A. above**:

(i) The location of his **business establishment**; or

> **Business establishment:** is the place where the essential decisions concerning the general management of the business are adopted, and where the functions of its central administration are carried out.
> This could be head office, or a factory, or a workshop, or shop/ retail outlet. However, a service provider or receiver can have only one business establishment.
>
> ***For instance**, head office of M/s ABC Enterprises is in India, and its branches are in Malaysia, Singapore and London. The business establishment of M/s ABC Enterprises is in India.*

(ii) Where the services are provided from/used at a place other than the business establishment, that is to say, a **fixed establishment** elsewhere, the location of such establishment; or

> **Fixed establishment:** is a place (other than the business establishment) where there is a permanent and adequate human and technical resources to provide the services that are to be supplied by it, or to enable it to receive and use the services supplied to it for its own needs.
>
> It may be noted that in case the staff is temporarily available by way of a short visit to a place, such place cannot be termed as fixed establishment.
>
> ***For instance****, George Telecoms of USA sets up an office with staff in India to provide services to Indian customers. Fixed establishment of George Telecoms is in India.*

(iii) Where services are provided from/used at more than one establishment, whether business or fixed, the **establishment most directly concerned** with the provision/use of the service; and

> Whether the **establishment is most directly concerned** with the provision/use of the service depends on the facts and supporting documentation, specific to each case. The documentation will include the following:-
>
> - written contract(s) or any written correspondence which sets out in detail their understanding of the oral contract between the service provider and receiver;
> - in particular, for suppliers, from which establishment the services are actually provided;
> - in particular, for receivers, at which establishment the services are actually consumed, effectively used or enjoyed;
> - details of how the business fits into any larger corporate structure;
> - the establishment whose staff is actually involved in the execution of the job;
> - performance agreements (which may be indicative both of the substance and actual nature of work performed at a particular establishment);
>
> Thus, normally in the case of multiple establishments of a person, it will be the establishment that actually provides, or receives, a service that would be treated as 'directly concerned' with the provision of service, notwithstanding the contractual position, or invoicing or payment.
>
> ***For instance,*** *Shubham Ltd. is incorporated in India. However, it provides its services entirely from London. In the instant case, the location of Shubham Ltd. is London, being the place where the establishment most directly concerned with the supply is located.*

(iv) In the absence of such places, the **usual place of residence** of the service provider/service receiver.

Usual place of residence:

In case of	Usual place of residence
(i) A body corporate	of service provider/service receiver is the place where it is incorporated or otherwise legally constituted.
(ii) Telecommunications services	of service receiver is the billing address of service receiver.
(iii) An Individual	of service provider/service receiver is the place (country, state etc) where the individual spends most of his time for the period in question. Hence, an individual cannot have more than one usual place of residence.

2. Rule 4- Place of provision of performance based services

The place of provision of following services shall be the location where the services are actually performed, namely:-

(a) Services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service.

However, when such services are provided from a remote location by way of electronic means, the place of provision shall be the location where goods are situated at the time of provision of service.

Further, this sub-rule shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or reengineering for re-export, subject to conditions as may be specified in this regard.

(b) Services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.

Analysis of the rule

Clause (a): The nature of services covered here are the services that are related to goods, and which require such goods to be made available to the service provider/person acting on behalf of the service provider so that the service can be rendered. It will not cover services where the supply of goods by the receiver is not material to the rendering of the service.

1. Only those services would be covered here the provision of which requires the goods to temporarily come into the physical possession or control of the service provider, and without this happening, the service cannot be rendered.
2. Service involves movable objects or things that can be touched, felt or possessed.

3. Examples of such services are:-

   - repair, reconditioning, or any other work on goods (not amounting to manufacture)
   - storage and warehousing
   - courier service
   - cargo handling service (loading, unloading, packing or unpacking of cargo)
   - technical testing/inspection/certification/ analysis of goods
   - dry cleaning

4. Sometimes, services are provided by electronic means in relation to tangible goods located distantly from a remote location. In such a case, the actual place of performance of the service would be quite different from the actual location of the tangible goods. The place of provision here shall be the actual location of the goods and not the place of performance.

Clause (b): The nature of services covered here are the services which are rendered in person and in the physical presence of the service receiver.

Though these are generally rendered at the service provider's premises, they could also be provided at the customer's premises, or occasionally while the receiver is on the move.

1. Examples of such services are:-

   - cosmetic or plastic surgery
   - personal security service
   - health and fitness services
   - photography service (to individuals)
   - internet café service,
   - classroom teaching

2. It shall also include the service actually rendered by the provider to a person other than the receiver, who is acting on behalf of the receiver, in terms of the contractual arrangement between the provider and the receiver.

   For instance, a film producer contracts with a make-up expert for make-up of the lead actors of his film. In the given case, the film producer is the receiver of the service, but the service is rendered to the actors, who are receiving the make-up service on behalf of the film producer. Hence, notwithstanding that film producer does not qualify as the individual receiver in whose presence the service is rendered, the nature of the service is such as can be rendered only to an individual, thereby qualifying to be covered under this rule.

3. Rule 5-Place of provision of services relating to immovable property

The place of provision of services provided directly in relation to an immovable property including:-

- services provided in this regard by experts and estate agents
- provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever, name called
- grant of rights to use immovable property
- services for carrying out or co-ordination of construction work, including architects or interior decorators

shall be the place where the immovable property is located or intended to be located.

Analysis of the rule

In case of a service that is 'directly in relation to immovable property', the place of provision is where the immovable property (land or building) is located, irrespective of where the provider or receiver is located.

> Immovable property shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth [Section 3(26) of the General Clauses Act].
>
> Thus, properties such as buildings and fixed structures on land would be covered by the definition of immovable property.

1. Applicability of this rule

   This rule applies if the service is *directly in relation to immovable property located in taxable territory.* The immovable property must be clearly identifiable to be the one from where, or in respect of which, a service is being provided. In other words, there needs to be a very close link or association between the service and the immovable property.

   Following criteria will be used to determine if a service is in respect of immovable property located in the taxable territory:

   (i) The service consists of lease, or a right of use, occupation, enjoyment or exploitation of an immovable property;

   (ii) The service is physically performed or agreed to be performed on an immovable property (e.g. maintenance) or property to come into existence (e.g. construction);

   (iii) The direct object of the service is the immovable property in the sense that the service enhances the value of the property, affects the nature of the property, relates to preparing the property for development or redevelopment or the environment within the limits of the property (e.g. engineering, architectural services, surveying and sub-dividing, management services, security services etc);

   (iv) The purpose of the service is:

      (a) the transfer or conveyance of the property or the proposed transfer or conveyance of the property (e.g., real estate services in relation to the actual or proposed acquisition, lease or rental of property, legal services rendered to the owner or beneficiary or potential owner or beneficiary of property as a result of a will or testament);

(b) the determination of the title to the property.

Examples of land related services

- Renting of immovable property
- The surveying (such as seismic, geological or geomagnetic) of land or seabed
- Legal services such as dealing with applications for planning permission
- The supply of hotel accommodation or warehouse space

2. Non-applicability of this rule

This rule does not apply if a provision of service has only an indirect connection with the immovable property, or if the service is only an incidental component of a more comprehensive supply of services.

Examples of services which are not land related

- Advice or information relating to land prices or property markets because they do not relate to specific sites
- Services of an agent who arranges finance for the purchase of a property
- Repair and maintenance of machinery which is not permanently installed. This is a service related to goods

4. Rule 6-Place of provision of services relating to events

The place of provision of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held.

For instance, a well-known singer from USA intends to organize a Concert in Delhi and Mumbai. Any service provided by an event manager, or the right to entry will be taxable in India.

1. Example of a service ancillary to organization of an event

Provision of sound engineering for an artistic event is a prerequisite for staging of that event and should be regarded as a service ancillary to its organization.

2. Example of a service ancillary to admission to an event

A service of hiring a specific equipment to enjoy the event at the venue (against a charge that is not included in the price of entry ticket) is an example of a service that is ancillary to admission

3. Event-related services that would be treated as not ancillary to admission to an event

A service of courier agency used for distribution of entry tickets for an event is a service that is not ancillary to admission to the event.

5. **Rule 7- Place of provision of services provided at more than one location**

Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory **where the greatest proportion of the service is provided**.

Analysis of the rule

This rule covers situations where the actual performance of a service is at more than one location, and occasionally one (or more) such locations may be outside the taxable territory.

1. This rule is applicable in case of performance-based services or location-specific services (immovable property related or event-linked).
2. It does not intend to capture insignificant portion of a service rendered in any part of the taxable territory like mere issue of invoice, processing of purchase order or recovery, which are not by way of service actually performed on goods.

> *For instance, an Indian firm provides a 'technical inspection and certification service' for a newly developed product of an overseas firm (for a newly launched motorbike which has to meet emission standards in different States or countries). The testing is carried out in Maharashtra (20%), Kerala (25%), and Colombo (55%).*
>
> *Notwithstanding the fact that the greatest proportion of service is outside the taxable territory, the place of provision will be the place in the taxable territory where the greatest proportion of service is provided, which in this case is Kerala.*

6. **Rule 8- Place of provision of services where provider and recipient are located in taxable territory**

Place of provision of a service, where the location of the provider of service as well as that of the recipient of service is in the taxable territory, shall be the location of the recipient of service.

Analysis of the rule

This rule is applicable in a situation where on application of one of the earlier rules i.e. rule 4 to 6, the place of provision of service provided in the taxable territory may be determinable to be outside the taxable territory. However, both service provider and the service receiver are located in the taxable territory.

In this case, the place of provision of service is the location of the service receiver, i.e. the place of provision will be deemed to be in the taxable territory, notwithstanding the earlier rules.

> *For instance, a machinery of Bahara India Ltd of Bangalore develops a technical problem in London. Bharat Machineries of Delhi deputes some engineers to undertake repairs at the site in London. But for this rule, rule 4(1) would apply in this case, and the place of provision would be London i.e. outside the taxable territory.*

However, by application of rule 7, since the service provider, as well as the receiver, are located in the taxable territory, the place of provision of this service will be within the taxable territory.

7. Rule 9-Place of provision of specified services

The place of provision of the specified services shall be the location of the service provider.

Specified services are as follows:-

(a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) Online information and database access or retrieval services;

(c) Intermediary services;

(d) Service consisting of hiring of means of transport, upto a period of one month.

Analysis of the rule

Specified services in rule 9:-

(a) Banking services provided to account holders

Banking services provided to persons other than account holders will be covered under the main rule-rule 3.

Example of services provided by a banking company/financial institution etc. to account holders in the normal course of business:-

(i) Services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc.

(ii) Transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.

Financial leasing services including equipment leasing and hire-purchase, merchant banking services, asset management services, advisory and other auxiliary financial services are few instances of the services that are generally NOT provided by a banking company or financial institution to an account holder in the ordinary course of business.

"Account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account [Rule 2(b)].

(b) Online information and database access or retrieval services

As per rule 2(l), "online information and database access or retrieval services" means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network.

1. These services must be delivered over the internet or an electronic network which relies on the internet or similar network for their provision.
2. They should be completely automated, and require minimal human

intervention.

3. Examples of these services are:-
   - Web-based services providing access or download of digital content
   - digitized content of books and other electronic publications
   - online news, flight information and weather reports.
4. Sale or purchase of goods, articles etc over the internet, repair of software, or of hardware through the internet from a remote location, telecommunication services provided over the internet etc. shall not be included in the said services.

(c) Intermediary services

As per rule 2(f), "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service ('main' service) between two or more persons, but does not include a person who provides the main service on his account.

Thus, following persons are excluded:-

(i) Intermediaries in respect of goods (such as a commission agent i.e. a buying or selling agent, or a stockbroker).

(ii) A person who provides the main service on his own account.

(i) Guiding principles to determine whether a person is an intermediary or not

In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-

1. An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price.
2. The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging.
3. The service provided by the intermediary on behalf of the principal is clearly identifiable.

(ii) Services qualifying as 'intermediary services'

Services provided by the following persons will qualify as 'intermediary services':-

(i) Travel Agent (any mode of travel)

(ii) Tour Operator

(iii) Commission agent for a service

(iv) Recovery Agent

Any other service wherever a provider of any service acts as an intermediary for another person, as identified by the guiding principles outlined above.

(d) **Service consisting of hiring of means of transport, upto a period of one month**

Following will constitute means of transport:-

- Land vehicles such as motorcars, buses, trucks;
- Vessels;
- Aircraft;
- Vehicles designed specifically for the transport of sick or injured persons;
- Mechanically or electronically propelled invalid carriages;
- Trailers, semi-trailers and railway wagons.

The following are not 'means of transport':-

- Racing cars;
- Containers used to store or carry goods while being transported;
- Dredgers, or the like.

8. Rule 10-Place of provision of goods transportation services

The place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods.

However, the place of provision of services of goods transportation agency shall be the location of the person liable to pay tax.

Analysis of the rule

This rule covers the service of transportation of goods, by any mode of transport (air, vessel, rail or by a goods transportation agency). However, it does not cover the transportation of goods by courier or mail.

For instance, a consignment of polished diamonds is consigned from Mumbai to New Jersey. The place of provision of goods transportation service will be New Jersey (outside India, hence not liable to service tax).

Conversely, if a consignment of glassware is consigned from New York to Chennai, the place of provision will be Chennai.

Exception to the rule

Sub-rule 2(1)(d) of Service Tax Rules, 1994 provides that where a service of transportation of goods is provided by a 'goods transportation agency', and the consignor or consignee is covered under any of the specified categories prescribed therein, the person liable to pay tax is the person who pays, or is liable to pay freight (either himself or through his agent) for the transportation of goods by road in a goods carriage. If such person is located in non-taxable territory, then the person liable to pay tax shall be the service provider.

For instance, a goods transportation agency ABC located in Delhi transports a consignment of *new motorcycles from the factory of XYZ in Gurgaon (Haryana), to the premises of a dealer in Bhopal, Madhya Pradesh. Say, XYZ is a registered assessee and is also the person liable to pay freight and hence person liable to pay tax, in this case. Here, the place of provision of the service of transportation of goods will be the location of XYZ i.e. Haryana.*

9. **Rule 11- Place of provision of passenger transportation service**

   The place of provision in respect of a passenger transportation service shall be the place **where the passenger embarks on the conveyance for a continuous journey.**

   Analysis of the rule

   A **"continuous journey"** means a journey for which:-

   (i) a single ticket has been issued for the entire journey; or

   (ii) more than one ticket or invoice has been issued for the journey, by one service provider, or by an agent on behalf of more than one service providers, at the same time, and there is no scheduled ***stopover***** in the journey [Rule 2(d)].

   *****Stopover*** means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time. All stopovers do not cause a break in continuous journey. Only such stopovers will be relevant for which one or more separate tickets are issued.

   For instance, a travel on Delhi-London-New York-London-Delhi on a single ticket with a halt at London on either side, or even both, will be covered by the definition of continuous journey. However if a separate ticket is issued, say New York-Boston-New York, the same will be outside the scope of a continuous journey.

10. **Rule 12-Place of provision of services provided on board a conveyance**

    Place of provision of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the **first scheduled point of departure of that conveyance for the journey**.

    Analysis of the rule

    This rule covers the service which has been provided on a conveyance (aircraft, vessel, rail, or roadways bus) during the course of a passenger transport operation. The place of provision in such a case would be the first scheduled point of departure of that conveyance for the journey.

    Such services must be provided against a specific charge, and not supplied as part of the fare.

    For instance, a video game or a movie-on-demand is provided as on-board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi flight. The place of provision of this service will be Bangkok (outside taxable territory, hence not liable to tax).
    If the above service is provided on a Delhi-Kolkata-Bangkok-Jakarta flight during the Bangkok-Jakarta leg, then the place of provision will be Delhi (in the taxable territory, hence liable to tax).

11. **Rule 13-Powers to notify description of services or circumstances for certain purposes**

In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.

Analysis of the rule

The rule is an enabling power to correct any injustice being met due to the applicability of rules in a foreign territory in a manner which is inconsistent with these rules leading to double taxation. Due to the cross border nature of many services it is also possible in certain situations to set up businesses in a non-taxable territory while the effective enjoyment, or in other words consumption, may be in taxable territory.

This rule is also meant as an anti-avoidance measure where the intent of the law is sought to be defeated through ingenious practices unknown to the ordinary ways of conducting business.

12. Rule 14-Order of application of rules

Rule 14 of the said rules provide that notwithstanding anything stated in any rule, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration. Hence, in case where the nature of a service, or the business activities of the service provider, may be such that two or more rules may appear equally applicable, later rule would prevail.

For instance, an architect based in Mumbai provides his service to an Indian Hotel Chain (which has business establishment in New Delhi) for its newly acquired property in Dubai. If Rule 5 (Property rule) were to be applied, the place of provision would be the location of the property i.e. Dubai (outside the taxable territory). With this result, the service would not be taxable in India.

Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi. Place of provision being in the taxable territory, the service would be taxable in India.

By application of Rule 14, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.

H. CLARIFICATIONS

1. Service tax is not chargeable on delayed payment charges collected by Stock Brokers

CBEC has clarified that service tax would not be payable on the additional amount that is collected towards the delay in making payment to the stock brokers by their customers (delayed payment charges) in respect of Stock Broker's services.

The Board has referred to two of its earlier circulars on the issue. The circulars are:

(i) *Circular No. 96/7/2007 - ST dated 23.08.2007* which clarifies that an amount collected for delayed payment of a telephone bill is not to be treated as consideration charged for provision of telecom service and therefore, does not form a part of the value of taxable service.

(ii) *Circular No. 121/02/2010 - ST dated 26.4.2010* which clarifies that detention charges in respect of detained containers are not in respect of service provided on behalf of client (under BAS) nor is it on account of infrastructure support services (under BSS). Such charges can at best be called as 'penal rent' for retaining the containers beyond the predetermined period. Therefore, the amount collected as 'detention charges' is not chargeable to service tax.

Applying the same analogy, CBEC has clarified that delayed payment charges received by the stock brokers are also therefore, not includible in taxable value as the same are not the charges for providing taxable services. Such charges are on account of delay in making payments by the service recipient to the service provider and are in the nature of a penal charge for not making the payment within stipulated time.

It may be noted that the Board has stated that this principle will also apply to other service providers.

However, section 67 of the Finance Act 1994 provides that service tax is chargeable on taxable value which shall be the 'gross amount charged' by the service provider. Therefore, if in the account statement / invoice / bill etc issued by the service provider, only the gross amount is shown without indicating the delayed payment charges separately, the service tax would be payable on the entire amount. Delayed payment charges would not be includible in 'gross value charged' only if these charges are shown separately in the account statement/invoice/bill etc.

[CBEC Letter No. F.No.137/25/2011-ST dated 03.08.2011]

2. **Clarification on levy of service tax on distributors/sub-distributors of films & exhibitors of movie**

Earlier, *Circular No. 109/03/2009 dated 23.02.2009* clarified that screening of movie is not taxable except in a case where the distributor leases out the hall for screening of the movie,

(i) the theater owner gets a fixed rent from the distributor.

(ii) the profit or loss from exhibiting the film is borne by the distributor.

In such a case, the theatre owner provides the taxable service of **'renting of immovable property'** for furtherance of business or commerce and is accordingly **liable to pay service tax on the rent received** from the distributor.

However, in view of the introduction of "services related to copyrights on cinematographic film and sound recording" and enhancement of the scope of "business support services" by substitution of words 'operational assistance for marketing' with the words 'operational or administrative assistance', the Department has revisited its stand taken in the said circular.

The arrangements entered into by the distributor/sub-distributor/area distributor etc and the exhibitor/ theatre owner etc in exhibiting the film produced by the producer, the original copyright holder, the arrangements and their respective service tax classification is tabulated as under:

In case where	Type of arrangement	Service tax implication
Distributor/sub-distributor /area distributor enters into an arrangement with the exhibitor or theatre owner with no profit/revenue sharing agreement	Movie being exhibited by theatre owner or exhibitor on his account – i.e. the copyrights are temporarily transferred	Service tax is leviable under copyright service on the service to be provided by distributor or sub-distributor or area distributor or producer etc, as the case may be.
	Movie being exhibited on behalf of distributor or sub-distributor or area distributor or producer etc – i.e. no copyrights are temporarily transferred	Depending upon the arrangement whether the theatre owner has merely let out its premises to the distributor or is also involved in giving support services for the business of the distributor, there can be a case of leviability of service tax on the remuneration retained by such theatre owner under renting of immovable property service/ business support service, to be provided by theatre owner or exhibitor
Distributor/sub-distributor /area distributor enters into an arrangement with the exhibitor or theatre owner with the understanding to share revenue/profits	Arrangement is on principal-to-principal basis	The character of a "person" is not acquired in the business transaction and the tax is leviable on either of the constituent members based on the nature of the transaction and as per rules of classification of service as embodied under section 65A of the Finance Act, 1994.
	Arrangement is NOT on principal-to-principal basis	A new entity emerges, distinct from its constituents. As the new entity acquires the character of a "person", the transactions between it and the other independent entities namely the distributor / sub-

		distributor / area distributor and the exhibitor etc will be a taxable service under applicable service head.

[Circular No. 148/17/2011-ST dated 13.12.2011]

3. Service tax not leviable on toll in the nature of 'user charge' or 'access fee' paid by roads users

Issue: Whether the toll fee paid by users, for using the roads, is liable to service tax?

Clarification: Toll is a fee paid by the users of roads, including those roads constructed by a Special Purpose Vehicle (SPV) created under an agreement between National Highway Authority of India (NHAI)/State Authority and the concessionaire (Public Private Partnership Model / Build-Own/Operate-Transfer arrangement). 'Tolls' is a matter enumerated (serial number 59) in List-II (State List), in the Seventh Schedule of the Constitution of India and the same is not covered by any of the taxable services at present.

(a) SPV collecting service tax on its own account not liable to service tax

Under PPP model, SPV collects toll on its own account and not on behalf of the person who has made the land available for construction of the road. An SPV formed as a result of agreement between NHAI/State Authority and the concessionaire under the BOT arrangement, cannot be considered as an agent of the NHAI. Renting, leasing or licensing of vacant land by the NHAI or State Authority to an SPV for construction of road and such construction, do not attract service tax.

(b) An independent entity collecting toll on behalf of SPV liable under "business auxiliary services"

SPV engages an independent entity to collect toll from users on its behalf and a part of toll collection is retained by that independent entity as commission or is compensated in any other manner, service tax liability arises on such commission or charges, under the Business Auxiliary Service [erstwhile section 65(105)(zzb) read with section 65(19) of the Finance Act, 1994.

> Key to important terms used
>
> 1. BOT (Build-Operate-Transfer arrangement)
>
> A company builds a facility, an infrastructure project, gets to operate it for a while and is paid for that, and finally transfers it back to the public sector at the end of sometime.
>
> 2. BOOT (Build-Own-Operate-Transfer arrangement)
>
> A private project company builds a project, operates it for some period of time (like 20 or 25 years) during which they collect revenues, and then transfers it to the host government or its agency.
>
> 3. BOO (Build-Own-Operate arrangement)
>
> The contractor constructs and operates a facility without transferring ownership to the public sector. Legal title to the facility remains in the private sector, and there is no obligation for the public sector to purchase the facility or take title.
>
> 4. Public–Private Partnership (PPP)
>
> Public–private partnership (PPP) describes a government service or private business venture which is funded and operated through a partnership of Government and one or more private sector companies.
>
> 5. Special purpose vehicle (SPV)
>
> A special purpose vehicle (SPV) is a company that is created solely for a particular financial transaction or series of transactions.

Note: In the negative list approach, services by way of access to a road or a bridge on payment of toll charges have been included in the negative list.

[Circular No. 152/3 /2012-ST dated 22.02.2012]

4. **CBEC prescribes the documents to be submitted along with the application of service tax registration**

The following documents have been prescribed by the CBEC to be submitted along with the application for registration under service tax:

(a) Copy of Permanent Account Number (PAN)

(b) Proof of Residence

(c) Constitution of the Applicant

(d) Power of Attorney in respect of authorized person (s).

The above documents must be submitted within a period of 15 days from the date of filing of the application, otherwise the application may be rejected. The time limit of seven days within which the registration is to be granted by the Superintendent of Central

Excise/Service Tax would be reckoned from the date the application for registration is complete in all respects.

[Order no. 2/2011 - ST dated 13.12.2011 - F.No. 137/120/2011 - ST]

5. Services provided by the Agricultural Produce Marketing Committee (APMC) /Board

The CBEC has issued the following clarification as to whether the services provided by the Agricultural Produce Marketing Committee (APMC) /Board are liable to service tax.

Leviability under business support services

It has been clarified by the Board that under business support services, tax is to be levied on the outsourced services as illustrated in the definition of support services of business/commerce. In the light of the above instruction, the service provided by APMC out of the market fee is not in the nature of 'outsourced service'. It is not possible to hold that the licensees have outsourced the development and maintenance of agricultural market to the APMC, which could have been otherwise undertaken by them, solely in their business interest. Development and maintenance of agricultural market infrastructure undertaken by APMC in accordance with the statute, is for the benefit of all users, rather than an activity solely in the interest of licensees. Hence, APMC cannot be said to be rendering 'business support service' to the licensees. 'Market fee' is not in the nature of consideration for such business support service.

Leviability under business auxiliary services

As statutory bodies, APMCs provide basic facilities in the market area out of the 'market fee' collected from the licensees, mainly to facilitate the farmers, purchasers and others. APMCs provide a host of services to the licensees in relation to the procurement of agricultural produce, which are 'inputs' in terms of the definition given in section 65(19) of the Finance Act, 1994 (now has ceased to exist) itself. To that extent the meaning of 'input' is much wider in scope than the meaning assigned in rule 2(k) of Cenvat Credit Rules, 2004. Therefore, it is clarified that the services provided by the APMC are classifiable as business auxiliary services and hence covered by the exemption under Notification 14/2004-ST (It has been rescinded now).

It may be noted that any other service provided by the APMCs for a separate charge (other than 'market fee') to either the licensees or farmers or any other person, e.g. renting of shops in the market area, etc. would be liable to tax under the respective taxable heads.

Agricultural Produce Marketing Committee

APMCs are statutory bodies created with a view to regulate agricultural produce markets. APMCs charge market fee for issuing licenses to whole sale trader-cum-commission agent, wholesale traders, commission agent, mill / factory / cold storage owners or any other buyers of agricultural produce, for an agricultural year. The amount so collected by the APMC, from the licensees, is used for providing among other things facilities like roads, drinking water, weighing machines, storage places, street lights, etc. in the market area. These services are not provided on one-to-one basis i.e. in consideration or as an obligation to the persons who have tendered the license fee. Some of these services may be capable of being used more conspicuously by the licensees but they do not form part of any contractual obligation to any of the licensees.

Note: Services provided by APMCs relating to agriculture or agricultural produce have been specifically included in the negative list.

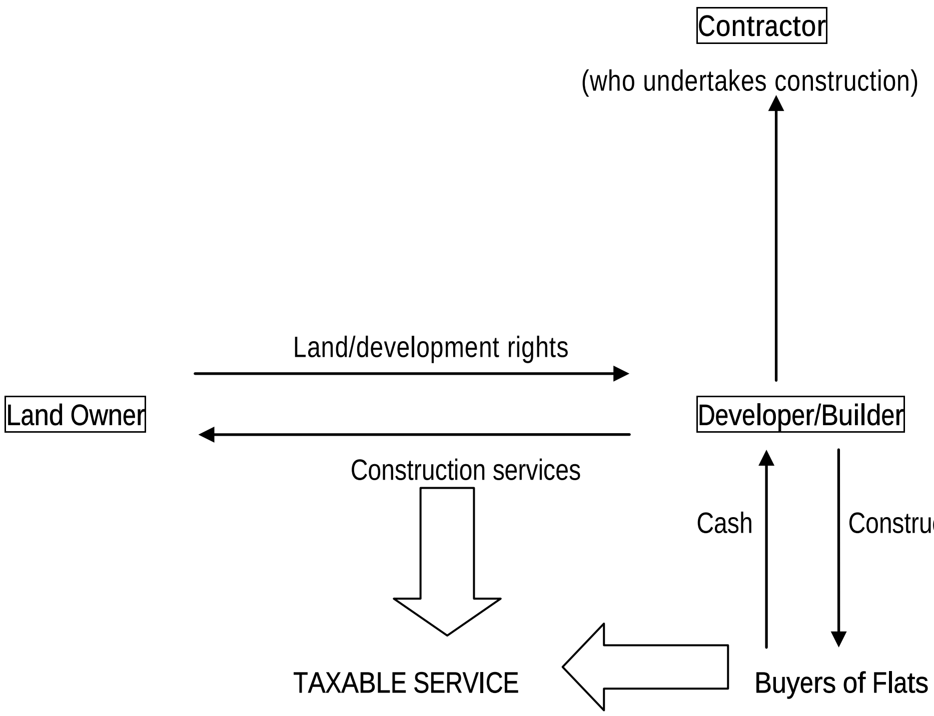
[Circular No. 157/8 /2012-ST dated 27.04.2012]

6. Clarification regarding the service tax on construction services under various business models

(a) TRIPARTITE BUSINESS MODEL

Parties in the model: (i) landowner; (ii) builder or developer; and (iii) contractor who undertakes construction).

Issue: Whether service tax is liable to be paid on flats/houses agreed to be given by builder/developer to the land owner towards the land /development rights and to other buyers?



Clarification:

I. Taxability: Construction service provided by the builder/developer is taxable in case any part of the payment/development rights of the land was received by the builder/ developer before the issuance of completion certificate and the service tax would be required to be paid by builder/developers even for the flats given to the land owner.

II. Valuation:

(i) Flats given to the land owner: Value is determinable in terms of section 67(1)(iii) read with rule 3(a) of Service Tax (Determination of Value) Rules, 2006, as the consideration for these flats i.e., value of land / development rights in the land may not be ascertainable ordinarily. Accordingly, the value of these flats would be equal to the value of similar flats (as are sold nearer to the date on which land is being made available for construction) charged by the builder/developer from other buyers.

Liability to pay service tax arises at the time when the possession or right in the property of the said flats are transferred to the land owner by entering into a conveyance deed or similar instrument (eg. allotment letter).

(ii) Flat sold to other buyers: Value shall be determined in terms of section 67 of the Finance Act, 1994.

Valuation under service tax

Flats given to land owner	Flats sold to other buyers
Section 67(1)(iii) + Rule 3(a) of the Valuation Rules	Section 67

(b) RE-DEVELOPMENT INCLUDING SLUM REHABILITATION PROJECTS

Generally in this model, land is owned by a society, comprising members of the society with each member entitled to his share by way of an apartment. When it becomes necessary after the lapse of a certain period, society/its flat owners may engage a builder/developer for undertaking re-construction.

Society /individual flat owners give 'No Objection Certificate' (NOC) or permission to the builder/developer, for re-construction. The builder/developer makes new flats with same or different carpet area for original owners of flats and additionally may also be involved in one or more of the following:

(i) construct some additional flats for sale to others;

(ii) arrange for rental accommodation or rent payments for society members/original owners for stay during the period of re-construction;

(iii) pay an additional amount to the original owners of flats in the society.

Members of society → Builder/Developer: Development rights including permission for additional no. of flats

Builder/Developer (undertaking re-construction) → Members of society:
(i) Re-construction service
(ii) Rental accommodation/rent for stay during the period of re-construction
(iii) Additional amount

Buyers of new flats → Builder/Developer: Cash

Builder/Developer → Buyers of new flats: Construction of flats ⇒ TAXABLE SERVICE

I. **Taxability:** Construction service provided by the builder/developer to the buyers of new flats of service receivers is taxable in case any payment is made to the builder/ developer before the issuance of completion certificate.

II. **Valuation:** Value shall be determined in terms of section 67(1)(i) of the Finance Act, 1994.

(c) INVESTMENT MODEL

In this model, before the commencement of the project, the same is on offer to investors. Either a specified area of construction is earmarked or a flat of a specified area is allotted to the investors and as it happens in some places, additionally the investor may also be promised a fixed rate of interest. After a certain specified period, an investor has the option either to exit from the project on receipt of the amount invested alongwith interest or he can re-sell the said allotment to another buyer or retain the flat for his own use.

Taxability: Investment amount shall be treated as consideration paid in advance for the construction service to be provided by the builder/developer to the investor and the said amount would be subject to service tax. If the investor decides to exit from the project at a later date, either before or after the issuance of completion certificate, the builder/developer would be entitled to take credit under rule 6(3) of the Service Tax Rules, 1994 (to the extent he has refunded the original amount). If the builder/developer resells the flat before the issuance of completion certificate, again tax liability would arise.

(d) CONVERSION MODEL

Conversion of any hitherto untaxed construction /complex or part thereof into a building or civil structure to be used for commerce or industry, after lapse of a period of time would be liable to service tax only if such conversion falls within the meaning of commercial or industrial construction service.

(e) NON REQUIREMENT OF COMPLETION CERTIFICATE/WHERE COMPLETION CERTIFICATE IS WAIVED/NOT PRESCRIBED

In certain States, completion certificates have been waived or are considered as not required for certain specified types of buildings. In such cases, the equivalent of completion certificate by whatever name called should be used as the dividing line between service and sale.

(f) BUILD- OPERATE - TRANSFER (BOT) PROJECTS

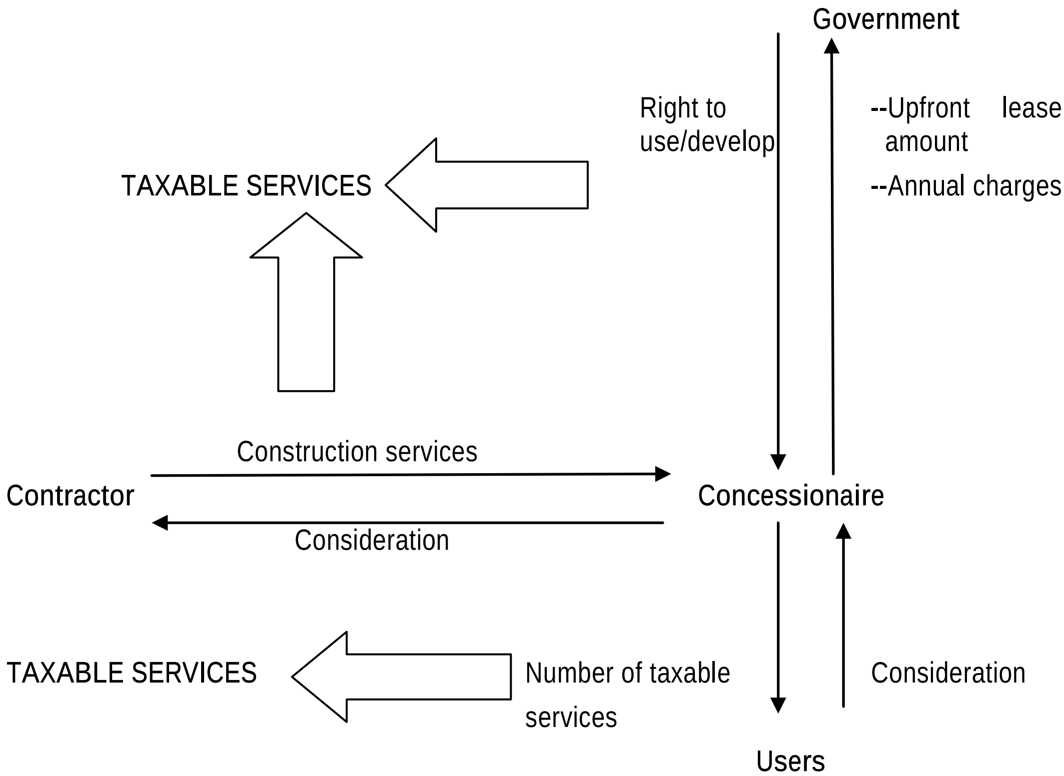
Generally under BOT model, transactions involving taxable service take place usually at three different levels: Firstly, between Government or its agency and the concessionaire; secondly, between concessionaire and the contractor and thirdly, between concessionaire and users, all in terms of specific agreements.

First level: Government or its agency transfers the right to use and/or develop the land, to the concessionaire, for a specific period, for construction of a building for furtherance of business or commerce (partly or wholly). Consideration for this taxable service may be in the nature of upfront lease amount or annual charges paid by the concessionaire to the Government or its agency. Here the Government or its agency is providing 'renting of immovable property service' (renting of vacant land to be used for furtherance of business or commerce).

In this model, though the concessionaire is undertaking construction of a building to be used wholly or partly for furtherance of business or commerce, on the land provided by the government or its agency for temporary use, he will not be treated as a service provider since such construction has been undertaken by him on his own account and he remains the owner of the building during the concession period.

Second level: Where the concessionaire engages a contractor for undertaking construction of a building on the land, service tax is payable on the construction service provided by the contractor to the concessionaire.

Third level: Concessionaire enters into agreement with several users for commercially exploiting the building developed/constructed by him, during the lease period. At this level, concessionaire is the service provider and user of the building is the service receiver. The concessionaire may provide to the users, taxable services such as 'renting of immovable property service', 'business support service', 'management, maintenance or repair service', 'sale of space for advertisement', etc. Service tax is leviable on the taxable services provided by the concessionaire to the users.



(g) JOINT DEVELOPMENT AGREEMENT MODEL

Under this model, land owner and builder/developer join hands and may either create a new entity or otherwise operate as an unincorporated association, on partnership /joint / collaboration basis, with mutuality of interest and to share common risk/profit together. The new entity undertakes construction on behalf of landowner and builder/developer.

[Circular No. 151 /2 /2012-ST dated 10.02.2012]

7. **Audit fees collected by the Comptroller and Auditor General (CAG) not liable to service tax**

   CBEC vide *Circular No. 159/10/2012 ST dated 19.06.2012* has clarified that audit fees collected by Comptroller & Auditor General (CAG) for conducting audit of corporations is not liable to service tax under the category of "Practicing Chartered Accountant's Services" on account of the following reasons:

   - CAG, being a constitutional authority, cannot be considered as a "concern" in the same manner as a firm of Chartered Accountants.
   - The services of CAG are not the services as are rendered by a Chartered Accountant even though both may be engaged in the sphere of the auditing. The scope of work of the CAG goes far beyond that of a statutory company auditor and is often carried out by persons who may not even be Professional Chartered Accountants. These audits are done in terms of Section 18 of the CAG (Duties, Powers and Conditions of Service) Act, 1971, which is entirely different from the powers vested in a Chartered Accountant under the Chartered Accountant Act, 1949.

   CBEC has further clarified that the services of CAG are also not covered under the category of "Business Support Services" since the audit activity undertaken by CAG is not an outsourced function, but is carried out in statutory fulfillment of duties.

8. **Finance Act, 2004 relating to EC and the Finance Act, 2007 relating to SHEC applicable in the negative list approach also**

   Issue: Whether the provisions of the Finance Act, 2004 relating to education cess and the Finance Act, 2007 relating to secondary and higher education cess are applicable as the concerned Acts make reference to section 66 of the Finance Act, 1994, which shall cease to have effect from July 1, 2012?

   Clarification: CBEC referred to section 8(1) of the General Clauses Act, 1897 which provides as under:

   Where this Act, or any Central Act or Regulation made after reference to the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provisions so re-enacted.

   Thus any reference to section 66 of the Finance Act, 1994 would be construed as reference to the newly re-enacted provision i.e. section 66B of the same Act.

   [Circular No. 160/11/2012 dated 29.06.2012]

> **Important note**
>
> Clarification no. 1 to 7 mentioned above have been issued during the period prior to introduction of negative list concept. Hence, they have reference to the various taxable services as per section 65(105). However, it may be noted that the principles clarified in the said circulars still hold good.

C. CUSTOMS

1. E-payment of customs duty made mandatory for importers paying duty of Rs 1 lakh or more

In order to reduce the transaction cost of the importers and expedite the time taken for customs clearance, the CBEC has made e-payment of duty mandatory for the importers paying an amount of ₹ 1,00,000 or more per transaction. *The date from which the E-payment will be made mandatory will be notified separately.* In 2007, e-payment facility was introduced on a voluntary basis.

Further, the Board has clarified that Accredited Importers under the Customs Accredited Client Programme will have to duty through E- payment mode only irrespective of the amount of duty to be paid.

Any importer wanting to make use of the e-payment facility first needs to have an Internet account with a designated bank. The Board has set up a dedicated payment gateway called, 'ICEGATE'.

If the importer is registered on this Web site, it can easily use the e-payment facility with the current log-in facility. Those that are un-registered can also use the Web site as an 'unregistered user'.

The importer need not produce any proof of payment for the clearance of goods in case of e-payment.

[Circular No. 33/2011 Cus. dated 29.07.2011]

2. Time Period for claiming drawback on Goods exported other than by post prescribed under Drawback Rules aligned with the period prescribed under section 75A

Section 75A of the Customs Act, 1962 provides for payment of interest if the drawback is not paid to the claimant within one month from the date of filing a claim for drawback at the rate prescribed from the date of expiry of one month till the date of payment of such drawback. This period of 'one month' was amended w.e.f 14.05.2003 from 'two months' prior to 14.05.2003.

However, corresponding amendment was not made in rule 13(4) of the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, which provides for manner and time limit for claiming drawback. The rule continued to mention that 'two months' period prescribed under section 75A shall exclude the time taken in testing of the export goods subject to maximum of one month. CBEC has therefore, now amended this period under Rule 13(4) from 'two months' to 'one month' to bring it in line with time limit prescribed under section 75A.

[Notification No. 69 /2011- Cus (NT) dated 22.09.2011]

3. Section 28 of Customs Act amended retrospectively to validate Show Cause Notices

The Supreme Court in the case of CCus. v. Sayed Ali 2011 (265) ELT 17 has held that Collector of Customs (Preventive) is not 'proper officer' and hence not competent to issue Show Cause Notice. The Apex Court held that only the customs officer assigned with specific functions of assessment and re-assessment in jurisdictional area where goods are imported are competent to issue show cause notice under Section 28 of Customs Act, 1962 as 'proper officer'. The Court further ruled that Notifications appointing Collector of Customs (Preventive) to be Collector of Customs for Bombay, Thane and Kolaba Districts do not ipso facto confer jurisdiction on him to exercise power entrusted to 'proper officers' under Section 28. The Court explained that the governing test to determine whether an 'officer of customs' is 'proper officer' is the specific entrustment of function by either CBEC or Commissioner of Customs under section 2(34) of Customs Act, 1962.

Pursuant to the above judgement, an *Instruction F.No.437/143/2009- Cus. IV(pt) dated 15.04.2011* was issued by the Board directing the field formations to examine pending Show Cause Notices and wherever these are not hit by time limitation to get these issued afresh by the jurisdictional Commissionerates. Further, as a prospective remedial measure, the officers of Directorate General of Revenue Intelligence (DRI), Commissionerates of Customs (Preventive), Directorate General of Central Excise Intelligence (DGCEI) and Central Excise Commissionerates were assigned the functions of the 'proper officer' for the purposes of Sections 17 and 28 of the Customs Act by the Board vide *Notification No.44/2011-Customs (N.T.), dated 06.07.2011*.

With a view to validate the Show Cause Notices issued prior to 06.07.2011, the Board had proposed to retrospectively amend section 28 of the Act by the Customs (Amendment and Validation) Bill, 2011. The President has given assent to the said Bill and the amendment to Section 28 has come into force w.e.f. 16.09.2011. The said Act amends Section 28 of the Customs Act, 1962 by inserting clause (11), which reads as follows:

"(11) Notwithstanding anything to the contrary contained in any judgement, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the sixth day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section."

Accordingly, as per the amended Section 28 of the Customs Act, 1962 Show Cause Notices issued prior to 06.07.2011 by officers of Customs, which would include officers of Commissionerates of Customs (Preventive), Directorate General of Revenue Intelligence (DRI), Directorate General of Central Excise Intelligence and similarly placed officers stand validated since these officers are retrospectively recognized as 'proper officers' for the purpose of Sections 17 and 28 of the said Act.

The Board has therefore, withdrawn *Instruction F.No.437/143/2009-Cus. IV (pt) dated 15.04.2011* as the matter pertaining to validity of Show Cause Notice has now been settled in terms of *Notification No.44/2011-Customs (N.T.) dated 06.07.2011* and amended Section 28 of the Customs Act, 1962.

It may be noted that though in terms of Notification No.44/2011-Customs (N.T.) dated 06.07.2011 the officers of DRI and DGCEI are 'proper officers' for the purposes of Section 28, the Board has directed that these officers shall not exercise authority in terms of clause (8) of Section 28 of the said Act. In other words, there would be no change in the present practice and officers of DRI and DGCEI shall NOT adjudicate the Show Cause Notices issued under Section 28 of the Act.

[Circular No. 44/2011 Cus dated 23.09.2011]

4. Advance Ruling facility available to resident public limited companies

By virtue of *Notification No. 67/2011 dated 22.09.2011*, the Resident Public Limited Companies have been brought under the ambit of Section 28E of Customs Act. Such companies can now avail the facility of advance ruling on the issues like classification, applicability of any exemption notification, principles of valuation, applicability of notifications issued in respect of duties under the Customs Act, 1962, Customs Tariff Act, 1975, and any duty chargeable under any other law for the time being in force in the same manner as duty of Customs under the Customs Act, 1962 etc.

Public limited company shall have the same meaning as is assigned to a "public company" in clause (iv) of sub-section (1) of section 3 of the Companies Act, 1956 and shall include a private company that becomes a public company by virtue of section 43A of the said Act. A 'resident' shall have the same meaning as is assigned to it in clause (42) of section 2 of the Income tax Act, 1961 in so far as it applies to a company. The facility provides an option to wholly Indian-owned companies to seek binding rulings so as to avoid risk litigation at a later stage.

Hitherto, the advance ruling facility was restricted to any person who is a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident, any person who is a resident setting up a joint venture in India in collaboration with a non-resident, a wholly-owned subsidiary Indian company of which the holding company is a foreign company, a joint venture in India or a resident who proposes to import any goods under specified preferential or free trade agreements. In 2009, public sector companies were also allowed to seek advance ruling and now the facility has been extended to resident public limited companies.

[Notification No.67/2011 Cus. (NT) dated 22.09.2011]

5. Limits for duty free baggage for tourists revised

Rule 7 of Baggage Rules, 1998 contains the provisions for clearance of free of duty articles by tourist in his bonafide baggage. The limit of baggage allowed is contained in Appendix E of the Rules. The Appendix E has been revised as under:

(1)	(2)
(a) Tourists of Indian origin coming to India other than tourists of Indian origin coming by land routes as specified in Annexure IV;	(i) used personal effects and travel souvenirs, if - (a) these goods are for personal use of the

	tourist, and (b) these goods, other than those consumed during the stay in India, are re-exported when the tourist leaves India for a foreign destination. (ii) articles as allowed to be cleared under rule 3 or rule 4.
(b) Tourists of foreign origin, other than those of Pakistani origin coming from Pakistan, coming to India by air.	(i) used personal effects (ii) articles other than those mentioned in Annexure I up to a value of ₹ 8000 for personal use of the tourist or as gifts and travel souvenirs if these are carried on the person or in the accompanied baggage of the passenger.
(c) Tourists – (i) of Pakistani origin coming from Pakistan other than by land routes; (ii) of Pakistani origin or foreign tourists coming by land routes as specified in Annexure IV; (iii) of Indian origin coming by land routes as specified in Annexure IV.	(i) used personal effects (ii) articles other than those mentioned in Annexure I up to a value of ₹ 6000 for personal use of the tourist or as gifts and travel souvenirs if these are carried on the person or in the accompanied baggage of the passenger.

[Notification No. 77/2011 Cus. (NT) dated 14.11.2011]

6. Request for provisional assessment of duty can now be made even by an importer/exporter

Central Board of Excise and Customs has issued new Customs (Provisional Duty Assessment) Regulations, 2011. The new regulations provide that duty can be provisionally assessed by the proper officer if an importer/exporter is unable to make self-assessment under section 17(1) of the Customs Act, 1962 or if the proper officer is not able to verify the self-assessment or make re-assessment of the duty on the imported/export goods.

The importer/exporter will have to execute a bond of an amount equal to the difference between the duty that may be finally assessed or re-assessed and the provisional duty and deposit twenty per cent of the provisional duty with the proper officer. The proper officer may require the bond to be executed along with such surety or security, or both. Any contravention to these regulations would attract penalty which may extend to Rs.50,000.

[Notification No. 81/2011 Cus (NT) dated 25.11.2011]

7. Revised allowances for passengers other than tourists

The basic allowance to passengers other than tourists consists of

(a) Used personal effects, excluding jewellery required for satisfying daily necessities of life.

(b) Other articles which are carried on the person or in his accompanying baggage.

There is no value limit for used personal daily necessities of life.

However there is a value limit in respect of other articles of baggage (apart from the goods mentioned in Annexure-1) as categorized according to age of the passenger, country from which they returning and the number of days of stay abroad. Some of these allowances have been revised as under:-

Country coming from	Age of the Passenger	Duration of Stay	Pre-revised Value Limit	Revised Value Limit
Countries other than Nepal, Bhutan, Myanmar or China	10 Yrs. or more	More than 3 days	₹ 25,000/-	*₹ 35,000/-*
		3 days or less	₹ 12,000/-	*₹ 15,000/-*
	Upto 10 yrs	More than 3 days	₹ 6,000/-	*₹ 15,000/-*

[Notification No.21/2012-Cus (N.T.) dated 17.03.2012 and 37/2012-Cus (N.T.) dated 23.04.2012]

8. EC and SHEC exempted on CVD

Central Government has exempted education cess and secondary and higher education cess leviable under sub-section (1) of section 3 of the Customs tariff Act, 1975.

[Notification No.13/14-Cus both dated 17.03.2012]