

PAPER – 8: INDIRECT TAX LAWS

PART – I : STATUTORY UPDATES

Significant amendments made between 1.7.2012 and 31.10.2012

A. CENTRAL EXCISE

1. Provisions of section 28AAA of the Customs Act, 1962 made applicable to excise duty also

The Central Government has provided that the provisions of section 28AAA of the Customs Act, 1962 shall be applicable in regard to like matters in respect of the duties imposed by section 3 of the Central Excise Act, 1944, subject to the necessary modifications and alterations which the Central Government considers necessary and desirable to adapt those provisions to the circumstances.

[Notification No. 29/2012-CE (NT) dated 10.10.2012]

B. SERVICE TAX

1. Transportation of passengers and goods by Indian Rail service exempted till 30-9-2012

Following services provided by the Indian Railways are taxable as they have been specifically excluded from the negative list. However, they have been exempted from service tax till 30.09.2012:-

- (a) Service of transportation of passengers, with or without accompanied belongings, by railways in-
 - (A) first class; or
 - (B) an air conditioned coach
- (b) Services by way of transportation of goods by railways.

Consequently, with effect from October 1, 2012, the above services have again become liable to service tax @ 12.36% with an abatement of 70% been granted to such services. Therefore, the effective rate of service tax for such services would be 3.7%.

[Notification No. 43/2012-S.T. dated 02.07.2012]

2. Services by way of slaughtering of ALL animals exempted-Mega exemption notification amended

Mega exemption notification, *Notification No. 25/2012 dated 20.06.2012*, has been amended to provide the exemption to services by way of slaughtering of **ALL** animals. Earlier, this exemption was restricted to the slaughtering of bovine animals only.

[Notification No. 44/2012-S.T. dated 07.08.2012]

3. Directors fee & security charges brought under Reverse Charge Mechanism

(i) Abatement notification amended

Notification No. 30/2012 dated 20.06.2012 has been amended to bring the directors fee & security charges under Reverse Charge System in the following manner:-

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 a director of a company to the said company	Nil	100%
2	in respect of services provided or agreed to be provided by way of security services 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 %

(ii) Service Tax Rules, 1994 amended

Definition of **person liable to pay service tax** provided under rule 2(1)(d) of the Service Tax Rules, 1994 has also been accordingly amended as follows:-

- (i) Person liable for paying service tax in relation to service provided or agreed to be provided by a director of a company to the said company is the recipient of such service **[Item (EE) inserted to rule 2(1)(d)(i)]**.
- (ii) Person liable for paying service tax in relation to services provided or agreed to be provided by way of security services 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 are 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 (refer point 2 in the aforesaid table) **[Item (F) to rule 2(1)(d)(i) amended]**.

Security services means services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity **[Rule 2(fa) of the Service Tax Rules, 1994]**.

[Notification No. 45 & 46/2012-S.T. dated 07.08.2012]

Clarifications**1. No service tax on remittances from abroad**

CBEC has clarified that service tax is not leviable on the amount of foreign currency remitted to India from overseas as definition of 'service' under section 65B(44) specifically excludes transactions in money.

Further, service tax would also not be leviable on the fee or conversion fee chargeable for sending such money as the company conducting the remittances and the person sending the money are located outside India. Such services are deemed to be provided outside India in terms of the Place of Provision of Services Rules, 2012.

It has also been clarified that Indian counterpart or financial institutions or entity who charges the foreign bank or any other entity for the services provided at the receiving end will also not be liable to service tax as the place of provision of such service shall be the location of the recipient of the service, i.e., outside India, in terms of Rule 3 of the Place of Provision of Services Rules, 2012.

[Circular No.163/14/2012 ST dated 10.07.2012]

2. Clarification regarding determination of POT for works contracts in progression on July 1, 2012

CBEC has clarified the following issues relating to point of taxation arising out of the amendments made vide the Budget 2012 and subsequent amendments made effective from July 1, 2012:

- (a) Point of taxation and the applicable rate for continuous supply of services at the time of change in rates effective from 01.04.2012;
- (b) Applicability of the revised rule 2A of the Service Tax (Determination of Value) Rules, 2006 to ongoing works contracts for determination of value when the value was being determined under the erstwhile Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007; and
- (c) Applicability of partial reverse charge provisions in respect of specified services.

Till 31.03.2012, rule 6 of the Point of Taxation Rules, 2011 (POTR) determined point of taxation (POT) in case of continuous supply of services. Since, the rule started with a non-obstantate clause, "notwithstanding anything contained in rules 3, 4 ...", the POT for continuous supply of services provided on or before 31.03.2012 would not be affected by rule 4 of POTR. In other words, if the invoice had been issued or payment received for such services on or before 31.03.2012, the POT would be determined under rule 6, not being affected by the amendments made effective only from 1.4.2012.

However, with effect from 01.04.2012, rule 6 has been omitted and the POT for continuous supply of services is also being determined ordinarily under the main rule i.e., rule 3 subject to provisions of rule 4. Rule 4 determines the POT when there is a

“change in effective rate of tax”. Change in effective rate of tax includes a change in the portion of value on which tax is payable. The following examples have been given by the Board to illustrate as to what would constitute changes in effective rate of tax:-

- (i) the change in the portion of total value liable to tax in respect of works contract other than original works (from 4.8% earlier to 12% on 60% of the total amount charged, or effectively @ 7.2% now).
- (ii) exemption granted to certain works contracts w.e.f. 1st July 2012 which were earlier taxable.
- (iii) taxability of certain works contracts which were hitherto exempted.
- (iv) change in the manner of payment of tax for works contracts from composition scheme to payment on actual value under clause (i) of rule 2A of the Service Tax (Determination of Value) Rules, 2006.

However, the following will not constitute the change in effective rate of tax:-

- (i) works contracts paying service tax at the composite rate of 4.8% earlier and now required to pay service tax @12% on 40% of the total amount charged as the effective rate remains the same at 4.8%.
- (ii) non – taxable works contracts (and not merely exempted) which have become now taxable e.g. construction of residential complex comprising of 2 to 12 residential units, construction of buildings meant for use by NGOs etc. Rule 5 of the POTR will apply in such cases.

It has been further clarified that the provisions of partial reverse charge would also be applicable in respect of such services where point of taxation is on or after 01.07.2012 under the applicable rule in respect of the service provider.

[Circular No. 162/13/2012 ST dated 06.07.2012]

3. No service tax on vocational education course if offered by the Central/ State Government/Local Authority

CBEC has clarified that service tax is not leviable on vocational education/training/ skill development courses (VEC) offered by the institution of the Government (Central Government or State Government) or a local authority as in terms of section 66D(a), only specified services provided by the Government are liable to tax and VEC is excluded from the service tax.

However, if the VEC is offered by an institution, as an independent entity in the form of society or any other similar body, service tax treatment would be determined by either sub-clause (ii) or (iii) of clause (l) of section 66D of the Finance Act, 1994.

Sub-clause (ii) refers to “qualification recognized by any law” and sub-clause (iii) refers to “approved VEC”. In the context of VEC, qualification implies a Certificate, Diploma, Degree or any other similar Certificate. The words “recognized by any law” will include

such courses as are approved or recognized by any entity established under a central or state law including delegated legislation, for the purpose of granting recognition to any education course including a VEC.

[Circular No.164/15/2012 ST dated 28.08.2012]

C. CUSTOMS

1. Classes of importers liable to pay customs duty electronically notified

First proviso to section 47(2) of the Customs Act, 1962 empowers the Central Government to specify the class or classes of importers who shall pay customs duty electronically. In exercise of such powers, the Central Government hereby specify following classes of importers who shall pay customs duty electronically, namely:-

- (i) Importers registered under Accredited Clients Programme.
- (ii) Importers paying customs duty of ₹ 1 lakh or more per bill of entry.

[Notification No. 83/2012-Cus (N.T.) dated 17.09.2012]

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

CENVAT Credit Rules, 2004

1. Determine the amount of CENVAT Credit available to Satnarayan Manufacturing Ltd. in respect of the following items procured by them in the month of November, 2012:

	Item	Excise Duty paid (including EC and SHEC)
		₹
(i)	Raw materials	72,000
(ii)	Capital goods used for generation of electricity for captive use within the factory	1,50,000
(iii)	Goods used in the guest house primarily for personal use.	40,000
(iv)	Inputs used for making structures for support of capital goods	1,25,000
(v)	Parts and components for use in the manufacture of final product	40,000
(vi)	Goods for providing free warranty	10,000
(vii)	Special purpose motor vehicle (falling under tariff heading 8705) for use in the factory of manufacturer	3,50,000

Note : The aggregate value of clearances of Satnarayan Manufacturing Ltd. for the financial year 2011-12 is ₹ 480 Lakhs.

Valuation under Central Excise

2. Shubhika Ltd. supplies raw material to a job worker Pihu Ltd. After completing the job-work, the finished product of 4,000 packets are returned to Shubhika Ltd. putting the retail sale price as ₹ 25 on each packet. The product in the packet is covered under MRP provisions and 40% abatement is available on it. Determine the assessable value under Central Excise law from the following details:

	₹
Cost of raw material supplied	45,000
Job worker's charges including profit	9,500
Transportation charges for sending the raw material to the job worker	2,000
Transportation charges for returning the finished packets to Shubhika Ltd.	2,000

CENVAT Credit Rules, 2004

3. Examine the validity of the following statements with reference to Cenvat Credit Rules, 2004 as amended:
- All motor vehicles are eligible as capital goods used in the factory of the manufacturer of the final products for availing Cenvat Credit.
 - Cenvat credit on inputs cannot be taken without bringing them into the premises of output service provider.

Warehousing under Central Excise

4. Mr. Armaan Bansal, manufactures electronic items for selling them within India as well as exports to Italy. He has stored his goods in the warehouse for the purpose of export. However, on account of certain unforeseen circumstances, goods cannot be exported to Italy. Now, he wishes to divert the goods kept in the warehouse for the purpose of export for home consumption. Explain briefly the procedure under Central Excise Act, 1944 to be adopted by Mr. Armaan Bansal for diverting the said goods kept in the warehouse for the purpose of export to Italy for home consumption.

Provisions relating to Arrest under Central Excise

5. "Any Central Excise Officer not below the rank of Superintendent may arrest any person". Discuss the validity of the statement under the provisions of the Central Excise Act, 1944

Manufacture

6. Mayank Manufacturers was a manufacturer of cigarettes. It used duty paid paperback aluminum foil in the roll form for the purpose of packing cigarettes. In the process, the roll of aluminum foil was cut horizontally to make separate pieces of the foil and word

'PULL' was embossed on it. Thereafter, fixed number cigarettes were wrapped in it. An aluminium foil being resistant to moisture was used as a protector for the cigarettes and to keep them dry.

Revenue issued a show cause notice to Mayank Manufacturers alleging that the process of cutting and embossing aluminum foil amounted to manufacture. Since the aluminum foil was used as a shell for cigarettes to protect from them moisture; the nature, form and purpose of foil were changed.

Briefly discuss, with reference to case law, whether the show cause notice is sustainable in law.

Demand Procedures under Central Excise

7. M/s Sunlet Unlimited, manufacturing excisable goods, paid the differential duty, suo motu, to the Department as the prices of the said goods were revised with retrospective effect. The Revenue took the view that the assessee was liable to pay interest on differential duty under section 11AA of the Central Excise Act, 1944 and penalty thereof. The assessee replied that there was no question of charging interest and penalty as the payment of differential duty was made by it at the time of issuing supplementary invoices to the customers.

Discuss, whether the view taken by the Revenue is justifiable.

Appeals under Central Excise

8. Bhavya Limited (BL) cleared the goods to Chandi Enterprises (CE) after making payment of excise duty @ 14% in the month of March although the rate of duty on the said goods had been reduced to 10% in the Union Budget of that year.

However, CE refused to pay the higher duty paid by BL by mistake and subsequently raised a debit note. BL applied for the refund of excess excise duty paid of ₹ 4,80,000 which was rejected by the Department on the ground that a debit note could not form the basis for refund.

An appeal was filed to the Commissioner of Central Excise (Appeals) which passed an order accepting RIL's refund claim. You are required to examine whether, in the instant case, Revenue being aggrieved by the order of the Commissioner of Central Excise (Appeals) can file an appeal to the CESTAT against such order.

Valuation of Taxable Services

9. Saarthak Ltd. was awarded a contract in August, 2012 for providing plastering services in respect of an immovable property for ₹ 3,00,000/-. The material required for plastering is also required to be supplied by Kirti Ltd. Whether the foregoing plastering services are subject to Service Tax and if so, how the service tax liability will be computed?

Service tax procedures

10. Vishal Piyush & Sons, a partnership firm is engaged in providing construction services. Aggregate value of its taxable service provided during the financial year 2011-12 was ₹47 lakh. However, its receipts from taxable services was ₹51 lakh. However, during the financial year 2012-13, upto 20.09.2012 value of its taxable services was ₹50 lakh out of which payment of ₹42 lakh was received by it until 30.09.2012. Subsequently, on 22.09.2012 the firm provided services of ₹15 lakh, the payment for which was received by it in January 2013.

Discuss the options available to the above referred firm regarding deposit of service tax.

Services provided by Advertising Agency

11. Florus Advertising agency provided the following services during the quarter ending 31.03.2013:-

Services rendered	Amount (₹)
Sale of space for advertisement in newspaper	45,000
Services related to preparation of advertisement	85,000
Sale of time for advertisement to be broadcast on FM Radio	65,000
Advertisement via banner at public places	50,000
Sale of time for advertisement to be broadcast on TV Channel	1,00,000
Aerial bill-boards	90,000
Canvassing advertisement for publishing on a commission basis	35,000

Compute the service tax liability of Florus Advertising agency for the quarter ending 31.03.2013.

Notes:

- Point of taxation for all the aforesaid cases falls during the quarter ending 31.03.2013.
- All the charges stated above are exclusive of service tax.
- Small Service Providers' exemption need not be taken into account while solving the aforesaid question.

Special Audit under Service tax

12. "The Commissioner of Central Excise may order Special audit under service tax on random basis." Discuss briefly.

Construction services

13. ASB Ltd., dealing in all activities relating to Real estate business furnishes the following information pertaining to services provided :

Particulars	Amount (₹)
Construction services provided to International Labour Organisation	10,00,000
Construction of Private clinic for Dr. Deepak Gupta	50,00,000
Renovation service provided to Government relating to plant for sewerage treatment	25,00,000
Construction of roads in a factory	20,00,000
Construction of residential complex meant for use of member of parliament	80,00,000
Renting of residential dwelling for use as residence	2,00,000
Repair and maintenance of Railway Station	15,00,000

Compute the value of taxable service and the service tax liability of ASB Ltd. considering the rate of service tax at 12% assuming that it is not eligible for small service providers' exemption under *Notification No. 33/2012 – ST dated 20.06.2012*.

Place of Provision of Service Rules, 2012

14. Mrs. Neelam Goel, an Interior Designer based in Delhi provides her service to an Indian Hotel Chain (which has business establishment in Mumbai) for its newly acquired property in London. On the basis of Place of Provision of Service Rules, 2012, state whether the service would be taxable in India.

Computation of VAT

15. From the following particulars compute net VAT payable by M/s. ANK & Co. for the period ending March 31, 2013.

Inputs procured		₹
(i)	Raw material at Nil VAT	10,00,000
(ii)	Raw material at 4% VAT	40,00,000
(iii)	Raw material at 12% VAT	20,00,000
Output		
(i)	Intra state sale of finished goods at 4% VAT (these goods were produced entirely from raw material at NIL VAT rate procured as inputs)	15,00,000
(ii)	Exempted sales (these goods were procured from raw material procured at 4% VAT to the extent of 50%)	20,00,000
(iii)	Sale of finished goods intrastate at 12% VAT	20,00,000
(iv)	Intrastate sale of raw material purchased at 4%	10,00,000
(v)	50% of the raw material produced at 12% VAT has been utilised to produce capital goods for the manufacturing process in ANK & Co's factory (Market Value):	15,00,000

Provide explanations where necessary.

VAT in special transactions

16. Explain briefly whether VAT is leviable on each of the following lease transactions:-
- Inter State Leasing
 - Sale of leased asset after lease period
 - Maintenance of leased asset

VAT Procedures

17. What is VAT invoice? What are the mandatory provisions to be complied with while issuing a VAT invoice by a registered dealer?

Valuation under Customs

18. Compute the assessable value for purpose of determination of customs duty from the following data:

	US \$
Machinery imported from USA by air (FOB price)	5,000
Accessories compulsorily alongwith the machinery	1,000
Air freight	1,800
Insurance charges	Actuals not available
Local agent's commission to be paid in Indian currency	₹ 9,300
Transportation from Indian airport to factory	₹ 4,000

Exchange rate US \$ 1 = ₹ 52

Provide explanations where necessary.

Classification under Customs

19. M/s Hind IT Co. imported laptops with Hard Disc Drives (HDD) preloaded with operating software like Windows XP, XP home etc. The department has claimed that the said laptop along with the operating software was classifiable and assessable as a single unit. It is the claim of the assessee that the software loaded HDD should be classified and assessed separately as an exemption is available as per notification issued under section 25(1) of the Customs Act, 1962. Decide with a brief note whether the action proposed by the department is correct in law.

Provisional assessment under Customs

20. Mr. Sunny Bhansali, an importer has imported some garments from Germany on 02.04.2012. He is unable to make self-assessment under section 17(1) of Customs Act and hence has made a request in writing to the proper officer for Provisional assessment. Can he apply for Provisional assessment?

SUGGESTED ANSWERS / HINTS

1. Computation of CENVAT credit available to Satnarayan Manufacturing Ltd.

Particulars	₹
Raw materials	72,000
Capital goods used for generation of electricity for captive use within the factory (₹ 1,50,000×50%) [as per Definition of capital goods under rule 2(a) of the CENVAT Credit Rules, 2004]	75,000
Goods used in the guest house primarily for personal use [as per definition of inputs under rule 2(k) of the CENVAT Credit Rules, 2004]	Nil
Inputs used for making structures for support of capital goods[as per definition of inputs under rule 2(k) of the CENVAT Credit Rules, 2004]	Nil
Parts and components for use in the manufacture of final product[as per definition of inputs under rule 2(k) of the CENVAT Credit Rules, 2004]	40,000
Goods for providing free warranty [as per definition of inputs under rule 2(k) of the CENVAT Credit Rules, 2004]	
(It has been assumed that the value of free warranty is included in the price of the final product and is not charged separately from the customer)	10,000
Special purpose motor vehicle (falling under tariff heading 8705) for use in the factory of manufacturer (₹ 3,50,000×50%) [as per Definition of capital goods under rule 2(a) of the CENVAT Credit Rules, 2004]	<u>1,75,000</u>
Total CENVAT credit available	<u>3,72,000</u>

Note: Since its value of clearances in the financial year 2011-12 is ₹ 480 lakh, Satnarayan Manufacturing Ltd. is not eligible for SSI exemption in FY 2012-13. Hence, as per Third proviso to rule 4(2) (a) of the CENVAT Credit Rules, 2004, CENVAT credit on capital goods will be restricted to 50% in the first year.

2. As the product is under MRP scheme, the duty shall be payable only as per the provisions of section 4A of the Central Excise Act i.e. on the basis of MRP less abatement and not on the basis of material cost plus job charges etc. Section 4A overrides section 4 of the Central Excise Act.

Hence, assessable value in this case shall be determined as under:-

	₹
Retail sale price of 4000 packets = 4000 x 25	1,00,000
Less: Abatement @ 40%	<u>40,000</u>
Assessable Value	<u>60,000</u>

3. (i) The said statement is not valid. As per Rule 2(a) of the CENVAT Credit Rules, 2004, although motor vehicles used in the factory of the manufacturer of the final products are now eligible as capital goods, but following motor vehicles are still not eligible:-
- (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.
- (ii) The said statement is not valid. Rule 4 of the CENVAT Credit Rules, 2004 has been amended **vide Notification No. 18/2012-CE (NT) dated 17.03.2012** to provide that CENVAT credit on inputs can be taken without bringing them into the premises of the output service provider.
- Credit can be taken when the inputs are delivered to the service provider subject to the maintenance of documentary evidence of delivery and location of the inputs.
4. The goods kept in a warehouse for being exported can be diverted by Mr. Armaan Bansal for home consumption in the following manner:
- (i) With the permission of the Deputy or Assistant Commissioner of Central Excise, the goods can be cleared for home consumption on invoice prepared under rule 8 on payment of duty, interest and any other charges on GAR 7 challans. Necessary entries are to be made in the export warehouse register maintained by the exporter in the warehouse.
 - (ii) Credit will be permitted in the Running Bond Account equivalent to the duty involved in the goods so diverted, which shall not exceed amount of duty debited on the basis of ARE-3 on which such goods were received in the warehouse.
 - (iii) Goods can also be diverted for home consumption even after clearance of goods from warehouse under ARE- 1. The documents will be cancelled as per **Notification No. 46/2001 CE (NT) dated 26.6.2001** as amended. The intimation of such cancellation is to be given to Deputy/Assistant Commissioner having jurisdiction over the warehouse. Credit in Running Bond Account will be permitted in the same manner as mentioned above.
 - (iv) The exporter has to pay an **interest @ 24% p.a.** on the amount of duty payable on such goods from the day of clearance from the factory of production or any other premises approved till the date of payment of duty and clearance.

5. The said statement is not valid. Any Central Excise Officer **not below the rank of Inspector** may arrest any person whom he has reason to believe to be liable to punishment under the provisions of the Central Excise Act or rules made thereunder. Such arrest can be made only with the **prior approval of the Commissioner** of Central Excise [Section 13 of Central Excise Act].
6. No, the show cause notice is not sustainable in law. The facts of the given case are similar to case of *CCE v. GTC Industries Ltd.* 2011 (266) E.L.T. 160 (Bom.). The High Court pronounced that cutting and embossing did not transform aluminum foil into distinct and identifiable commodity. It did not change the nature and substance of foil. The said process did not render any marketable value, only made it usable for packing. There were no records to suggest that cut to shape/embossed aluminum foils used for packing cigarettes were distinct marketable commodity. Hence, process did not amount to manufacture as per section 2(f) of the Central Excise Act, 1944. Only the process which produces distinct and identifiable commodity and renders marketable value can be called manufacture.
7. As per section 11AC of Central Excise Act 1944, where the non-payment or short payment etc. of duty is by the reason of fraud, collusion, any wilful mis-statement, 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 would also be liable to pay a penalty. However as per the facts of the given case, the short payment is not intentional and hence, penalty cannot be levied in above case.

Further as per section 11AA, interest on delayed payment of duty is compulsorily levied whether such payment is made voluntarily or after determination by Central Excise Officer.

Hence M/S Sunlet Unlimited is liable to pay interest, but not the penalty.
8. No, Revenue cannot file an appeal to CESTAT against the order passed by the Commissioner of Central Excise (Appeals). As per the National Litigation Policy, in Revenue matters, appeal shall not be filed if the amount involved is less than the monetary limit fixed by the Revenue authorities for the said purpose. CBEC has issued the instructions fixing the monetary limits of duty below which an appeal shall not be filed in CESTAT, High Court and Supreme Court. Consequently, an appeal cannot be filed in Tribunal if the duty involved in a case is ₹ 5,00,000 or below and these monetary limits apply to cases of refund as well. Since the amount of duty involved in the instant case is less than ₹ 5,00,000, the Revenue cannot file an appeal in the Tribunal.
9. Saarthak Ltd. has agreed to provide materials which are **leviable to tax as sale of goods**. In addition, it is also required to provide its services to its client. Therefore, its services fall within the scope of term 'works contract' as defined under Section 65B (54) of Finance Act, 1994. As a result, aforesaid Services of Saarthak Ltd. are subject to Service Tax. As the value of materials transferred in the execution of said works contract has not been separately given, the value of Works Contract Services has to be

determined in accordance with Rule 2A(ii) of Service Tax (Determination of Value) Rules, 2006 which is effective from 01.07.2012. Further, the present contract will get covered under Rule 2A(ii)(C) of Service Tax (Determination of Value) Rules, 2006. Therefore, Service Tax shall be payable on sixty per cent of the total amount charged for the works contract. The computation of service tax payable has been exhibited below:

Sixty per cent of the total amount charged	₹ 1,80,000/- [₹ 3,00,000 X 60%]
Rate of Service Tax	12.36%
Amount of Service Tax payable	₹ 22,248/- [which is 7.416% of the total amount charged of ₹ 3 lakh]

10. Following two options are available for depositing Service Tax by Vishal Piyush & Sons:

- (i) To deposit Service Tax on Accrual basis
- (ii) To take the benefit of **third proviso to Rule 6(1) of Service Tax Rules, 1994** and deposit service tax to the credit of Central Government up to ₹50 lakh in current financial year on receipt basis. According to aforesaid third proviso to Rule 6(1) of Service Tax Rules, 1994 in case of individuals and partnership firm whose aggregate value of taxable services provided from one or more premises **is fifty lakh rupees or less** in the previous financial year, the service provider shall have the **option** to pay tax on taxable services provided or agreed to be provided by him upto a total of rupees fifty lakh in the current financial year, by the 6th day of the month or 5th day of the month immediately following the quarter in which the payment is **received**. In simple words, such service providers can discharge their service tax liability up to ₹ 50 lakh in current financial year on receipt basis.

Since in the present case, value of taxable services provided by Vishal Piyush & Sons was 47 lakh, [less than ₹ 50 lakh] it can take the benefit of above-mentioned third proviso to Rule 6(1) of Service Tax Rules, 1994 and discharge its service tax liability on receipt basis up to ₹ 50 lakh in the current financial year 2012-13. It is to be noted carefully that the fact of receipt of ₹ 51 lakh in the preceding financial year is not a deciding factor for the purpose of eligibility to the benefit provided by above-mentioned third proviso. In other words, for deciding the eligibility to avail the benefit of third proviso, only value of services provided in the previous financial year are to be kept in mind.

As a result, in the present case, Vishal Piyush & Sons can deposit service tax on taxable services provided or agreed to be provided upto a total of rupees fifty lakh in the financial year 2012-13 on receipt basis. However, once the foregoing limit of ₹50 lakh is crossed, service tax is required to be deposited on accrual basis. In the foregoing legal position, the firm is required to deposit service tax as under by 5th October, 2012

(A) Service Tax on receipt basis on ₹ 42 lakh

(B) Service Tax on accrual basis on ₹ 15 lakh

11. "Selling of space or time slots for advertisements other than advertisements broadcast by radio or television" is included in the Negative List of services as per section 66D of the Finance Act, 1994. Hence, sale of space for advertisement in print media, sale of space for advertisement in bill boards, public places (including stadia), and Aerial advertising are not taxable as they are included in the negative list. However, following services are excluded from the negative list:-

- (i) Services provided by advertisement agencies relating to making or preparation of advertisements.
- (ii) Merely canvassing advertisement for publishing on a commission basis.
- (iii) Sale of space or time for advertisement to be broadcast on radio or television.

Hence, the aforesaid services are taxable.

Thus, the amount of service tax payable by Florus Advertising agency for the quarter ending 31.03.2013 would be as follows:-

Particulars	Amount(₹)
Sale of space for advertisement in newspaper	Nil
Services related to preparation of advertisement	85,000
Sale of time for advertisement to be broadcast on FM Radio	65,000
Advertisement via banner at public places	Nil
Sale of time for advertisement to be broadcast on TV Channel	1,00,000
Aerial bill-boards	Nil
Canvassing advertisement for publishing on a commission basis	<u>35,000</u>
Value of taxable service	<u>2,85,000</u>
Service tax @ 12% [2,85,000×12%]	34,200
Education cess @ 2% [34,200×2%]	684
Secondary and higher education cess @ 1% [34,200×1%]	<u>342</u>
Service tax liability	<u>35,226</u>

12. With effect from 28.05.2012, section 72A has been inserted in the Finance Act, 1994 to provide for the special audit by the practicing Chartered Accountant/Cost Accountant. However, the Commissioner of Central Excise cannot order Special audit under service tax on random basis. The Circumstances under which Commissioner may order Special audit are as follows:-

If the Commissioner of Central Excise, has reasons to believe that any person liable to pay service tax—

- (i) has failed to declare or determine the value of a taxable service correctly; or

- (ii) has availed and utilised credit of duty or tax paid—
- which is not within the normal limits 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 fraud, collusion, or any wilful misstatement or suppression of facts; or
- (iii) has 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 failing under the jurisdiction of the said Commissioner,
- he may direct such person to get his accounts audited by a Chartered Accountant or Cost Accountant nominated by him, to the extent and for the period as may be specified by the Commissioner.

13. Computation of value of taxable service and service tax liability of ASB Ltd:-

Particulars	Amount (₹)
Construction services provided to International Labour Organisation (Note-1)	Nil
Construction of Private clinic for Dr. Deepak Gupta (Note-2)	50,00,000
Renovation service provided to Government relating to plant for sewerage treatment (Note-3)	Nil
Construction of roads in a factory (Note-4)	20,00,000
Construction of residential complex meant for use of member of parliament (Note-5)	Nil
Renting of residential dwelling for use as residence (Note-6)	Nil
Repair and maintenance of Railway Station (Note-7)	<u>15,00,000</u>
Value of taxable service	<u>85,00,000</u>
Service tax @ 12% [₹ 85,00,000×12%]	10,20,000
Education cess @ 2% [₹ 10,20,000×2%]	20,400
Secondary and higher education cess @ 1% [₹ 10,20,000×1%]	<u>10,200</u>
Service tax liability	<u>10,50,600</u>

Notes:

- Services provided to the specified international organisations are exempt vide mega exemption notification. (**Notification No. 25/2012-ST dated 20.06.2012**)
- Construction of hospitals for the Government is not liable to service tax. However, if it is constructed for others, service tax is payable on such construction.

3. Renovation service provided to Government relating to plant for sewerage treatment is exempt vide mega exemption notification.
 4. Services provided by way of construction of roads **for use by general public** is exempt vide mega exemption notification. However, Construction of roads in a factory would be taxable as it is not for general public.
 5. Construction of residential complex meant for use of member of parliament is exempt vide mega exemption notification.
 6. Services by way of renting of residential dwelling for use as residence are included in the negative list and hence are not taxable.
 7. Services by way of construction, erection, or installation of original works pertaining to railway is exempt vide mega exemption notification. However, Repair, maintenance of railways would be liable to service tax
14. As per Place of Provision of Service Rules, 2012, If Rule 5 (Property rule) were to be applied, the place of provision would be the location of the property i.e. London (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. Mumbai. Place of provision being in the taxable territory, the service would be taxable in India.

By application of Rule 14 relating to order of application of rules, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision and hence the Place of provision being in the taxable territory, the service would be taxable in India.

15. Computation of Net VAT payable by M/s. ANK & Co.:-

Output VAT payable

S.No.	Particulars	₹
1.	Intra-state sale of goods at 4% VAT (₹ 15,00,000 × 4%) (manufactured out of exempted material)	60,000
2.	Sale of finished goods at 12% VAT (₹ 20,00,000 × 12%)	2,40,000
3.	Sale of raw materials purchased at 4% VAT (₹ 10,00,000 × 4%)	<u>40,000</u>
	Total (A)	<u>3,40,000</u>

Input tax credit available

S.No.	Particulars	₹
1.	Purchase of raw material @ 4% VAT (50% of ₹ 40,00,000 × 4%) (Note – 1)	80,000

2.	Purchase of 12% VAT including purchases used for capital goods produced (12% of ₹ 20,00,000) (Note – 2)	<u>2,40,000</u>
	Total (B)	<u>3,20,000</u>

Net VAT payable = (A) - (B) = ₹ 3,40,000 – ₹ 3,20,000 = ₹ 20,000.

Notes:

1. Input tax credit for goods used to produce exempted goods will not be allowed. Hence, 50% of the input tax credit has been disallowed on purchases of goods at 4% VAT and utilized to produce exempted goods.
 2. Input tax credit on raw materials is allowed even if the same has been consumed to produce capital goods. Hence, full input tax credit on goods purchased at 12% VAT has been allowed.
- 16. (a)** Lease of an asset in the course of inter-State or import trade cannot be taxed under a State VAT law. It can be taxed under the Central Sales-tax Act, 1956 as deemed sales.
- (b)** Sale of a leased asset after the lease period is over is taxable in the same manner in which normal sale of such asset would have been taxed. Normally, such sale is effected to the same lessee and hence, such sale would be a local one exigible to tax under the VAT laws of the State in which the asset is located.
- (c)** The maintenance of the leased asset involving supply of materials for maintenance/repair by the lessor would not amount to works contract, as there would be no transfer of property in such materials to the lessee. Thus, there would be no VAT on the value of the materials supplied during maintenance/repair of the asset. In case of computers, generally the lessor undertakes the maintenance and repair of the leased computers. However, the materials required during such maintenance /repair would be input for sale and input tax credit will be available.
- 17.** VAT invoice is a document providing details of goods sold along with price, tax charged and other details as may be prescribed. Vat invoice is issued by a dealer authorized under the Act.

Mandatory provisions to be complied with:

- (i) Every registered dealer whose turnover of sales exceeds the specified amount shall issue to the purchaser a serially numbered tax invoice, cash memo or bill with the prescribed particulars.
- (ii) The VAT invoice shall be dated and signed by the dealer or his regular employee, showing the required particulars.
- (iii) The dealer shall keep a counterfoil or duplicate of such VAT invoice duly signed and dated.

18. Computation of Assessable Value of Machinery and Accessories

	Accessories US \$	Machinery US \$
FOB price	1,000.00	5,000.00
Add : Air Freight (restricted to 20% of FOB price) [Note 2]	200.00	1,000.00
Add : Insurance charges (1.125% of FOB price) [Note 3]	<u>11.25</u>	<u>56.25</u>
Total CIF price excluding agent's commission	1,211.25	6,056.25
Exchange rate 1US \$ = ₹ 52		
	₹	₹
Total in Indian currency	62,985.00	3,14,925.00
Add : Local agent's commission (allocated on <i>pro-rata</i> basis) [Note 4]	<u>1,550.00</u>	<u>7,750.00</u>
CIF value	64,535.00	3,22,675.00
Add : Landing charges @1% of CIF value [Note 5]	<u>645.35</u>	<u>3,226.75</u>
Assessable value	65,180.35	3,25,901.75

Notes :

- (1) Since the price of the accessories is not included in the price of the machinery and is charged separately, the accessories will not be charged at the same rate as applicable to the machinery. Hence, separate assessable values for the machinery and accessories have been computed [Proviso (a) to section 19 of the Customs Act, read with Accessories (Condition) Rules, 1963]
- (2) If the goods are imported by air, the freight cannot exceed 20% of FOB price [Second proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
- (3) Insurance charges are taken as 1.125% of FOB price if actual charges are not known [Clause (iii) of first proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
- (4) The commission paid to local agent is includible as it is not a buying commission [Rule 10(1)(a)(i)].
- (5) Even if there is no information regarding landing charges, still they are charged @ 1% of CIF value [Clause (ii) of first proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

(6) Transportation charges from Indian airport to factory of importer are not includible in the assessable value.

19. The action proposed by the Department is correct in law. The facts of the case are similar to **CCus. v. Hewlett Packard India Sales (P) Ltd. (2007) 215 ELT 484 (SC)**.

In this case, the Supreme Court observed that the pre-loaded operating system recorded in HDD in the laptop (item of import) forms an integral part of the laptop as the laptop cannot work without the operating system. A laptop without an operating system is like an empty building. Hence, laptop should be treated as one single unit and assessed accordingly.

However, if the operating system had been imported as **packaged software like an accessory**, then the benefit of exemption notification would have been available on it.

20. Section 18(1) of Customs Act provides that the importer may make a request for assessment of goods by the officer when he is not in a position to self-assess. Section 18(1) provides as follows:-

Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46, —

- (a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or
- (b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or
- (c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or
- (d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry, the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.

Hence, Mr. Sunny can apply for Provisional assessment for the garments imported on 02.04.2012.