CHARGE OF SERVICE TAX (SECTION 66B)

Every person, who is ***not allowed*** or who ***does not want to claim exemption*** of Rs. 10 lacs provided in case of small service provider, is liable to pay service tax @ 12% on the ***value of all services, provided or agreed*** to be provided in the ***taxable territory*** by him to ***another person***.

However, there is no liability to pay service tax in case of services specified in the-

a. negative list; or
b. Mega exemption notification

REVERSE CHARGE OR PAYMENT OF SERVICE TAX

Generally, the liability to pay service tax has been placed on the **'service provider'.** But in special cases **service receiver** is liable to pay service tax [***where provider of a service is located outside the taxable territory and the place of provision of service is in the taxable territory***]. This is also known as **Reverse Charge**. Under this charge SERVICE RECEIVER has to register himself under service tax. SERVICE RECEIVER is liable to pay service tax even on small amount i.e. no benefit of exemption limit of Rs. 10 lacs.

In the case of following services, the service tax is required to be paid by RECIPIENT OF SERVICE:

Nature of Service	***Service Provider (Not liable to pay tax)***	***Service Receiver (Liable to pay tax)***
Insurance Auxiliary Services	Insurance Agent	Insurance Company
Services provided to a ***person in India*** from outside India	Person outside India	***Person in India***
Goods Transport Agency for transport of goods by road. [If service receiver is individual/HUF, tax is payable by the ***Service Provider i.e. Transporter]***	Goods Transport Agency	i. Any Registered Society ii. Any Company iii. Any Statutory Corporation iv. Any Registered Society/ Co-operative Society v. Any Registered dealer of Excisable Goods vi. Any Registered Firm/ Body Corporate
Business Auxiliary Services- Mutual Fund Distribution	Mutual Fund Distributor/ Agent	Mutual Fund/ Asset Management Company
Sponsorship Service	Any Person	Firm/ Body Corporate

In the case of following services, service tax is payable partly by SERVICE PROVIDER and partly by SERVICE RECIPIENT.

Nature of Service	***% of Service Tax payable by SERVICE PROVIDER***	***% of Service Tax payable by SERVICE RECIPIENT***
In respect of services by way of renting or hiring any motor vehicle designed to carry passenger on non abated value.	60%	40%
Services by way of supply of manpower for any purpose.	25%	75%
Services by way of works contract..	50%	50%

Levy of service tax

- ***Taxable Territory:*** - The law relating to service tax extends to whole of India ***except the State of Jammu and Kashmir.*** Service tax is levied on services provided within the territory of India including territorial waters of India extending upto 12 nautical miles (under International Sea Act). Hence services provided beyond the territorial waters of India are not liable to service tax as the provisions of the service tax have not been extended to such areas so far.
- ***Place of Provision:*** **-** As per rule 3 of the Place of Provisions of Service Rules, 2012, generally the place of provision of a service shall be ***LOCATION OF THE RECIPIENT OF SERVICE.*** 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 provider of service.
- ***Value of Taxable Services:*** Where the gross amount charged by a service provider is inclusive of service tax payable, the value of taxable service shall be such amount as with the addition of tax payable, is equal to the gross amount charged.

SIGNIFICANCE OF LOCATION OF SERVICE PROVIDER/ SERVICE RECEIVER

- The location of a service provider or receiver (as the case may be) shall be determined in the following manner:

  A. where the service provider or receiver has obtained only one registration, whether centralized or otherwise, the premises for which such registration has been obtained;

  B. where the service provider or receiver is not covered by A above:

     i. the location of his BUSINESS ESTABLISHMENT; or

     ii. where services are provided or received at a place other than the business establishment i.e. a FIXED ESTABLISHMENT elsewhere, the location of such establishment;

     iii. where services are provided or received at more than one establishment, whether business or fixed, ***the establishment most directly concerned with the provision or use of the service***; and

     iv. in the absence of such places, the USUAL PLACE OF RESIDENCE of the service provider or receiver

- All services received and consumed in the territory of Jammu and Kashmir are not taxable, as the location of the service recipient is non-taxable territory. But if a person from the State of Jammu and Kashmir provides the taxable services outside its State to any part of India, the services so provided will be liable to service tax, as the service tax is applicable on the basis of destination principle *i.e.* the location of the recipient of service. In this case recipient of service who is in taxable territory shall be liable to pay service tax instead of service provider, who is in non-taxable territory *viz.* Jammu and Kashmir.

BASIS OF SERVICE TAX AND DUE DATE FOR PAYMENT OF SERVICE TAX

As per Rule 6, the service tax provider is required to pay service tax within:

Case	Due date
In case of individual, proprietary firm or partnership firm -	
• Service tax on the value of taxable services *received* during the quarter ending March	Within 31st March
• Service tax on the value of taxable services *received* during other quarter	Within 5th (6th if paid electronically) of the month immediately following the quarter
In case of any other assessee -	
• Service tax on the value of taxable services *received* during the month of March	Within 31st March
• Service tax on the value of taxable services *received* during other months	Within 5th (6th if paid electronically) of the month immediately following the month

Interest on late Payment of Service Tax (Sec.75)

If the service tax has been paid after the due date, simple interest @ 18% (15% in case of a service provider, whose value of taxable service does not exceed Rs.60 lakhs either during any of the years covered by the notice or during the last preceding financial year) shall be charged for the period of delay. If delay in payment of service tax is for 10 days interest will be paid for 10 days only. Period of delay is counted from the first day after the due date till the actual payment of service tax is made.

Penalties for failure to pay service tax

If any person who is liable to pay service tax has failed to pay within prescribed time limit, he shall be liable to pay penalty. The quantum of penalty shall not less than ₹100 per day of default or 1% per month of tax whichever is higher. In no case penalty can exceed 50% of the amount of tax.

- ***In the case -interest on late payment of service tax: -*** *has to pay simple interest at such rate not below 10% and not exceeding 36% p.a.*

Important Notes:

- The assessee, who has paid service tax of rupees 10 lacs or above in the preceding financial year or has already paid service tax of rupees 10 lacs in the current financial year, shall be liable to pay service tax ELECTRONICALLY. **E-Filing of Service Tax Returns:-**
  i. This facility is available on the website http://servicetaxefiling.nic.in.
  ii. Assesses having a 15-digit Sevice Tax Payers (STP) code can avail of the facility of electronic filing of their return.
  iii. Assesses **who opt for the e-filing of return** should make an application to concerned Assistant/ Deputy Commissioner in the prescribed form.
  iv. The assessee is thereupon provided a unique user name and password.
  v. The assessee gets a computer-generated acknowledgement for evidence of having filed the return.
- The payment has to be deposited through challan GAR-7 with the bank designated by the CBEC for this purpose. A Xerox copy has to be attached to the return of service tax (which has to be filed in Form- ST3.
- ***E-payment*** has been made mandatory with the issue of Notification No.1/2010-ST dated 19.2.2010 for an assessee who in the preceeding financial year, has paid total service tax of rupees 10 lacs or more ***including the amount paid by utilization of Cenvat credit***, to pay service tax and file its returns electronically only.
- In case of INDIVIDUALS and PARTNERSHIP FIRMS whose aggregate value of taxable services provided from one or more premises is ***50 lacs rupees or less*** in the previous

financial year, the service provider shall have option to pay the service tax ON RECEIPT BASIS by the due dates ***upto the taxable services of Rs.50 lacs***.

- ✓ ***Payment by Cheque –Date of Tender***: - The date of payment is the date on which the cheque is presented to the designated bank, provided the cheque is not dishonoured in the course of clearing.

ADVANCE RULING

"**ADVANCE RULING**" means the determination, by the Authority, of a question of law or fact specified in the application regarding the liability to pay service tax in relation to a service proposed to be provided, by the applicant".

"**APPLICANT**" means

i. (a) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or
(b) a resident setting up a joint venture in India in collaboration with a non-resident; or
(c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company, who or which, as the case may be, proposes to undertake any business activity in India.

ii. a joint venture in India,

iii. a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf. t8)

Applicant for Advance Ruling:-An applicant desirous of obtaining an advance ruling may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought. ***The question on which the advance ruling is sought shall be in respect of***:

a. classification of any service as a taxable service
b. the valuation of taxable services for charging service tax;
c. the principles to be adopted for the purposes of determination of value of the taxable service
d. applicability of notifications issued;
e. admissibility of credit of service tax;
f. determination of the liability to pay service tax on a taxable service.

- ✓ The application shall be made in QUADRUPLICATE and be accompanied by a fee of ***Rs. 2500/-.***
- ✓ An applicant may withdraw an application ***within 30 days*** from the date of the application.
- ✓ The authority is required to give its ruling ***within 90 days*** of the receipt of valid application.

Rejection of Application: -An application may be rejected by the prescribed authority if-

a. the question or subject matter of ruling sought in the application is such which is already pending before any assessing officer, Tribunal and court of law or
b. such question already stands decided by any court or bench of Tribunal.

Applicability of Advance Ruling: - The advance ruling pronounced by the Authority shall be binding only:-

a. on the applicant who had sought it;
b. on the Commissioner of Central Excise, and the Central Excise authorities subordinate to him, in respect of the applicant.

Hewer, the advance ruling shall be binding unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

Validity of Advance Ruling: - No proceeding before, or pronouncement of advance ruling by, the Authority shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

POINT OF TAXATION RULES, 2011

- ✓ These rules laid down the provisions relating to payment of service tax on ACCRUAL BASIS instead of receipt basis and specify the relevant date for determining rate of service tax.
- ✓ The time of provision of service will be earliest of the following dates:
  - (i) Date on which service is provided or to be provided
  - (ii) Date of invoice
  - (iii) Date of Payment.

- ✓ "**POINT OF TAXATION**" means the point in time when a service shall be deemed to have been provided. This POINT OF TIME shall determine Rate of Service Tax and DUE DATE OF PAYMENT OF SERVICE TAX.

- ✓ **DETERMINATION OF POINT OF TAXATION (Rule 3)**.- Unless otherwise provided, '***point of taxation'*** shall be,-
  - a. the time when the invoice for the service is issued.
  - b. in case where payment is received before the issue of invoice THAN the time when such payment is received.
  - c. where advance is received by the service provider the time of receipt of such advance.

- ✓ Every person providing taxable service shall issue invoice ***within 30 days*** of completion of service or receipt of service, whichever is earlier.
- ✓ Where the invoice is not issued within 30 days of completion of service THAN the point of taxation shall the DATE OF COMPLETION OF SERVICE.
- ✓ ***DATE OF PAYMENT*.—** "DATE OF PAYMENT" shall be the earlier of the dates on which the payment is entered in the books of accounts or is credited to the bank account of the person liable to pay tax: **Provided that —**

  A. the date of payment shall be the ***date of credit in the bank account*** when –
     - 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; and
     - ii. the credit in the bank account is ***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,

  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.

Determination of 'Point of Taxation in case of specified persons (Rule 7)

- ✓ *The point of taxation in respect of persons required to pay tax as 'RECIPIENT OF SERVICE'* 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-
  - i. the *date of debit* in the books of account of the person receiving the service or
  - ii. *the date of making the payment* whichever is earlier.

'POINT OF TAXATION' WHERE SERVICE IS TAXED IN FIRST TIME (Rule 5)

In case of new service which was hitherto not covered due to negative list or exemption notification and 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 for the said payment has been issued ***within 14 days*** of the date when the service is ***taxed for the first time***.

DETERMINATION OF POINT OF TAXATION IN OTHER CASES

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 determine the point of taxation to the best of his judgment.

CONTINUOUS SUPPLY OF SERVICE

- ✓ "***Continuous Supply of Service***" rneans 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 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.
- ✓ **TELECOMMUNICATION SERVICE** and **WORKS CONTRACT SERVICES** have been notified as continuous supply of service irrespective of period for which they are provided or to be provided vides Notification No. *28/2011*.
- ✓ ***In case of continuous supply of service***, the point of taxation shall be-
  - i. the date of completion of the events as specified in the contract or
  - ii. time when invoice for the service provided or to be provided is issued or
  - iii. the date on which payment received,

  WHICHEVER IS EARLIER.
- ✓ If any advance is received by the service provider, THEN the point of taxation shall be date of receipt of each such advance.

DATE OF COMPLETION OF SERVICE IN CASE OF CONTINUOUS SUPPLY OF SERVICE

- ✓ The date of completion of each event *(i.e.* milestone) as specified in the contract shall be deemed to be the date of completion of provision of service.
- ✓ In case of continuous supply of service, every person providing such taxable service shall issue an invoice, bill or challan, as the case may be, *within 30 days* of the date when each event *(i.e.* milestone) specified in the contract, which requires the service receiver to make any payment to service provider, is completed.

Registration

- Every person liable for paying the service tax shall make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within a period of thirty days from the date on which the service tax under section 66 of the Finance Act is levied **or** *where a person commences the business of providing a taxable service after such service has been levied, he shall make an application for registration within a period of thirty days from the date of such commencement.*

- **'Special Category of Persons'**:
  i) Input Service Distributor;
  ii) Any provider of taxable service whose 'aggregate value of taxable service' in a financial year exceeds nine lakh rupees.

  shall make an application to the jurisdictional Superintendent of Central Excise in the prescribed form for registration within a period of thirty days of exceeding the aggregate value of taxable service of nine lakh rupees.

- The service tax is administered by the Central Excise Department.

Procedure for Registration

- Fill the Form ST-1 in duplicate. (Form ST-1 is available on the departmental website (www.cbec.gov.in).

- ST-1 Form shall be accompanied by the following documents:
  — *Permanent Account number (PAN);*
  — *An affidavit declaring the commencement of the services;*
  — *Copy of passport/ration card etc., showing proof of residence;*
  — *Passport size photograph of the assessee in case of an individual.* ***In case of partnership firm****, copy of partnership deed duly certified to be true copy along with registration certificate in case the firm is registered;*
  — ***In case of corporate assessee****, copy of memorandum, articles of association duly certified to be true copy by the director.*

- Copy of PAN card is necessary as a PAN based code (**S**ervice **T**ax **C**ode) is allotted to every assessee.
- ST-1 to be submitted to the jurisdictional Central Excise office.
- A person liable to pay service tax should file an application for registration within **thirty days** from the date on which the service tax on particular taxable service comes into effect or within thirty days from the commencement of his activity.
- A **SINGLE REGISTRATION** is sufficient even when an assessee is providing more than one taxable services. However, he has to mention all the services being provided by him in the application for registration and the field office shall make suitable entries/endorsements in the registration certificate.

Application for Registration: -Where application is for SINGLE REGISTRATION for more than one premise and: -

i. If all the offices are falling under the jurisdiction of one ***Chief Commissioner/ Commissioner***, he has to apply before that ***Chief Commissioner/Commissioner of Central Excise*** or

ii. If his offices are falling under the jurisdiction of more than one ***chief commissioners***, he has to apply before the Director General of Service Tax (DGST). Registration application before the DGST shall be submitting through the ***jurisdictional office of the Assistant/Deputy Commissioner of Central Excise.***

- The Superintendent of Central excise is bound to grant a certificate of registration in Form ST-2 **within 7 days** of the date of receipt of the application (S.T.1). This certificate shall indicate the details of all the taxable services provided by the service provider.
- A fresh registration is required to be obtained in case of transfer of business to another person.
- ***SURRENDER OF REGISTRATION CERTIFICATE:-*** *Any registered assessee when ceases to provide the taxable service shall surrender the registration certificate immediately*.
- ***In case a registered assessee starts providing any new service from the same premises, he need not apply for a fresh registration: -*** He can simply fill in the Form S.T.1 for necessary amendments he desires to make in his existing information. The new form may be submitted to the jurisdictional Superintendent for necessary endorsement of the new service category in his Registration certificate.

Returns

Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a half yearly return in form ST-3 (in triplicate alongwith copies of challan) within 25th of the month immediately following the particular half.

Half yearly return is required to be submitted in Form ST-3 within following due date:

Half year ending on	Due Date
Half year ending on September	Within 25th October
Half year ending on March	Within 25th April

Penalty for delayed filing of return

Penalty for delayed filing of return may be charged as per following schedule (subject to maximum of ₹20000):

Delay	Penalty
Up to 15 days	₹500
16 to 30 days	₹1000
31 days onward	₹1000 *plus* ₹100 per day from 31 day onwards (subject to max of ₹20000)

Where the gross amount of service tax is nil, the Central Excise Officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the aforesaid penalty.

- In case the assessee has opted for provisional payment of service tax, he is required to file the service tax return in form S.T.3A.
- ***Revision of return: -***An assessee may submit a revised return, in Form ST-3, to correct a mistake or omission, ***within a period of ninety days*** from the date of submission of the return under rule 7. If the original return has been filed late, this period of 90 days will be applicable from the date when return has been actually filed and not from the last date when such return was required to be filed with the department.

Recovery of Service Tax

- ✓ Central Excise Officers are 'Adjudicating Authorities.
- ✓ Central Excise Officers are 'Quasi Judicial Authorities'

[SECTION 73]- RECOVERY OF *"SERVICE TAX NOT LEVIED OR PAID OR SHORT LEVIED OR SHORT PAID OR ERRONEOUSLY REFUNDED"******

Time Limit for issue of SCN

- ✓ In such case***** the Central Excise Officer may, within 18 months from the relevant date serve notice on the person chargeable with the service tax*****, requiring him to show cause why he should not pay the amount specified in the notice :

Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —

a. fraud; or
b. collusion; or
c. wilful mis-statement; or
d. suppression of facts; or
e. contravention of any of the provisions of such case***** with intent to evade payment of service tax, by the ***person chargeable with the service tax or his agent***,

THEN the time limit for serving the notice is extended up to **five years**. Where the service of notice is stayed by order of court, such stay period shall be excluded.. ***Where the service of notice is stayed by order of court, such stay period shall be excluded.***

Relevant date for issue of SCN

- ❖ Relevant date for calculating limit of **Eighteen months/five year** for issue of show cause notice is as follows [Section 73(6)]:
  - i. In the case of taxable service in respect of which service tax has not been levied or paid or has been short levied or short paid –
    (a) Where a periodic return is to be filed, the date on which such return was filed.
    (b) Where no return was filed, the last date on which the return should have been filed under Service Tax Rules.
    (c) In any other case, the date on which service tax is to be paid under provisions of Finance Act, 1994 or Service Tax Rules, 1994.
  - ii. In case where service tax is provisionally assessed, the date of adjustment of service tax after final assessment thereof.
  - iii. In case any sum relating to service tax, has been erroneously refunded, the date of such refund.

Payment before receipt of show cause notice

- ❖ Assessee may pay such tax **on the basis of own ascertainment** or **on the basis of tax ascertained by Central Excise Officer**, before issue of show cause notice.
- ❖ After payment of tax, assessee should inform the Central Excise Officer in writing about such payment, and then the central excise officer shall not issue any show cause notice under Section 73(1) in respect of service tax so paid [Section 73(3)].

- However, even after such payment, show cause notice for further amount can be issued within ***Eighteen months*** from the date on which the assessee had informed the Central Excise Officer about payment of service tax by him [proviso to Section 73(3)].
- Even after payment of tax by assessee, demand can be raised within ***five years*** in case of suppression of facts, fraud, collusion, willful misstatement or contravention of any provision with intent to evade service tax [Section 73(4)].

PROVISIONAL ATTACHMENT PENDING ADJUDICATION

- ✓ During the pendency of any proceedings u/s. 73 or 73A, for protecting the interests of revenue, CEO may provisionally attach any property belonging to the person on whom notice u/s. 73(1) or 73A(3) is served. He can do so only with prior approval of CCE.
- ✓ Every provisional attachment shall cease to have effect after the expiry of six months from the date of the order. However, the CCE may extend the period as he thinks fit which in any case not to exceed two years.

- ✓ The Service Tax (Provisional Attachment of Property) Rules, 2008 prescribes procedures and provisions regarding provisional attachment of the property

Penalty

- ***Contravention of any of the provisions of the Act or the Rules made thereunder for which no penalty is separately provided***: An amount which may extend to Rs.10,000/- shall be liable to be imposed as penalty.
- ***Failure to keep, maintain or retain books of account and other documents as required***: An amount which may extend to ten thousand rupees shall be liable to be imposed as penalty.
- ***Non registration or delayed registration***: An amount which may extend to Rs. 10,000/- or Rs.200/- for every day during which such failure continues, whichever is higher could be imposed as penalty.

- ***Failure to—***
  - **i.** furnish information called by an officer; or
  - **ii.** produce documents called for by a Central Excise Officer; or
  - **iii.** appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry,

  An amount which may extend to Rs. 10,000/- or Rs. 200 for every day during which such failure continues, whichever is higher, shall be liable to be imposed as penalty.

- ***Person who is required to pay tax electronically, through internet banking, but fails to pay the tax electronically***: An amount which may extend to Rs. 10,000/- shall be liable to be imposed as penalty.
- ***Person who issues an invoice with incorrect or incomplete details or fails to account for an invoice in his books of account*****:** An amount which may extend to Rs. 10,000/- shall be liable to be imposed as penalty.

SUPPRESSION OF THE VALUE OF TAXABLE SERVICES [SECTION 78]

- Penalty to an extent ranging from 100% to 200% of the Service Tax which was not levied or paid or erroneously refunded, can be imposed on any person, if such short levy or short payment or erroneous refund is by reason of ***fraud collusion, willful mis-statement, suppression of facts; or contravention of any of the provisions of the Act or the rules made thereunder with an intent to evade payment of Service Tax***.

- Such liability towards penalty would be in addition to the Service Tax amount evaded or erroneously refunded and the interest thereon.
- ***Reduced Penalty:*** *The AMOUNT OF PENALTY shall be reduced to*:
  - i. ***50% of the service tax so determined*** where true and complete details of the transactions are available in the specified records. *Only 50% shall be paid.*
  - ii. ***25% of the service tax so determined*** where true and complete details of the transactions are available in the specified records and the amount of service tax, interest and penalty has been paid within 30 days. *Only 25% shall be paid.*

In case of service providers whose taxable value of service tax does not exceed Rs. 60 lacs, the period of 30 days shall be extended to 90 days.

WAIVER OR REDUCTION OF PENALTY

- As per Section 80, penalty under Sections 76, 77 or 78 can be waived if assessee proves that he had reasonable cause for the failure.
- In **CCE v. Milan Tent Palace 2001 (CEGAT)**, it was held that penalty is not mandatory and can be waived or reduced in deserving cases.

WHO CAN IMPOSE PENALTY

Section 83A empowers Central Excise Officer to adjudicate penalty within such powers as may be conferred by CBE&C, by issuing a notification.

RECORDS TO BE MAINTAINED

- Every assessee is required to furnish to the **Superintendent of Central Excise** at the time of filing his return **for the first time**, a list of all accounts maintained by him in relation to service tax including memoranda received from his branch offices.
- All types of records including computerized data as maintained by an assessee as per various laws in force from time to time shall be acceptable.

ADJUSTMENT OF SERVICE TAX

- Where an assessee has paid to the **credit of Central Government** any amount in excess of the amount required to be paid towards service tax liability for a **month** or **quarter**, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter.
- The adjustment of excess amount paid, shall be subject to the conditions that the excess amount paid is on account of reasons not involving interpretation of law, taxability, valuation or applicability of any exemption notification.
- The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of fifteen days from the date of such adjustment.

DOCTRINE OF UNJUST ENRICHMENT

- **Since service tax is indirect tax**, it is recoverable from customer. If you recover the amount from customer and again claim refund, you will get double benefit. **Hence, provision of 'unjust enrichment' have been made in the law.**

- As per the doctrine of unjust enrichment, refund will be granted to assessee only if assessee had not passed on the tax burden to your customer/client.
- It will be presumed that assessee has passed on the burden of service tax. Thus, assessee will have to prove that he has not passed on the burden to your customer. If he is unable to prove it, refund will be paid to **'Consumer Welfare Fund'** and not to assessee, as provided in Section 12C of Central Excise Act.
- If assessee has shown the amount of service tax separately in invoice (which assessee is legally required to do), it will be difficult for assessee to establish that he has not passed on the tax burden to the client/customer.
- Refund of service tax is governed by provisions of Section 11B of Central Excise Act – confirmed in International Security Organisation v. CCE 2002 (CEGAT).
- If application for refund is rejected by AC/DC, **appeal can be filed with Commissioner (Appeals)**.

CENVAT Credit Rules, 2004

- The burden of proof regarding the admissibility of CENVAT Credit is on the manufacturer or service provider who is availing credit.
- Cenvat credit of inputs and input services is not available if final product/output service is exempt from excise duty/service tax.
- In case of manufacturer manufacturing both exempt and dutiable goods (or service provider providing taxable as well as exempt services), it may happen that same inputs/input services are used partly for manufacture of dutiable goods/taxable services and partly for exempted goods/services. **In such cases, the manufacturer/service provider has following three options—**
  a. Maintain separate inventory and accounts of receipt and use of inputs and input services used for exempted goods/exempted output.
  b. Pay amount equal to 6% of value of exempted goods (if he is 'manufacturer') and/or 6% of value of exempted services (if he is service provider) if he does not maintain separate inventory and records.
  c. Pay an 'amount' equal to proportionate Cenvat credit attributable to exempted final product/exempted output services.

- "**Input service**" means any service –
  (i) used by a provider of taxable service for providing an output service; or
  (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, upto the place of removal.

Outward freight should not be 'input service'.

Provisions of Cenvat Credit Rules relating to Service tax:

1. For a service provider the use of inputs and capital goods must be direct and they must be used for providing output service. Otherwise Cenvat Credit is not available on them.
2. Motor vehicles registered in the name of the service provider will be treated as capital goods for specified services such as outdoor catering, rent a cab, cargo handling, goods transport agency, tour operator & courier agencies.
3. Cenvat credit on service tax can be taken only when both service tax and service charge has been paid.
4. Service provider is not eligible take credit on special CVD paid on imported goods.

5. Service tax paid on input services by Input service distributor can be distributed among its constituent units.
6. Service provider is allowed to transfer credit on inputs and capital goods to its other offices. For that registration under Central Excise is necessary.
7. A service provider has to reverse the Cenvat credit when he removes the inputs or capital goods as such. **But** no reversal is necessary if such inputs or capital goods are taken out for providing output service.
8. Cenvat credit on service tax can be taken on the strength of documents such as challan, Bill or invoice.
9. If the service provider uses inputs or input services both for exempted and taxable services, he should take credit proportionately by maintaining separate accounts. Otherwise he has to pay 8% on exempted services also.

Abatement of Service Tax:-- For example- As per notification no. 26/2012, Railways is require to charge service tax only on 30% value of the taxable services. Hence, if Railways receive an amount of Rs. 50 lacs against the services, it needs to pay service tax only on Rs. 15 lacs i.e. 30% value of Rs. 50 lacs.

Appeals

- Appeal can be filed against adjudication order as per following provisions.
    i. If adjudication order is passed by authority lower than Commissioner of Central Excise, first appeal will be with **Commissioner (Appeals)** under Section 85(1) **within three months** from date of receipt of order of adjudicating authority.
    ii. Second and final appeal is with **Appellate Tribunal** (known as – Customs, Excise and Service Tax Appellate Tribunal – CESTAT) under Section 86(1). Appeal is required to be filed **within three months**.
    iii. If adjudication order is passed by Commissioner, appeal is to be filed to **CESTAT** under Section 86(1).

The adjudicating order of Commissioner may be in respect of following –
(a) Original adjudication of demand under Section 73,
(b) Imposition of penalty under Section 83A,
(c) Revision of order of lower authority under Section 84(1).

APPEALS TO THE COMMISSIONER OF CENTRAL EXCISE (APPEALS) [SECTION 85]

— Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Commissioner of Central Excise may appeal to the **Commissioner of Central Excise (Appeals)**.

— Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.

— An appeal shall be presented **within three months** from the date of receipt of the decision or order of such adjudicating authority relating to service tax, interest or penalty.

Condonation of delay:

— The Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months. **Extension of Period**

— The Commissioner of Central Excise (Appeals) shall hear and determine the appeals and, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty.

Principle of Natural Justice:

— an order enhancing the service tax, interest or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

APPEAL TO TRIBUNAL (Section 86)

- Any assessee aggrieved by an order passed by a Commissioner of Central Excise under section 73 or section 83A or section 84, or an order passed by a Commissioner of Central Excise (Appeals) under section 85, may appeal to the **Appellate Tribunal** against such order.
- The Committee of Chief Commissioners of Central Excise may, if it objects to any order passed by the Commissioner of Central Excise under section 73 or section 83A or section 84, or by the Commissioner of Central Excise (Appeals) under section 85 **direct the Commissioner of Central Excise** to appeal to the Appellate Tribunal against the order.
- Every appeal shall be filed **within four months** of the date on which the order sought to be appealed against is received by the assessee, the Committee of Chief Commissioners.
- The Commissioner of Central Excise or any Central Excise Officer subordinate to him or the assessee, notwithstanding that he may not have appealed against such order **within forty-five days** of the receipt of the notice, file a **memorandum of cross-objections**, verified in the prescribed manner.
- The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period if it is satisfied that there was sufficient cause for not presenting it within that period.

Every application made before the Appellate Tribunal,

i. in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
ii. for restoration of an appeal or an application, shall be accompanied by a fee of **five hundred rupees**

Provided that no such fee shall be payable in the case of an application filed by the Commissioner of Central Excise or Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise.

Cross objection should be in Form ST-6 in quadruplicate

Further appeals

Further appeals against order of Tribunal (CESTAT) lies with **Supreme Court** only in matters of valuation and classification. If there is **substantial question of law** (other than classification and valuation), appeal has to be filed with **High Court**. In case of matters relating to classification and valuation, appeal lies to the Supreme Court.

ROLE OF PRACTISING COMPANY SECRETARY

The educational background, knowledge, training and exposure that a Company Secretary has, makes him a versatile professional capable of rendering a wide range of services to companies of all sizes, other commercial and industrial organizations, small scale units, firms etc.

A Practising Company Secretary can render several services under the Service Tax such as;

— registration with tax authorities
— advising on applicability, rate and payment of service tax,
— filing of returns with the authorities,
— claiming exemption,
— advising on various procedural matters relating to service tax.

SERVICE TAX ON PRACTISING COMPANY SECRETARY

Regarding taxable services provided by Company Secretaries in Practice, the following is the position of the law:

A member of the Institute shall be deemed "to be in practice" when, individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognized professions as may be prescribed, if he involve or engage himself in any activity, as mentioned under Section 2(2) of Company Secretaries Act, 1980, for consideration of remuneration received or to be received."

Recently, the government has issued a Notification exempting the taxable services provided or to be provided by a company secretary in his professional capacity to a client, relating to representing the client before any statutory authority in the cause of proceedings initiated under any law for the time being in force, by way of issue of notice.

Service Tax is governed and administered by the CBEC.

Meaning of Service

"**SERVICE** means any activity carried out by a *person* for another for *consideration,* and include 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 clauses (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.

Further, the following functions or duties performed by the persons mentioned therein shall not be treated as service for this purpose:

i. Function performed by a Member of Parliament/Legislative Assembly/ Municipality /Panchayat/ other local authority, etc., or
ii. Duties performed by a person holding constitutional post by a person; or
iii. Duties performed by any person not deemed as employee.

- ✓ 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. In other words ***service provided in relation to conversion of a currency into another currency shall be liable to service tax***.
- ✓ "**TAXABLE SERVICE**" means any service other than specified in the negative list on which service tax is leviable under section 66B.

Negative List

The services as mentioned below, which are listed in section 66D, known as negative list shall not be liable to service tax:

a. Services provided by Government or a local authority excluding services provided by the Department of Posts, services in relation to an aircraft or a vessel, transport of goods and/or passengers; or other support services;
b. Services provided by the Reserve Bank of India
c. All services provided by a foreign diplomatic mission located in India
d. Services relating to agriculture
e. ***Trading of goods***: - Goods which are purchased and sold are not liable to service tax.
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 provided 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. Specified services relating to education
m. Services by way of renting of residential dwelling for use as residence
n. Certain services provided by financial sector 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. Services relating to transportation of passengers
p. Services provided by way of transportation of goods
q. Funeral, burial, crematorium or mortuary services including transportation of the deceased

Amendment in 'MEGA EXEMPTIONS' notification no. 25/2012-ST dated 20th June, 2012

Following exemptions are rationalized from 1.4.2013:

1. ***Restaurants with only Air-condition taxable***

2. ***Additions in exemption of services of GTA*:** The following additional services provided by Goods transport agency (GTA) by way of transport in a goods carriage would be exempt:
    a. agricultural produce
    b. foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;
    c. chemical fertilizer and oilcakes;
    d. newspaper or magazines registered with the Registrar of Newspapers;
    e. relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
    f. defence or military equipments

3. ***Exemption to charitable organization*:** Charitable activities would be activities relating to advancement of any other object of general public utility up to value of Rs. 25 lacs per annum. Now, such limit of Rs 25 Lakh Rupees per annum will be covered by the threshold exemption limit i.e. 10 lakh Rupees per annum.

Following exemptions are withdrawn from 1.4.2013

1. ***Services by Education institution*****:** Services provided by an educational institution by way of renting of immovable property would not be exempt from service tax from 1st April, 2013.

2. ***Exemption for Cinematographic films:*** Temporary transfer or permitting the use or enjoyment of a copyright relating to cinematographic films was fully exempt so far; now, this exemption will be restricted to exhibition of cinematograph films in a cinema hall or a cinema theatre.

3. ***Transportation of certain goods*****:** Services by way of transportation by rail or a vessel from one place in India to another of the following goods would omitted and the same would not be exempt from service tax -
   a. petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985;
   b. postal mail or mail bags
   c. household effects

4. ***Vehicle parking to general public*****:** Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility, would be omitted and accordingly the same would be liable for service tax.

5. ***Services provided to Government, a local authority or a governmental authority*****:** services provided to Government, a local authority or a governmental authority, by way of repair or maintenance of aircraft would be omitted and the same would not be exempt from service tax.

Declared Services

Such services include:

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 installments
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