UNDERSTANDING
SERVICE TAX CONCEPTS

By

CA. Madhukar N Hiregange

CA. Sudhir V S

PREFACE

Service tax is a subject which has been posing quite a few problems to assessees since its introduction in the year 1994 through Chapter V of Finance Act 1994. Over Rs.80,000 Crores has been collected last year on this count. The service tax law like other tax prevalent in the country is not simple, not equitable, not certain and tax administration generally not fair. Over the years there have been number of instances where assessees have had to face litigations with the department at various levels mainly because of lack of clarity in the subject matter in the past. It has been observed that as the Tribunals and Court provide the clarity, the demands from the revenue for the past periods are raised. The professional advisor would also face difficulties while advising the clients in this nascent law.

Though an attempt has been made to remove confusion by appropriate clarifications where ever applicable, the assessees' woes and the advisors problems are far from over. One of the main reasons for this has been the fact that the subject has not yet developed to the fullest extent and we continue to see changes every year by way of clarifications being given and introduction of new services for the purpose of charging service tax apart from making changes to the existing categories to expand the scope of levy. Invariably the changes have been primarily been aimed at increasing the revenue to the government even if it means arming the tax administrators unduly.

Because of this we would always have some of the assessees who would be new to service tax and who know next to nothing about the legal provisions pertaining to the same. This book is aimed at such Chartered Accountants in employment as well as practice / assessees who are new to service tax practice and are interested in understanding the basic concepts of the subject so that they can take steps to ensure effective compliance with the law. The attesting auditor may also like to have a handily easy to refer book for ensuring compliance under laws he certifies when he signs off the financials for corporates. Keeping this fact in mind and as well as the constraints as to space, this book deals with concepts of service tax to guide the assessee/professional rather than an in-depth discussion of the legal provisions, especially the taxable services individually.

This book has attained its present form partly due to the efforts of CA Rajesh Kumar TR, CA Srikanth T Rao Partners M/s Hiregange & Associates and CA Vinay K V and CA Shilpi Jain who spared their valuable time to edit the book and add value as is his wont.

The book contains an overview of service tax initially which would provide the reader with a bird's eye view of service tax. The reader is advised to go through the same before proceeding onto the subsequent chapters. This book also contains some of the important procedures which would be useful to the assessee in complying with the legal provisions of service tax.

The authors have tried their best to make the book as complete as possible but where the readers have any doubt regarding the subject matter they are advised to refer a more comprehensive publication regarding the same.

The chapters in this book have been arranged in such a way as to give the reader a fairly good idea as to the provisions of law. A reader who is new to service tax would benefit from a reading of the overview chapter as it would tell him all that he needs to know about service tax right from the beginning to the end. The authors would also welcome valuable suggestions from the readers, which would help us in ensuring a better offering next time around. For any comments or feedback please write to mhiregange@gmail.com, vssudhir@gmail.com. For your queries on the subject you may also host your queries on pdicai.org under Service Tax segment.

Finally, we wish the reader all the best!!

Madhukar N Hiregange

Sudhir V S

06.06.2010

Bangalore

ABOUT THE AUTHORS

Madhukar N Hiregange B.Com., FCA, DISA(ICAI), CISA completed his articleship at Brahmayya & Company, Bangalore and is currently member of Central Council of ICAI and Vice President of Indirect Taxes Committee of ICAI. He is also a Director of Hiregange Tax Consultants P Ltd, Tirupur. He has been a regular contributor of articles to various professional and trade journals including the CA Journal, CASC, ELT & STR. He has jointly authored books on Modvat, Central Excise Law and Procedures, Central Excise Made Simple published by Bharat Law House New Delhi, Excise audit manual, Service tax made Simple and K.VAT law and Procedure, Practical Guide to Service Tax. He has been active in the field of spreading awareness on Indirect tax by conducting seminars and presenting papers. He has been a visiting faculty at various Management Institutes including ICFAI, ICSI, ICWAI and IIM Bangalore. He has also coached the Officers of the Central Excise and Service Tax Department. Past Chairman Indirect Taxes Committee FKCCI. Has a vision of simple, certain and fair indirect tax laws in India and Chartered Accountants being trusted with no question as to their credibility. Also managing Trustee of Empower Education Foundation which involves in education of the economically challenged children. Believes in “Value Based Practice and Life”.

Sudhir V S, B.Com, ACA, , is a Chartered Accountant having qualified in November 2006 and having completed his articleship at M/s Hiregange & Associates, Bangalore. He is the co-author of “Practical Guide to Service Tax” and “How to Tackle Service Tax Problems” published by Bharat Law House , New Delhi.. He has presented papers in ICAI, ICWAI etc and is a faculty at NATFM (Training wing of BSNL) and NACEN (Training wing of Central Excise and Service Tax)

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CHAPTER 1. OVERVIEW OF SERVICE TAX

Tax on services has been in vogue in India since 1994 when it was introduced for the first time. When it was introduced initially there were three services which were liable but over the years various other services have been added and today more than a hundred services are liable under service tax. The basket of services liable to service tax is only expected to grow in the near future as the service sector's contribution to the country's GDP is expected to increase even further. In the Goods & Service Tax regime [expected to be in place by 1st April 2011] a negative list is being contemplated which would make more sense to avoid uncertainty caused by frequent changes.

One of the main reasons for the services to be taxed is the fact that the manufacturing sector can be taxed only to a certain extent if we are to ensure the competitiveness of our industry, since ours is no longer a closed economy, all activities are to bear the burden. Services presently forming more than 56 % of the GDP are expected to reach 70% in the next decade, which should also bear the burden of tax. This tax would be subsumed into the Goods and Service Tax which maybe in place in the next few years.

Constitutional validity and concepts

Whether tax on services is constitutionally valid?

The levy of service tax was initially under the residuary powers conferred to the Union by entry 94 of List I to the Seventh Schedule to the Constitution of India. Later entry 92C was introduced specifically to cover 'Taxes on Services'.

In a number of cases the constitutional validity of service tax has been questioned and the decisions of the High Courts/ Supreme Court have been in favour of revenue. In *Tamil Nadu Kalyana Mandapam Assn Vs UOI* ((2004) (167) ELT 3) S C,, the levy of service tax on mandap keepers and outdoor caterers was upheld by the Supreme Court as a tax on services and not a tax on sale of goods or hire purchase activities. The levy of service tax on professional services of Chartered Accountant, Cost Accountant and Architect was also upheld by the Supreme Court in All India Federation of Tax Practitioners Vs UOI (2007 (07) STR 625-SC).

In *GDA Security Private Ltd., Vs. UOI* (2006 (02) STR 542) it was held by the Madras High Court that the tax on profession was levied in order to allow professionals to carry on a particular profession, trade or calling or employment in a particular state. The aspect of providing a service was held to be different and independent of the aspect of profession and the levy of service tax on security agency was upheld.

This has been the case for the chartered accountants, architects and advertisers also. The question of constitutionality would favour the revenue. As on date, the validity of service tax levy on rental of immovable property is an issue to be decided by the Supreme Court though the Delhi High Court has admitted a writ petition in Home Solution Retail India Ltd Vs UOI (2009-TIOL-196-DEL-HC-ST) challenging the levy of service tax on pure renting of immovable property without there being a service associated with the renting

What the concept of "service" is as understood here?

Assessees should note that in order to attract service tax, there should first of all be a service. The concept of "service" though has not been defined for this purpose under law and one would have to refer the meanings given by dictionary to understand the same. There is a possibility of this being defined under GST when the same is in place. The concept has been explained in the chapter on levy.

Where service involves sale of goods as well, whether such sale is also sought to be taxed?

Service tax is a tax on service and not a tax on sale of goods. The various decisions given by the Courts on the constitutional validity of service tax have also clarified his aspect. There are notifications issued under service tax which provide for deduction / abatement in respect of the transfer of property in goods made during the provision of services and this deduction/abatement would be from the gross value charged for the service. The applicability of these notifications would depend on the nature of the services involved and the activities performed. Before opting for the benefit of these notifications, the assessee should ideally perform a cost-benefit analysis as there are associated conditions to be met to claim such deduction.

Governing provisions

The provisions pertaining to service tax are given in Chapter V and VA of Finance Act 1994 as amended from time to time. The Central Government has also been empowered to make rules to carry out the provisions of this Chapter, through section 94 of this chapter. This comes along with the power to grant exemptions from Service Tax u/s 93. The Government has consequently notified various sets of rules, the provisions of which have been explained as we proceed with this book. The rules which may be noted are as follows –

- Service Tax Rules 1994
- Cenvat Credit Rules 2004
- Export of Service Rules 2005
- Service Tax (Registration of Special Category of Persons) Rules 2005
- Service Tax (Determination of Value) Rules 2006
- Taxation of Services (Provided from outside India and received in India) Rules 2006
- Works Contract (Composition Scheme for Payment of Service Tax) Rules 2007

Levy and collection

The levy of service tax extends to whole of India except that it does not extend to a service provider providing taxable services from the state of Jammu and Kashmir by virtue of section 64 of Chapter V of Finance Act.

The question of taxing a service would arise where the service that is provided by the service provider happens to be covered under the various sub-clauses of section 65(105) as a taxable service. Once the relevant clause is identified, the concept of "service provider" and "service receiver" would also have to be satisfied in order to tax the concerned service. In most of the categories though, the "service provider" and the "service receiver" can be any person. In other words, the concept is not restricted to individuals or to firms or to corporate and any one providing the designated services to any person, would be held liable.

Where the criteria set out are satisfied, the tax would be levied on the service provider who would be liable to collect the service tax amount from the service receiver and remit it to the government. However in certain cases the statute requires the service receiver to pay the service tax to the government. The charge of service tax would be at the rates set out in section 66 which is presently 10%. The education and secondary higher

education cess would be payable on this amount at 3% and the total service tax including cess is 10.30% as on date though this rate is very likely to go up in future

Since the levy of service tax is on the provision of service, the services provided before the date on which such services were brought under the tax net, would not be subjected to service tax. Readers here may note that even if the bills for the services provided are raised by the service provider after the date on which the service became taxable, there would be no liability as the services had been provided during the period when the service was not taxable at all. This has been confirmed by the Ahmedabad High Court in Schott Glass India (P) Ltd Vs Commissioner Central Excise and Customs Vadodara II (2009-TIOL-82-HC-AHM-ST)

Concept of Classification

The service provider should ensure that he classifies the service properly as this would enable him to ascertain his liability correctly. Correct classification is critical as the exemptions under service tax barring the general exemptions are based on specified categories and if the classification is wrong, the service provider may either end up paying more than required or even face a liability. For the purposes of classification, the category which gives the most specific description of the service, should be adopted. Where composite services (combination of different services) are provided, the classification should be on the basis of the service which gives them their essential character. Where the aforesaid two principles cannot be followed for classification, the classification shall be under the sub-clause which occurs first among the sub-clauses which equally merit consideration as per section 65A. In addition to this, the non statutory principles as to consideration of trade parlance especially where certain “terms” are not defined under law would also assume significance as indicated in *CC General (New Delhi) Vs Gujarat Perstorp Electronics Ltd* 2005 (186) ELT532

Registration

Every person liable to pay service tax is required to register himself by making an application to SCE as per section 69. The service provider before registering himself shall ensure that he has crossed the exemption limit of registration for the small service provider which is Rs. 10 lakhs, specified by notification 6/2005 ST dated 01.03.05 as amended from time to time. Branded service providers i.e providing services under brand name or trade name of others, would not be admissible for the exemption. An

illustration could be the commercial coaching franchisees. The exemption from registration would not be available for a person who is liable to pay service tax as receiver of services. Moreover, the aggregate value of taxable services provided in the preceding financial year should not exceed Rs. 10 lakhs in order to avail the benefit of exemption.

As per Rule 4 of Service Tax Rules 1994, an application in Form ST 1 would have to be filed within thirty days from the date on which the taxable service is provided/tax is levied on such service. Such form can be filed online through the site www.*aces.gov.in* wherein the assessee will have to first register himself as a user and then fill the form ST-1 (the procedure in this respect is discussed in the chapter "Procedures with regard to Registration") The assessee would also have the option of going in for centralised registration where the accounting and billing activities are centralised. A change in the information or any additional information sought to be given shall be intimated in writing to the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise. There is a penalty of Rs. 200/-day or 5000/- whichever is higher for delay in registration.

Concept of consideration and valuation

The service provided should be for a consideration. As per section 67, where the consideration is wholly in money, the gross amount charged for the service would be liable. Even reimbursements of expenses shall be liable as per Service Tax (Determination of Value) Rules 2006 unless the same is incurred by the service provider as a pure agent of the service receiver. The conditions to be satisfied for this are explained in the chapter on valuation. The gross amount charged shall include payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment. One would have to refer the Rules on valuation to ascertain the value where the consideration is not wholly or partly in monetary terms or where the same is not ascertainable.

Payment of service tax

The service provider providing taxable services shall be required to pay service tax under section 68(1). However, the service provider does not have to pay service tax until he collects the value of service, from the service receiver towards the taxable services

provided by virtue of Rule 6 of Service Tax Rules 1994. Once the payments are received, the service tax shall be paid by the 5th of the month following the month in which the sums are received towards such taxable service. However, in respect of the amounts received in the month of March, the payment would have to be made by the 31st of March and not by 5th of April. Where the payment is made electronically, the due date is 6th of the following month instead of 5th. From 01.04.2010 e-payment has made mandatory for those who had paid central excise duty or service tax of Rs. 10 lakhs or more in the preceding financial year, whether by cash or debit in CENVAT credit account or both vide circular No. 919/09/2010-CX dated 23.03.2010. Receipt of amount towards taxable service though is not a pre-requisite for taxing when the service provider and the service receiver happen to be associated enterprises as defined under Section 92A of the Income Tax Act 1961. In this case, even debit/credit in the books towards value of service provided would require payment of service tax.

The liability to pay would even arise where the service provider receives amounts in advance towards taxable services to be provided by virtue of definition of Taxable services read with section 67. Where the assessee pays excess service tax as result of collecting amounts in advance from the customer and then not providing the service, the excess amount paid can be set off against the service tax liability for the subsequent period provided the excess service tax collected from the customer has been refunded to him. Where this is not possible, the refund option may be selected and if so, the claim is to be made as per the procedure explained in a later chapter dealing with refund procedure.

Payment u/s 68(2) by the service receiver

Generally it is the service provider who provides the taxable services who is called upon to collect service tax from his customer/client and pay the same to the government. But section 68(2) empowers the government to notify the services with regard to which the service receiver would be held liable to pay service tax to the government. The government has consequently notified the following services in this regard through notification 36/2004 ST dated 31.12.2004 as amended from time to time –

- Goods Transport Agency service – specified person paying the freight
- Business auxiliary service of distribution of mutual fund by a mutual fund distributor or agent – mutual fund or asset management company receiving such service

- Sponsorship service provided to any body corporate/firm in which case, the body corporate or firm receiving such sponsorship service would be liable
- Taxable services received by any person in India from abroad – the recipient of such service in India.
- Insurance auxiliary service by an insurance agent – person carrying the general insurance business or life insurance business

In the opinion of the authors, where the service provider pays the service tax, the service receiver can still be called upon by the department to pay service tax as a receiver of such services. However, if one were to go as per the clarification provided by the department through its master circular on procedural issues 97/6/2007 dated 23.08.07, it had clarified that where service tax had been paid by the service provider the same could be taken as credit. This would lend credibility to the theory that a transaction cannot be taxed twice which could be a possible defense.

Payment of Interest

Section75 of Chapter V of Finance Act 1994 as amended from time to time provides for payment of interest by the assessee where there is short payment or delay in payment of service tax. The present notified rate is 13% p.a. simple interest as per Notification 26/2004 ST dated 10.09.04 and this should be paid along with the tax. The interest shall be for the period of default. Interest is mandatory in nature as far as the service tax is concerned.

CENVAT Credit scheme

The service provider providing taxable services is entitled to avail cenvat credit of the service tax paid on input services as well as excise duty charged on inputs and capital goods used for providing such taxable service. This credit can be used by him to pay off his liability on his services. This would reduce his outflow in cash on account of service tax. Eg – If his liability is Rs. 10000/- and he has credits of Rs. 4500/-, he utilizes this and pays only Rs. 5500/- in cash. The credit of service tax on input services (eg. Telephone service, management consultancy, professional services, security service etc) would be available once the payment has been made to the input service provider for the value of services including the service tax amount. Part payment would enable part credit. The service provider would however have to be careful where he provides

both taxable as well as exempted services in which case he shall be required to follow Rule 6 of Cenvat Credit Rules 2004 for the purpose of arriving at the correct figure to be claimed as credits.

Export of Services

The service provider who exports his service in accordance with the Export of Service Rules 2005 would not have to pay service tax on such exports. He would also have the option of going in for the rebate of service tax paid on taxable service exported or service tax paid on input services or excise duty paid on inputs used in providing such taxable services exported in accordance with Rule 5 of Export of Service Rules 2005 and the notifications specified there under. Another option would be that of refund in accordance with Rule 5 of Cenvat Credit Rules 2004.

Filing of returns

The service provider is required to submit half-yearly returns in Form ST-3 or Form ST-3A (in case of provisional assessment) as the case may be with relevant copies of Form GAR 7, in triplicate by the 25th day of the month following the end of the relevant half-year as per Rule 7 of Service Tax Rules 1994. From 01.04.2010 e-filing of return is mandatory for those who had paid central excise duty or service tax of Rs. 10 lakhs or more in the preceding financial year, whether by cash or debit in Cenvat credit account or both vide circular No. 919/09/2010-CX dated 23.03.2010. Form ST-3A is to be used where a deposit is to be made provisionally (i.e. the assessee has opted for provisional assessment). The returns are to be filed for the half year ending 30th September and for the half year ending on 31st March. Where the assessee makes a mistake in the return, the revised return in Form ST 3 should be submitted within ninety days from the date of submission of the return under Rule 7.

Where the filing of the return is delayed, the service provider would have to pay a sum to the credit of the central government as follows under Rule 7C of Service Tax Rules 1994 –

- Rs. 500 for a delay of 15 days from the prescribed date
- Rs. 1000 where the delay is between 15 and 30 days from the prescribed date
- Rs. 1000+ Rs. 100 per day of delay where the delay is beyond 30 days from the prescribed date but not exceeding Rs. 2000 in terms of Section 70.

Rule 7C empowers the Central Excise Officer to reduce or waive the penalty for delayed filing of return, where the gross amount of service tax payable is nil and there was sufficient cause for not filing the return

Section 71enables the Board to notify a scheme for preparation and filing of service tax returns through a class of persons known as Service Tax Return Preparer authorized for this purpose. The assessee could thus utilize the services of STRP where he has any difficulty in filing the returns. The Government has framed the Service Tax Return Preparer Scheme 2009 notified through Notification 7/2009 ST dated 03.02.09, a copy of which can be obtained on the website www.cbec.gov.in.

Recently with an MOU with CBEC and ICAI Chartered Accountant can register as a Certified Filing Center and can offer the service of filing service tax and excise returns online through ACES website. [visit icai.org]

Assessment

The assessee is required to assess the tax payable by him and pay the same on monthly or quarterly basis as applicable. In other words, what is envisaged here is self-assessment. Rule 6(4) of Service Tax Rules 1994 enables him to opt for payment on provisional basis where there is difficulty in ascertaining the amount to be paid. For this, he shall make an application to ACCE/DCCE. The assessment would be finalized at a later date. The departmental authorities can call for further information as they may require from time to time. The provisions of Central Excise Rules would apply here in relation to such provisional assessment with the exception as to requirement of furnishing of bond.

<u>Is best judgement assessment possible under service tax?</u>

Section 72 authorizes the Central Excise Officer to make such assessment after allowing the assessee to represent his case, where the assessee has failed to make service tax returns or assess the tax properly. Thus where the assessees fail to assess tax properly or fail to furnish return itself they could face the risk of the department calling for a best judgment assessment. However these assessments are expected to lead to substantial litigation.

Provisions as to recovery

As per section 73 of Chapter V of Finance Act 1994 as amended, where the service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer handling service tax can serve a Show Cause Notice on the person chargeable with service tax as to why he should not pay the amount specified in the notice. The notice shall state the amount involved.

This can be done within one year from the relevant date unless such short payment/ non-levy/refund was by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of the provisions of Chapter V or rules made thereunder with the intent to evade payment of service tax. In such cases, the time limit would be five years.

There is an option of completing the proceedings by payment of the tax amount along with interest u/s 75 before issue of notice in cases pertaining to fraud, collusion etc., by paying the said tax and interest along with penalty of 25% of the service tax specified in the notice within 30 days from the date of communication of notice.

Provisions pertaining to penalty

Section 76 of the Finance Act provides for a penalty in case of failure to pay tax, of an amount equal to the higher of -

1. A sum of not less than rupees two hundred for every day during which the failure to pay tax in accordance with section 68 continues, or
2. Two percent of the tax for every month, starting with the first day after the due date till the date of actual payment of service tax due.

The total amount of penalty cannot exceed the amount of service tax payable.

Section 77 deals with penalty for a contravention where no specific penalty is prescribed.

The penalty in cases of fraud, collusion, willful misstatement, suppression of facts or contravention of any provision with an intention to evade the payment of service tax would be u/s 78. (Section 78 is being amended to provide that in a case where penalty u/s 78 is imposed, penalty for failure to pay service tax u/s 76 shall not apply). This section even provides for a reduction in amount of penalty to 25% of the service tax determined where payment of tax and interest is made within 30 days from the date of communication of order, along with the penalty so determined.

Further an explanation to section 73(3) is being added whereby if the amount of service tax and interest is paid by the assessee before the issue of show cause notice then no penalty is leviable under any of the provisions of this Act or the Rules made thereunder.

Collecting amounts representing service tax

Any person collecting any amount as representing service tax or in excess of the service tax liable, or collecting service tax on transaction not liable for service tax has to deposit such amounts with the Central Government as per section 73A. The provision for the interest on the same is governed by section 73B.

Provisions pertaining to Appeals

Section 85 of the Finance Act, allows an assessee or revenue aggrieved by any decision or order passed by an adjudicating authority subordinate to the Commissioner of Central Excise, to appeal to the CCE (Appeals) within three months from the date of receipt of the decision of the authority.

Rule 8 of Service Tax Rules 1994 requires the appeal to be made on Form ST-4 in duplicate. A copy of the order sought to be appealed against is also to be filed with the appeal.

Section 86 allows the assessee or revenue to make an appeal to the Appellate Tribunal against the order passed by either the CCE or CCE (Appeals). The appeal is to be filed within three months of the date on which the order sought to be appealed against is received by the assessee and as per Rule 9 of Service Tax Rules 1994, would be filed on Form ST-5 and would be in quadruplicate. Even orders passed either under section 73 dealing with recovery or a revision order of the CCE u/s 84 or order adjudging penalty u/s 83A may be appealed against.

As far as appeals to High Court and Supreme Court are concerned the provisions of sections 35G and 35L of the Central Excise Act 1944 would apply. The appeal to High Court can be made against the order of the Appellate Tribunal once the High Court is satisfied that the case involves a substantial question of law. The appeal shall be within 180 days from the date on which the order appealed against is received by the assessee. The fee shall be rupees two hundred.

The appeal against the order of the High Court shall be with the Supreme Court once the High Court certifies the case to be one that is fit for appeal to Supreme Court. This may be done on its own motion or on an application by the assessee once its judgement is delivered. The decision of the Supreme Court shall be final and binding on the parties concerned. The practice of the revenue department to continue to raise protective demands or litigate a matter much after its judicial confirmation should be discouraged as it amounts to a harassment to the tax compliant service providers/ receivers who contributes more than 80% of the total collections of taxes whether in direct or indirect taxes. It would also embrace the global best practice of trusting the tax payer both in word and spirit reduce the cost of tax administration.

CHAPTER 2. SERVICE TAX - LEVY

The service tax levy is attracted when a taxable service is provided by a defined service provider to a defined service receiver. Unless a service can be regarded as being taxable and being provided by a defined service provider to a defined service receiver, it cannot be taxed. All the three conditions here should be met and even if one of the conditions is not met, the activity in question cannot be taxed. The assessees may however note here that the concept of service receiver now is only of academic interest as the scope of the term is being widened to cover almost all service receivers in the last couple of years (the service receiver can be any person in most of the services). Over the years, the number of services being subject to service tax is also being increased by including all the concerned services in the relevant section discussed above. The service tax levy does not extend to the state of Jammu and Kashmir.

What do we mean by the term "service"?

The word "service" has not been defined under service tax may be with a purpose. The government can deem any activity or transaction to be a service. One would have to go by the dictionary meaning of the term "service". Black's Law Dictionary defines the term "service" to mean an intangible commodity in the form of human effort such as use of labour, skill or knowledge for the benefit of another. One of the meanings given by Webster's dictionary goes thus – "performance of any duties or work for another; helpful or professional activity". Where there is no service, there would be no liability and a transaction cannot be deemed to be one involving a service in the absence of service. Moreover, what is not a service is not easy to determine. The revenue seems to be of the opinion that what is not goods is a service as indicated by their efforts to tax supply of goods for use. Even this view was questioned recently by the Delhi High Court which observed that in a pure renting transaction there is no value added service provided at all which in the opinion of the authors appears valid.

Relevance of the concept of taxable service

The concept of taxable service can be appreciated by going through section 65(105) which consist of various sub-clauses with each sub-clause seeking to define "taxable

service" in relation to a particular service category. In order to tax a particular service, the same should be covered by one of the sub-clauses referred above as a taxable service.

Though the service tax levy is attracted at the time of provision of taxable services the payment of the same can be made at the time of receipt of the consideration. But where any amount is received as an advance towards the taxable service to be provided in future, the service provider would be liable to pay service tax on the same. In case the service is not provided at all, the service tax paid in advance would be allowed to be adjusted in the subsequent period or would be refunded.

As per the second proviso to Rule 6(1) of Service Tax Rules 1994, no matter when the payment is received towards the value of services, no service tax shall be payable for the part or whole of the value of services attributable to services provided during the period when such services were not taxable.

The concept of taxable service is also critical as the CENVAT credit availment would be on excise duty paid on inputs and capital goods and service tax paid on input services used for providing such service. Even where the export benefits are to be examined in respect of the services exported, the services exported should be taxable services.

Relevance of the concept of service provider

In addition to the concept of taxable service, one should also be familiar with the concept of service provider. Under service tax there is no uniform definition of the term "service provider" and it varies from one service to another. The concept of service provider has been defined keeping in mind the category of service that is sought to be taxed. For instance, in case of advertising services, the service provider should be an advertising agency. Similarly, in case of services of a technical nature, the service provider would have to be an agency or an engineer depending on the exact nature of the activity that is sought to be taxed.

Normally the service provider who provides taxable services is liable to pay service tax. However, in certain circumstances he could even be liable as a service receiver. These circumstances would be governed by section 68(2) and the categories with regard to which the service receiver could be liable have already been given in the chapter on overview. Here, the concept of service provider would not be relevant to attract liability.

Therefore in order to tax a particular service, it should find a mention in one of the sub-clauses of section 65(105) as a taxable service plus the person providing the stated service should be covered as a service provider by the relevant definition. Where the service is not covered as a taxable service or where the person providing the service cannot be regarded as a service provider under the relevant definition, the person providing the service would not be liable to service tax.

The person providing the service is advised to exercise caution here because there have been cases of confusion in the past regarding certain categories of service providers.
In *Zee Telefilms Vs CCE Mumbai* 2006 (4) STR 349 the assessee was held not liable as an advertising agency as he was not engaged in making, preparation, display or exhibition of advertisement and had only been collecting advertisement material for display by a broadcaster.
In *Tata Technologies Ltd Vs CCE Pune* 2007 (8) STR 358 the assessee who was acting as a nodal agency on behalf of the Tata Group while interacting with SAP India, was held as not providing any management consultancy services to affiliates and consequently not liable as a management consultant.
In Rai Associates Vs CCE Mangalore (2008 (10) STR 194 (Tri-Bang)), the activity of meter reading, billing and ledger posting undertaken by the Chartered Accountants for MESCOM was held not to be liable as Chartered Accountant's service.
The recent observation in a matter of stay by the Delhi High Court question whether the services in relation are taxable or the service itself where the definition read- "*taxable services means… in relation to…..*" It observes that the definition only talks of services in relation to renting of immovable property but does not specify the renting of immovable property itself.
Very often the confusion regarding the taxability is on account of differences in interpretation of the definitions concerned which can be resolved to a certain extent by strictly going as per the facts and circumstances of each case and by studying proper commercial / business practices.

Relevance of the concept of service receiver
Normally the service receiver is the customer/client who receives the service. Here one should note that a service provider cannot provide service to himself. Thus the existence of the defined service receiver as stipulated by the relevant definitions would also be

necessary to attract liability. Now with most of the service receivers being “any person” only the cases where it is different would be relevant.

Where service provider is also a manufacturer – whether service tax levy would apply

It is quite possible for a service provider to also be engaged in manufacturing activities. But the fact that he is a manufacturer would not alter his liability under service tax especially where the manufacturing activity and service related activities are two separate streams of activities having no bearing on each other. Even where the activities are inter-linked, the liability under service tax could be unaffected by the liability under Central Excise if the goods are sold to the customer on being manufactured and service is provided subsequent to such sale.

The situation could be different in case of composite contracts dealing with the supply of manufactured goods and provision of services in relation to the same, where the amounts cannot be bifurcated in terms of material supply and provision of services. In this case the service provider would have to proceed taking into account the exemptions / abatements available under service tax, the deduction available under the VAT law of the concerned state, his cost break up in terms of material and labour components apart from his customer’s business profile. An example could be the contractors involved in windows, glazing and building facades. They could ideally remove the goods manufactured in their unit on comparable values discharging the CE duty at the applicable rate%. The service division would avail the credit of such duty along with other input services and use the same to discharge the ST on the whole value of the contract. This would enable encashing the duty paid on manufacture and should be possible in the opinion of the authors. This option would be useful where the customer is eligible for credits.

Pointers for practice

- The professional here would have to have a fair idea as to the provisions prevailing under the VAT law of the concerned state if he is really to add value to his client’s business. This would be so, as the more appropriate course of action is to be selected from a given set of alternatives. This would involve the study of deductions available for labour as per the VAT law, composition benefits, deduction for materials transferred under service tax, conditions to be met in order to claim deductions etc.

- The professional would have to go through the agreements the client has with his customers so that the essence of the same could be understood. This is critical in order to determine the liability or the absence of one under service tax.
- It may also be important to examine the taxation of the incoming services/ goods as well as the customers liability for central excise or service tax.

CHAPTER 3. CLASSIFICATION OF SERVICES

Classification of the service involved under service tax is perhaps the single most important step in ensuring legal compliance. Classification of services poses certain challenges unlike classification of goods as services are intangible. Professionals handling service tax matters often face problems here as the service sector involves specialists who specialise in certain select fields (technocrats, scientists, engineers) and who are not attuned to the requirements under service tax and the possible ramifications of non-compliance. Sometimes, the service provider may even be uneducated (for instance if he is a goods transport agency, sub contractors in the construction industry, pandal or shamiana contractor). Very often when it comes to classifying a service, difficulties are faced in understanding the exact nature of services being provided by the service providers as the explanations given can only be understood by another technically qualified individual rather than a professional who is well versed only in matters pertaining to taxation. The understanding of the trade is critical in this regard.

Relevance of the concept of classification

An assessee under Central Excise would know the importance of classification and the influence it would have on his liability. Similarly the importance of classification under service tax is not to be underestimated. There have been numerous instances of the assessees differing with the departmental authorities on the issue of classification of services that they provide.

Under service tax, correct classification is the single most critical factor the assessee should take care of if he is to feel secure as far as his compliance is concerned. This is for the reason that the various categories of services have been brought under the tax net over a period of time beginning with the year 1994 rather than in one shot. Thus when the assessee considers the various alternative categories for classifying his services, he may be confronted with a scenario where two or more services are liable from different dates. This would substantially increase the risk factor of non-compliance arising from improper classification of the service.

For the purpose of classification, one would have to follow section 65A of Chapter V of Finance Act. As per this section, the classification of the service has to be determined keeping in mind the sub-clauses of section 65(105). That is, in order to classify the services provided, the assessee is supposed to have a fair knowledge of the categories that are taxed under the aforesaid section and he should be able to identify the possible categories that could apply in his case and select the one that is most appropriate. The view of the revenue is normally available in the Circulars and if within that boundary of law, the service provider would be safe and is advised to follow the same.

The classification is done following the principles laid down below –

- The sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description. This has also been upheld by the Punjab and Haryana High Court in Dr Lal Path Lab (P) Ltd vs CCE Ludhiana (2007 (08) STR 337 (HC-P&H)).
- Composite services consisting of a combination of different services, which cannot be classified as per the aforesaid clause, shall be classified as if they consisted of a service which gives them their essential character
- Where a service cannot be classified as per the aforesaid two clauses, it shall be clasified under the sub-clause which occurs first among the sub-clauses which equally merit consideration

The Finance Act 2010 has bought in a concept of services linked to location such as port/ airport where all services within the area would be classified under that particular location. Here the start to end of the service should have been within the designated area. . This appears to be against the basic tenets of simple classification.

Possible ramifications where the assessee gets the classification wrong

Where the assessee gets the classification of service wrong, the result could be as follows –

- Losing out on the exemptions which could have been claimed if the classification had been done correctly, as a result of which the assessee pays more than what is required to be paid
- Loss of business due to rivals/competitors being cost-effective
- Wrongly claiming exemption that he was not entitled to in the normal course as a result of which he is saddled with additional liability along with interest and

penalties which cannot be collected from clients/customers thereby affecting his cash flows

- Paying service tax when he was not required to pay as a result of wrongly classifying his service under a category which was not appropriate leading to huge debts. He could lose where the refund period of 1 year would also be over.
- Not paying service tax when he was actually liable to pay the same as a result of classifying his service under a category which was not being taxed earlier but is taxed from a later date.
- Getting the liability on Import of Services all wrong or not claiming the benefit of export on service exports due to improper classification could also happen. This could happen when the alternative headings available have different import/ export criterion being applicable to them.

Pointers for practice

- The professional handling service tax matters would be required to go through the various records maintained by the assessee before arriving at a final decision regarding classification. This would ensure that the classification is done on the basis of documentary evidence rather than only on the basis of interviews. However in the absence of documents the same maybe made clear in the opinion.
- The professional would have to be careful in case of composite services. Here, the agreement available or the method of invoicing or charging need not in itself determine whether the service is a single service or multiple services. Here, the real nature and the substance of the transaction should be the guiding factor rather than form of the transaction, for the purposes of classification. He/she should therefore try to find out the category of service which gives the essential character and then adopt that category for classification
- Periodical review of the classification may also be undertaken by the professional to ascertain whether the concerned services can be classified under other headings which have been introduced at a later date and which provide a more specific description of the concerned service. This possibility cannot be ruled out though it may be remote. The shelf life of the opinion is to made clear to the client.

- In case of any doubt in the classification, the same is preferable to be intimated to the department and their confirmation sought. This would also allow for amendment in future when the matter becomes clear.

CHAPTER 4. CENVAT CREDITS AND PAYMENTS

Introduction

The concept of VAT provides that the indirect taxes paid in the earlier point of time are allowed to be set off against the tax payable at a later point of time. It may also require that the chain is not broken for maximisation of the gain under this scheme. The credits are available to the service provider and consequently awareness of the provisions as well as the procedures is to be ensured for effective compliance under service tax. Assessees who are new to both central excise as well as service tax should note that cenvat credit scheme is a scheme which provides for a scheme of set off of the Central Excise duties on inputs and capital goods and service tax paid on input services against the liability arising on taxable services or excisable goods. Thus where a service provider uses certain materials which have suffered duties of Central Excise at the time of procurement, for the purpose of providing a taxable service on which he is liable to pay service tax, the Central excise duties can be set off against the service tax liability. This set off facility would also be available in respect of service tax paid on input services used for providing the taxable service.

The set off scheme talked about above is presently governed by the Cenvat Credit Rules 2004 which is common to both assessees under Central Excise as well as Service Tax. The Rules provide for cross-sectional credit i.e a service provider not only gets credit for the service tax paid on input services but even for Central Excise duties on raw materials and capital goods used for providing the taxable service. The present sets of Rules are in force from 10th of September 2004 which is also the date from which the cross-sectional credit is admissible. The effect of these Rules would be to reduce the cash outflows for the service provider on account of service tax. An example would clarify this

Example – Ms. Mahadev Associates is a service provider whose service tax liability is Rs. 125000 and the service tax paid on input services like consultancy fees, technical testing, professional fees and security services put together is Rs. 65000 and the Central Excise duties on the raw materials and capital goods as shown by the suppliers' invoices are Rs. 35000. If the opening balance of credits from the previous months is Rs. 10,000 the calculation of the service tax amount to be paid by Ms. Mahadev Associates in cash is as follows –

Particulars	*Amount Rs*	*Amount Rs*
Service tax liability as stated above		125,000
Less: - Credits available for set off		
Opening balance of Cenvat credits	10,000	
(+) Cenvat Credit on raw materials and capital goods	35,000	
(+) Cenvat credit in respect of input services	65,000	
Total credits available for set off	110,000	
Deducting the credits total from the service tax payable		(-) 110,000
Amount of service tax to be paid in cash		Rs. 15,000

But for the set off available in the above example, the service provider would have had to pay Rs. 125000 in cash which would also have increased the cost of his services to his customer. The Cenvat credit can be utilized only to the extent such credit is available on the last day of the month, for payment of duty or tax relating to that month.

The Cenvat Credit Rules 2004 specify the duties and the taxes which can be used for set off as well as the conditions to be followed by the service provider in order to claim these credits set offs. The credits would not be available in respect of the Central Excise duties on raw materials and service tax on input services used for providing an exempted service. *In respect of capital goods, the credit of CE duties on such capital goods can be denied where they are used exclusively for providing exempted services.* Moreover, in respect of the service tax on input services, the credits would be admissible only on payment of service tax and the value of service to the input service provider and not before that. This restriction applies only to input services and not to inputs and capital goods.

Before we proceed with the discussion on Cenvat Credits, it is important to consider some of the critical definitions as relevant to a service provider. In this regard, the definitions of “input”, “input service” and “capital goods” assume significance. The reader

is advised to refer the Cenvat Credit Rules 2004 for the exact text though the definitions have been discussed below with reference to a service provider.

Concepts

Concept of input

"Inputs" generally mean all goods used for providing any output service. "Inputs" would not include light diesel oil, high speed diesel oil and motor spirit and motor vehicles.

Concept of output service

"Output service" as per Rule 2(p) of Cenvat Credit Rules 2004, means any taxable service provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person as the case may be. Taxable service shall not include service where the receiver pays the tax like GTA, sponsorship or import of services. Therefore where the receiver is required to pay the service tax, the same has to be paid fully in cash. The logic is that an input service credit cannot be used to pay the service tax on another input service. However whether this restriction would apply for input services other than GTA is being judicially examined.

Concept of capital goods

"Capital goods" as per Rule 2(a) of Cenvat Credit Rules 2004, means the following goods –

1. All goods falling under chapters 82, 84, 85, 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to Central Excise Tariff Act
2. Pollution control equipment
3. Components, spares and accessories of the goods specified at clauses (1) and (2) above
4. Moulds and dies, jigs and fixtures
5. Refractories and refractory materials
6. Tubes and pipes and fittings thereof; and
7. Storage tank

The aforesaid items should be used for providing output service.

Motor vehicles would also be regarded as capital goods where they are registered in the name of the service provider who provides output services falling under the categories stated below –

1. Courier agency
2. Tour operator
3. Rent-a-cab scheme operator
4. Cargo handling agency
5. Goods transport agency
6. Outdoor caterer
7. Pandal or shamiana contractor

It is expected that services like construction/ works contract, mining etc. where there is substantial vehicle usage would also be added up in time to come.

The definition of capital goods under Companies Act 1956 or under Income Tax Act 1961 would not be valid here.

"Input service" means any service used by a provider of taxable service for providing an output service;

It includes services used in relation to –

- Setting up, modernization or renovation or repairs of the premises of provider of output service or an office relating to such premises
- Advertisement or sales promotion
- Market research
- Storage up to the place of removal
- Procurement of inputs
- Activities relating to business (such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security)
- Inward transportation of inputs or capital goods
- Outward transportation up to the place of removal

Duties/taxes which can be considered for set off or availing credits

The duties and taxes which can be considered as per Rule 3(1) of Cenvat Credit Rules 2004 for set off or availment are as follows –

- Basic Excise Duty (First Schedule to CETA)

- Special Excise Duty (Second Schedule to CETA)
- Education cess on excisable goods and on taxable services
- Secondary Higher Education Cess of excisable goods and on taxable services
- Service tax u/s 66 of Chapter V of Finance Act
- Counter Veiling Duty u/s 3 (3) of Customs Tariff Act on imported goods

The aforesaid duties should have been incurred on input or capital goods received in the premises of the provider of output service on or after 10.09.2004 and the taxes should have been paid on any input service received by the provider of output services on or after 10.09.2004.

The service provider cannot claim credit of additional duty (SAD 4%) leviable under section 3(5) of the Customs Tariff Act, by virtue of proviso to Rule 3(1) of Cenvat Credit Rules 2004.

Utilisation of the credits

The service provider who avails Cenvat Credit on inputs, capital goods or on input services can utilize the credits as per Rule 3(4) of CCR 2004, either for –

Payment of excise duty on any final product or

Reversal of Cenvat credit availed on inputs when the inputs are removed as such or after partial processing (other than for providing taxable services) or

Reversal of Cenvat credits or

Payment of service tax on output service or

Reversal of Cenvat credit on capital goods where the capital goods have been removed as such other than for providing taxable services

Education cess and secondary higher education cess credit can be utilized for payment of the Cess on service tax or cess on excisable goods. But the credits of education cess and SHE cess cannot be used for payment of any other tax or duty. Education cess credit is to be used for payment of education cess and SHE cess credit is to be used for payment of SHE cess.

When inputs/capital goods are removed outside the premises

As per Rule 3(5), when inputs or capital goods on which cenvat credit has been taken, are removed as such from the premises of the service provider, the cenvat credit availed would have to be reversed unless the removal was for providing taxable service. Where the removal of capital goods or inputs is for providing an output service, there would be no time limit for receipt of the same back into the premises of the service provider. However, the service provider is advised to track the movement of inputs and capital goods using of challans and registers to avoid flouting of Rules and end up with disputes/ demands. In case of capital goods removed after use, where the credits are to be reversed, the reversal would be reduced to the extent of 2.5% per quarter of use of the capital goods.

When inputs/capital goods are written off fully

When inputs or capital goods are written off fully or a provision for such write off is made in the books of accounts then the manufacturer or service provider shall pay an amount equivalent to the cenvat credit taken on such input or capital good. Subsequently where such input or capital good is put to use for manufacture or providing taxable service, the manufacturer or service provider would be entitled to take credit of the amount paid earlier subject to the other provisions in the Rules.

Earlier these provisions were applicable to manufacturer only. From 07.07.2009 vide notification 16/2009 it is made applicable to service providers as well.

Restriction in case of capital goods

As per Rule 4(2)(a) of CCR 2004, the cenvat credit in respect of capital goods received in the premises of the service provider who provides taxable services, shall be taken for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year and the balance in the subsequent financial year if the capital goods are in possession of such service provider. In case of small scale industries claiming exemption under Not. 8/2007 100% credit can be availed in the first year itself. The criterion as to possession would not apply to components, spares, accessories, refractories and refractory materials, moulds, dies and goods falling under heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of First Schedule of Central Excise Tariff Act. Moreover, in case the capital goods are cleared as

such in the same financial year (initial year), the balance can be claimed in that year itself.

Where cenvat credit is claimed on capital goods, the duty amount cannot form part of the cost of the capital goods for the purpose of claiming depreciation u/s 32 of Income Tax Act 1961 by virtue of Rule 4(4) of CCR 2004. If depreciation is claimed on the duty amount on which cenvat credit had been claimed earlier, the credit would have to be reversed.

Capital goods may even be acquired on lease, hire purchase or loan agreement from a financing company u/r 4(3) and credits would still be available as long as documentation is in order.

Can the inputs or capital goods on which cenvat credit is claimed, be sent out to a sub contractor for processing?

The input or capital goods on which credit has been claimed, can be sent out under Rule 4(5)(a) of Cenvat Credit Rules 2004 to a job worker for processing, testing, re-conditioning etc. The goods after processing, testing etc are to be received back within the premises of the service provider within 180 days from the date of sending the same. Where it is not so received, the cenvat credits availed earlier in respect of the inputs so sent would have to be reversed which can again be claimed back once the goods are received any time after the expiry of the said period of 180 days. There is no restriction as to receipt within 180 days in case of capital goods as the same has been amended this year with regard to a service provider, as long as the removal is for providing output service.

The goods are normally sent under a pre-numbered challan which would consist of details like, name and address of the job worker, the description of the goods, value with duty amount, nature of processing required and the date on which the items are expected. The challan can have a provision for authenticating the receipt and despatch details at his end along with details of dispatch like, goods sent back, scrap generated if any, processing undertaken, date of sending and details of invoices raised if any. The service provider can also maintain a register to keep track of material movements showing the issue and receipt details.

Cenvat Credits – Refund for exporter of service

As per Rule 5 of CCR 2004, where any input or input service is used in providing an output service which is exported (in accordance with the Export of Service Rules 2005), the Cenvat credit in respect of that input or input service can be utilized by the provider of output service towards payment of service tax on taxable services provided within India. Where such utilization is not possible, the provider of output service can opt for a refund of such amount subject to conditions notified by the Central Government.

This refund shall not be allowed where the provider of output service avails of either –

Drawback under the Customs and Central Excise Duties drawback rules 1995 or

Claims rebate of duty under Central Excise Rules 2002 or

Claims rebate of service tax under Export of Services Rules 2005 in respect of such duty/tax.

Where the service provider has both taxable as well as exempted services

The provisions are governed by Rule 6 of Cenvat Credit Rules 2004. Where a service provider exclusively provides exempted services, he cannot avail and utilize the cenvat credits. The same philosophy would also apply to a manufacturer manufacturing exempted final products exclusively.

In a scenario where the service provider provides both taxable as well as exempted services and avails Cenvat credits on inputs and input services used in providing services, he would in the normal course be required to maintain separate accounts for receipt, consumption and inventory of inputs and input services meant for use in providing output service and those inputs and input services meant for use in providing exempted services. This would be to ensure that he does not claim credits on inputs and input services used for providing the exempted services. Even where they are availed, the same can be reversed in the books.

But where the service provider is not in a position to maintain separate accounts or has not maintained separate accounts, he cannot utilize the full amount of cenvat credits at his disposal. In such a scenario, the position would be as explained below -

For the period prior to 1st April 2008,

The utilization shall be only to the extent of an amount not exceeding twenty per cent of the *amount of service tax payable on taxable output service*. This utilization is subject to having sufficient balance of cenvat credits on hand on the basis of the invoices given by the input service provider/suppliers. The balance credit left out after such utilization can be carried forward to the subsequent period.

On or after 1st April 2008,

The rule now gives the service provider two options –

- Pay an amount equal to 6% of the value of the exempted services or
- Pay an amount equivalent to the CENVAT credit attributable to inputs and input services used for providing exempted services as per the formula/method indicated

As per this formula/method, the cenvat would be determined in two steps. First of all, during each month, the cenvat credits attributable to exempted activity would have to be ascertained provisionally by taking the value of exempted services, goods manufactured and taxable services *provided during the preceding financial year as the basis*. Secondly, the actual credits that the service provider is entitled to, would be calculated at the end of the year on the basis of actual figures for the relevant financial year with regard to the value of exempted services and taxable services provided or goods manufactured (if any).

Where the credits ascertained finally in relation to exempted activity are less than the credits ascertained provisionally, the service provider can take credit for the differential amount.

Where the credits ascertained finally in relation to exempted activity are more than the credits ascertained provisionally, the service provider would have to pay the differential amount on or before the 30th June of succeeding financial year. Where the payment is made after 30th of June, interest at 24% p.a. would be payable for the period of delay.

The calculations / steps to be taken every month for ascertaining provisional credits in relation to exempted activity would be as follows -

1. Ascertain the cenvat credit attributable to inputs used for manufacturing exempted goods if any and let the credits be A. (This point would apply where a service provider also engages in manufacturing)

2. Ascertain the cenvat credits provisionally in respect of inputs used for providing exempted services as follows – (B/C) * Total credits taken during the relevant month not including amount A indicated above.

   For this purpose, B = total value of exempted services provided during the preceding financial year

   C = total value of dutiable goods manufactured and removed during preceding financial year + total value of exempted services and taxable services provided during preceding financial year.

3. Ascertain the cenvat credits attributable to input services used for providing exempted services or for manufacturing exempted goods as follows – (E/F) * Total credits taken during the relevant month

   For this purpose, E = total value of exempted goods manufactured and removed during the preceding financial year + total value of exempted services provided during the preceding financial year.

   F = total value of dutiable goods and exempted goods manufactured and removed during preceding financial year + total value of exempted services and taxable services provided during preceding financial year.

At the end of the relevant financial year, the following calculations would have to be made –

1 Ascertain the cenvat credit attributable to inputs used for manufacturing exempted goods if any and let the credits be H. (This point would apply where a service provider also engages in manufacturing)

2. Ascertain the cenvat credits in respect of inputs used for providing exempted services during the financial year as follows – (J/K) * Total credits taken during the relevant financial year not including amount H indicated above.

   For this purpose, J = total value of exempted services provided during the relevant financial year

   K = total value of dutiable goods manufactured and removed during relevant financial year + total value of exempted services and taxable services provided during relevant financial year.

3. Ascertain the cenvat credits attributable to input services used for providing exempted services or for manufacturing exempted goods as follows – (E/F) * Total credits taken during the relevant financial year

For this purpose, E = total value of exempted goods manufactured and removed during the relevant financial year + total value of exempted services provided during the relevant financial year.

F = total value of dutiable goods and exempted goods manufactured and removed during relevant financial year + total value of exempted services and taxable services provided during relevant financial year.

Value for this purpose shall have the meaning assigned in section 67 of Chapter V of Finance Act for service tax and section 4 or 4A of Central Excise Act 1944 with regard to goods.

Example –

If the sale of exempted goods during 2007-08 had been Rs. 150 Lakhs and clearance of dutiable goods had been Rs. 187 lakhs during the said year and the exempted services had been Rs. 45 Lakhs and taxable services had been Rs. 25 lakhs for 2007-08, and the input credit total for the month of April 2008 is Rs. 22 Lakhs out of which the credits on inputs used for exempted goods is Rs. 2.5 Lakhs, the determination for April 2008 would be as follows –

Step 1: - Credits on inputs used for exempted goods =Rs. 2.5 L

Step 2: - Credits on inputs used for exempted services = Rs. 3.41440.

Credits for April 2008 (excluding step 1 credits) X Exempted services for last year/(Dutiable goods value+ Taxable service value+ Exempted service values for last year) = (22-2.5)X(45)/(187+45+25)

Step 3: - Input service credits is nil here.

Therefore, the total credits which can be claimed in April 2008 = Rs. 22-2.5-3.41440 = Rs.16.08560 L

If we assume that input service credit of Rs. 4 L is also available, then

Step 3: - Credits on input services used for exempted goods and exempted services = Rs. 1.91646

(Credits for April 2008)X(Exempted services value+Exempted goods values for last year)/(Dutiable goods value+Exempted goods value+Exempted service value+Taxable service value for last year) =
4X(45+150)/(187+150+45+25)

Therefore the credits admissible on input services would be Rs. 4-1.91646 = Rs.2.08354 L.

Note: - The method can also be used by manufacturers under Excise and they would be required to pay 5% of the value of the value of exempted goods instead of 6% (of value of exempted services) for service providers. The other option would be the same as discussed above i.e ascertaining the credits as per the method prescribed. If one analyses the method, it would cover even a case where a service provider also happens to engage in manufacturing while the old rule was silent regarding the treatment to be adopted in such cases. Moreover, the segregation is only in respect of inputs and input services and not capital goods. The question of denial of credits on capital goods would arise only where they are used exclusively for exempted goods or exempted services. The option to either go in for the method discussed above or not should be exercised by the assessee once and cannot be changed for the remainder of the financial year.

Another aspect which merits attention here is the treatment to be given to trading activity. Where for instance the service provider apart from providing taxable services also engages in trading activity, whether full cenvat credits can be claimed? Professional opinion is divided in this regard. Authors view is to regard trading activity as being distinct from exempted activity as what is spoken of in Rule 6 is exempted service or exempted goods and trading cannot fall under either of the two categories. This view has also been followed by Commissioner (Appeals) Central Excise Pune in Faber Heatcraft Industries Ltd case (2008 (12) STR 252 (Commr-Appeals)). Also in stay granted in the case of F. L. Smidth Ltd. (2009 (16) STR 322 (Tri- Chennai). The other view would be the conservative view of regarding the same as something not entitling the assessee to credits which would find favour with the department. The authors in their humble opinion though favour the former over the latter as long as the service provider provides taxable services.

The third aspect which would require attention is the treatment to be given to opening balances of credits where the service provider switches over from one method to another under Rule 6. The authors are of the view that in the absence of anything specific in Rule 6, the opening balances (as on 1.3.2008) would be outside the purview of the calculations using the formula given as those unutilized balances would be available for utilization.

Treatment under Rule 6 of CCR 2004 where the input services happen to fall under the specified categories

Where the input services obtained by the service provider happen to fall under the categories specified u/r 6 of CCR 2004, full cenvat credit can be utilized in respect of the service tax paid on such services unless such services are used exclusively for providing exempted services or exempted final products by the assessee. In other words neither the restriction as to 20% of the tax payable on output services (for the period prior to 1st April 2008), nor the restriction under the new sub rule 3 and 3A of rule 6 for the period following 1st April 2008, would apply to these services received by the service provider. The concerned input services are as follows –

1. Consulting engineer's services (Sec. 65(105)(g))
2. Services received from an architect (Sec. 65(105)(p))
3. Interior decorator's services (Sec. 65(105)(q))
4. Management consultant's services (sec. 65(105)(r))
5. Real estate agent's services (Sec. 65(105)(v))
6. Security agency's services (Sec. 65(105)(w))
7. Services provided by a scientist or a technocrat in relation to scientific or technical consultancy (Sec. 65(105)(za))
8. Banking and financial services (Sec. 65(105)(zm))
9. Insurance auxiliary services concerning life insurance business (Sec. 65 (105)(zy))
10. Erection, commissioning and installation services (Sec. 65(105)(zzd))
11. Management or maintenance or repair service (Sec. 65(105)(zzg))
12. Technical testing and analysis agency's services (Sec. 65(105)(zzh))
13. Technical inspection and certification services (Sec. 65(105)(zzi))
14. Banking or other financial services by a foreign exchange broker (Sec. 65(105)(zzk))

15. Commercial or industrial construction services (Sec. 65(105)(zzq))
16. Intellectual property services (Sec. 65(105)(zzr))

Service providers may note that the category of works contract service, as well as some of the other construction related services are conspicuous by their absence. This is so while commercial or industrial construction services do find a mention. It is common that as additional services have been included under tax net, their additions in the facilitating segments has been ignored. Whether this is an unintended omission or not is something which would have to be clarified in due course of time but indicates the lack of professional approach to law making in our country where the tax payer has to pay for the negligence of the draftsmen.

Where the assessee is both a manufacturer as well as a service provider

Strictly speaking, Rule 6 of CCR 2004 did not specifically cover a scenario for utilization of credits where the assessee engaged in manufacturing as well as providing services and had both dutiable and exempted goods as well as taxable and exempted services prior to 1st April 2008. However, with effect from this date, Rule 6 of the Cenvat Credit Rules 2004 has been amended by indicating the formula to be used for finding out the Cenvat credits attributable to exempted services and exempted goods, which seems to take care of this issue.

Documentation work to be done

The service provider should ensure that he claims the cenvat credits on a valid document satisfying the requirements of Rule 9 of Cenvat Credit Rules 2004. The documents may be -

- An invoice issued by a manufacturer
- An invoice issued by an importer
- An invoice issued by a registered first stage or second stage dealer
- Supplementary invoice issued by a manufacturer/importer
- Bill of entry
- Certificate issued by an Appraiser of Customs in respect of goods imported through a Foreign Post Office
- A challan evidencing payment of service tax where the service receiver is liable to pay u/s 68(2)

- An invoice, bill or challan issued by a provider of input service on or after 10.09.2004
- An invoice, bill or challan issued by an Input Service Distributor

The service provider would also be better off maintaining a cenvat credit register disclosing the details as to the cenvat credits being claimed. The register can disclose details as to the name of the supplier/input service provider, bill number, date, basic value of duty/tax, education cess, SHE cess, assessable value, GRN reference for material receipts, payment reference for input services, column for debits, credits balance. This record would facilitate the task of preparation of returns which would then be easier.

Where the assessee opts for ascertaining the credits as per the method prescribed under Rule 6 of CCR 2004 on a provisional basis

The following particulars would have to be intimated to the Superintendent of Central Excise while exercising this option –

- Name, address and registration number of the provider of output service/manufacturer of goods
- Date from which the option is to be exercised
- Description of dutiable goods or taxable services
- Description of exempted goods or exempted services
- Cenvat credit of inputs and input services lying in balance as on the date of exercising the option under this condition

Once the credits have been determined finally and the excess credits availed paid back or credits short availed have been availed, the following details would have to be sent to the SCE within 15 days from date of payment or adjustment –

- Cenvat credits attributable to exempted goods and exempted services for the whole financial year, determined provisionally on monthly basis
- Credits attributable to exempted goods and exempted services for the whole financial year determined finally
- Amount short paid with the date of payment of the said amount
- Interest payable and paid on the shortfall
- Credits taken on excess payments made earlier

Payment of service tax

The payment of service tax is to be made to the credit of the Central Government by the 5th of the month immediately following the calendar month (6th of the succeeding month instead of 5th if payment is made electronically) in which the payments towards taxable services are received, as per Rule 6 of Service Tax Rules 1994. For the period ending March 31st, the payment would have to be made by the 31st of March and not by 5th of April of the calendar year.

In case the service provider happens to be an individual, proprietary firm or a partnership firm, the payment has to be made by the 5th of the month immediately following the quarter (6th of the month succeeding the quarter if payment is made electronically) in which the payments towards taxable services are received. The cenvat credits position consequently would be determined as at the end of the relevant month/quarter as the case may be depending on the payment period.

Assessees paying service tax of more than rupees fifty lakhs would have to do so through internet banking.

Assessees would also have the option to pay service tax in advance and then adjust the amount paid towards the service tax liability on services provided. Intimation would have to be given to the SCE within 15 days once payment is made. For this, rule 6(1A) has been introduced in Service Tax Rules 1994.

Can Cenvat credits be transferred?

As per Rule 10(2) of Cenvat Credit Rules 2004, where a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of business to a joint venture, with the specific provision for transfer of liabilities of such business, then such provider of output service shall be allowed to transfer the Cenvat credit lying unutilized in his accounts, to such transferred, sold, merged, leased or amalgamated business.

The stock of inputs as such or in process or the capital goods are also to be transferred to the new site/owner and the accounting of such inputs/capital goods should be to the satisfaction of the Assistant Commissioner of Central Excise/Deputy Commissioner of Central Excise.

Can the old balance of Cenvat Credit be brought forward?

The service provider can bring forward the unutilized credits lying in his books as on 10.09.04 in respect of the credits availed under Service Tax Credit Rules 2002 and utilize the same in accordance with these rules.

Can credits be taken on inputs and capital goods received under invoice, bill or challan issued by another office of service provider?

Rule 7A of CCR 2004 allows distribution of credits on inputs by the office or another premises of output service provider. Here, the credits can be taken on inputs as well as capital goods received on basis of an invoice or a bill or challan issued by an office or premises of the said provider of output service which receives invoices towards purchase of inputs and capital goods. The assessee would have to note that provisions applicable to first stage and second stage dealers under Central Excise have been made applicable in regard to the office issuing such invoice/bill and distributing credit.

Confiscation and penalty in case of wrong availment of Cenvat Credits

As per Rule 15 of CCR 2004, where cenvat credit in respect of inputs or capital goods is taken wrongly or in contravention of these Rules, then such inputs or capital goods shall be liable to confiscation and the penalty would be Rs.2000/- or duty on such goods whichever is greater.

Where credit on input services has been taken wrongly or sought to be utilized by way of fraud, collusion, willful mis-statement or suppression of facts or through contravention of any of the provisions of the Finance Act or rules made thereunder, with the intention to evade payment of service tax, the service provider shall be liable to pay penalty in accordance with section 78 of the Finance Act.

Where cenvat credits in respect of input services is wrongly availed or availed in contravention of any of the provisions of these rules, then such person shall be liable to a penalty of an amount not exceeding Rs. 2000/-

Provision for recovery of credits wrongly availed

Where the cenvat credit has been taken or utilized wrongly by the service provider or has been erroneously refunded to him, the same can be recovered from him under Rule

14 of Cenvat Credit Rules 2004. Recovery shall be governed by sections 73 and 75 of Chapter V of Finance Act.

Concept of input service distributor

The term "input service distributor" has been defined by Rule 2(m) of Cenvat Credit Rules 2004 to mean an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be.

This facility could be used where the manufacturer or service provider has a system of receiving the bills for input services at the Head Office or at branch offices but the credits are to be distributed to the registered service units providing taxable services or the factories engaged in manufacturing. Where the assessee has independent registration for the various service units/factories, this scheme would be particularly useful. The scheme requires the Head Office/branch office seeking to distribute the cenvat credits to the individual units, to register under service tax as an ISD (Input Service Distributor).
Once registered, the Head Office/branch office would issue an invoice, bill or a challan to each of the recipient to whom the credit is sought to be distributed. The invoice, bill or challan is to be serially numbered and shall contain –

1. Details as to name, address and registration number of the provider of input services
2. Details of the document/bill given by such input service provider
3. Name and address of the input service distributor
4. Name and address of the recipient of the distributed credit
5. The amount of the credit that is sought to be distributed

The credit amount distributed cannot exceed the amount of service tax paid by the branch office/Head Office. Moreover, the credits pertaining to input services used by the unit engaged exclusively in providing exempted services or manufacturing exempted goods cannot be distributed.

Readers should note that the concept of input service distributor would enable in distributing the credit of service tax on input service whereas what is envisaged u/r 7A is

availment of credit of excise duty on inputs and capital goods. The availment u/r 7A would require the office or branch passing on the credit to register as a dealer under central excise and maintain registers recording the movement of materials i.e. receipt from supplier and issue to premises where credits is to be availed as well as the details as to duty per unit paid and duty per unit passed on to the premises where credit is to be availed. A dealer's invoice/bill or challan would have to be raised which would indicate the amount of credit passed on along with the description of goods, value, details of consignor/consignee etc. A quarterly return within 15 days from the end of the quarter would have to be filed by the consigning office/branch/unit.

Pointers for Practice

1. The area of Cenvat credit is an area where cost control is possible as also tax planning. Very often, the assessees have been found to have neglected the Cenvat credits aspect and consequently pay more tax in cash.
2. At times non consideration of the aspects of credit maybe the difference between getting an order or losing one. This is especially true now that the majority of goods are liable for central excise and services for service tax. Therefore the need to avoid breaking the cenvat chain is important.
3. Where ever taxable and exempted services are provided, the segregation of the inputs and input services towards taxable and exempted services has also been found to be inaccurate. This results in many assessees giving up on credits rather than maintaining detailed records and availing the credits that one is entitled to as an assessee.
4. The assessees should also ensure that where ever services are sub-contracted, the sub-contractor charges service tax as the same can be availed as credit provided a proper bill as discussed earlier is available.
5. The definition of input service should be noted carefully as it differs from that of inputs and capital goods in such a way that the service provider can avail credits in respect of services used in relation to setting up, modernization, renovation and repairs of his premises.
6. Where the service provider has substantial service exports, he should make it a point to go in for either refund of credits or rebate of service tax both of which have been explained in a separate chapter. The IT sector could therefore go in for these benefits if exports are substantial.

7. The professional would have to be careful where the assessee opts for provisional determination of credits as any change in value of either goods or services subsequent to 30th of June could lead to a situation where the credits for the year would have to be determined once again. This may happen as a result of any audits being carried out by the department or internally by the management itself.
8. It maybe noted that there is no time limit specified for availment of missed out credits.

CHAPTER 5. VALUATION UNDER SERVICE TAX

Since Service tax is a tax on services which are intangible, valuation of such services for the purpose of charging the tax would assume significance. This is because unlike tangible property in the form of goods which can be compared to other goods in terms of physical attributes and quality, services cannot be compared easily. The service provided by a technician need not be of the same quality as that provided by another technician. Even if they were to be compared, the comparison would be very difficult as the qualities that have to be compared would be intangible. There is also a very significant factor of "what the traffic would bear" in services. Moreover, there could be significant differences between the cost of providing a service and the value that is charged to the client / customer for the same signifying the margins for the service provider. The value of experience may be difficult to estimate.

What is the main basis for valuation?

As per section 67, the amount chargeable to service tax is the gross amount charged for such service provided or to be provided as long as the consideration is wholly in monetary terms. The gross amount charged for the taxable service shall include any amount received towards the taxable service either before, during or after provision of such service.

Where the assessee follows a method of charging one lump-sum amount including service tax, the value determined with the addition of service tax cannot exceed the amount charged by the assessee. For example where the value including service tax @ 10.30 % is Rs. 10 lakhs, the service tax would be determined as follows – ((Rs. 10 lakhs/1.103)*.103) = Rs. 93381.69. The value net of service tax on which such tax is charged = Rs. 1000000 – Rs.93381.69 = Rs. 906618.31 .

“Gross amount charged” as per explanation (c) to section 67, includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment.

Where the consideration is not wholly in monetary terms, the value would be such that with the addition of service tax would be equivalent to the consideration. The calculation of service tax would be the same as explained in the earlier example.

Where the consideration cannot be determined, the assessee would have to refer the Service Tax (Determination of Value) Rules 2006 in order to ascertain the valuation methodology. As per Rule 3 of the said Rules, the value shall be the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade. This proposition would not work and such a price is not possible to be arrived at, but may have to be judicially confirmed in the coming decade.
Where this amount is not available, the equivalent money value of the consideration should be determined and this should not be less than the cost of providing the service. This is possible but may at times be very low as in many services, the actual costs maybe between 1% to 70%. (Too much of subjectivity).

Can the Central Excise Officer question the valuation?

Where the Officer is satisfied that the value has not been determined in accordance with the provisions of this Act or the Rules, he can issue a Show Cause Notice to the assessee to show cause as to why the value should not be as per amount stated in such notice as per Rule 4 of Service Tax (Determination of Value) Rules 2006. The assessee is to be given reasonable opportunity of being heard before the Officer can proceed with the task of determining the value in accordance with the provisions of the Act and the Rules. It is felt that the judicial precedents in regard to valuation of goods under central excise and Customs maybe be useful in defending such valuation disputes and may not end up with any revenue for the Government.

Whether the gross amount charged for the service would include charges reimbursed by the service receiver?

Till 18.04.06, reimbursements were not liable. However, the Service Tax (Determination of Value) Rules 2006 were introduced with effect from 18.04.06. As per Rule 5 of the said Rules, the gross amount charged shall include the cost and expenditure incurred in connection to the taxable services charged to the service receiver. No deduction is allowed for the reimbursement of expenses unless such expenses are incurred by the service provider as a pure agent of the service receiver. The concept of pure agent

requires the service provider to satisfy certain conditions if the reimbursement of expenses is not to suffer service tax.

"Pure agent" as per explanation (1) to Rule 5(2) of Service Tax (Determination of Value) Rules 2006, means a person who –

1. Enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service
2. Neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service
3. Does not use such goods or services so procured and
4. Receives only the actual amount incurred to procure such goods or services

The conditions to be satisfied in this regard as per Rule 5(2) are as follows –

1. Service provider to act as a pure agent of the recipient of service while making payment to third party for the goods or services procured
2. Service receiver to receive and use the goods or services procured by the service provider on his behalf
3. Service receiver to be liable to make payment to the third party
4. Service receiver to authorise the service provider to make payment on his behalf
5. Service receiver to know that the goods and services, for which payment has been made by the service provider, shall be provided by the third party
6. The payment made by the service provider on behalf of the recipient of service is to be separately indicated in the invoice issued by the service provider to the recipient of service
7. The service provider recovers from the recipient of service only such amount as has been paid by him to the third party
8. The goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account

It is interesting to note that the *vires* of levy of service tax on reimbursements had been questioned by the service provider in Delhi High Court in Intercontinental Conslt & Technocrats (P) Ltd Vs UOI (2008 (12) STR 689 (Del)) though the matter is pending adjudication.

As far as the value of materials supplied free of cost is concerned, authors view is that normally the value of materials so supplied by customer is not to be included in the value of services for charging service tax. This is considering the fact that materials sold during the course of providing service is generally not subject to service tax. The department may however not agree to this view. A decision here would have to be taken on the basis of a review of the agreement entered into between contracting parties in order to see whether the provisions of Section 67(1)(ii) can be invoked i.e pertaining to consideration not being wholly or partly in money. Here, the obligation of the service receiver towards the service provider for the services involved would have to be quantified before one can arrive at a final conclusion. Where the service receiver is obligated to pay certain sum and pays it partly through materials, the same could come under the purview of section 67(1)(ii) and the service provider would be better off including the value of such materials provided by the service receiver in the gross amount for charging service tax, to be on the safer side of law.

Where services are received from abroad and the service receiver is required to pay tax on such import of taxable services, the value should be the actual consideration charged for the service. In the opinion of the authors, where expenses are reimbursed, even such expenses may not form part of the value of the service for the purpose of paying service tax.

It is also to be noted that the rules have overridden the relevant section 67 as they have gone beyond the valuation of services to other amounts received which could be challenged. However if that is not done then it is preferable to include such amounts unless the pure agent criterion can be met.

Are there any other specific inclusions and exclusions with regard to amount charged for specific services?

Rule 6 provides for certain specific inclusions as well as exclusions with regard to the amount charged for the services. These are given below –

Inclusions in amount charged for service:

1. Commission or brokerage charged by a broker on the sale or purchase of securities (including the commission or brokerage paid by the stock broker to any sub-broker)

2. Adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit
3. Amount of premium charged by the insurer from the policy holder
4. Commission received by the air travel agent from the airline
5. Commission, fee or any other sum received by an actuary or intermediary or insurance intermediary or insurance agent from the insurer
6. Re-imbursement received by the authorised service station from the manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer
7. Commission or any amount received by the rail travel agent from the railways or the customer
8. Remuneration or commission by whatever name called, paid to such agent by the client engaging such agent for the services provided by a clearing and forwarding agent to a client rendering services of clearing and forwarding operations in any manner
9. Commission, fee or any other sum by whatever name called paid to such agent by the insurer appointing such agent in relation to insurance auxilliary services provided by an insurance agent

Exclusions with regard to the amount charged:-

1. Initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit
2. Airfare collected by air travel agent in respect of service provided by him
3. Rail fare collected by rail travel agent in respect of service provided by him
4. Interest on loans

Where during the course of providing service, there is transfer of property in goods, what would be the value?

Where there is transfer of property in goods from the service provider to the service receiver, the service provider would be entitled to a deduction from the gross value to the extent of the value of the goods and materials sold as aforesaid. In other words the service tax is chargeable on the value charged towards labour alone. Where in the invoice the value subjected to VAT is clear, that value can be adopted. Where it is not

clear in the invoice the value in the VAT returns can be an indicator. Where no such evidence is available, the actual cost of the goods used for the provision of the service would have to be arrived at and then the gross profit margin added up to arrive at the value of goods sold. This would be in line with the decision in the case of Gannon & Dunkerley ((1958) (9) STC 353 (SC). Obviously the first option is advisable.

Pointers for practice

- The professional would have to go through the relevant agreements the assessee has with his customers to know the exact amounts being charged and the break ups for the same.
- The professional should be careful enough to ascertain whether the amounts charged are inclusive of all taxes or are the taxes extra. Where the amounts are including taxes and represents amounts charged towards material as well as labour, the gross amount has to be split up in terms of the amounts charged for material and the amounts charged for service. The taxes (VAT on material and service tax on labour portion) can then be calculated using the same inclusive philosophy discussed earlier.
- In case of separate collection of expenditure or costs whether the conditions under Rule 5 (2) are satisfied.

CHAPTER 6. EXEMPTIONS AVAILABLE UNDER SERVICE TAX

Assessees required to pay service tax are often found to be enquiring regarding the availability of exemptions. With the movement towards GST in a few years time and revenue departments looking at ST as the cash cow thanks to the 55% + contribution of the GDP, the exemptions under service tax are not too many.

However the nature of the levy itself and the fact that there could be instances where during the course of providing services, transfer of property in goods may take place, exemptions have been provided for value of materials sold from payment of service tax. Apart from this, specific exclusions have been made for specified activities within the individual categories liable to tax as taxable services.

Is there an exemption available generally to all service providers exempting value of services up to a certain limit?

Service tax provides for an exemption to small service providers who provide taxable services of a value not exceeding the specified limit. The specified limit is now Rs. 10 lakhs. In other words where the value of taxable services provided do not exceed Rs. 10 lakhs in the previous financial year, the concerned service provider would not be required to pay service tax upto receipts of Rs. 10 lakhs in the current financial year. The exemption is through notification 6/2005 ST dated 01.03.05 as amended from time to time. The service provider should however satisfy certain conditions in order to avail the benefit of this exemption. The conditions to be noted here are as follows –

- Taxable services provided by a person under a brand name or a trade name (whether registered or not) of another person would **NOT** be eligible for this exemption
- A receiver of services who is liable to pay service tax on the services he has received by virtue of section 68(2) cannot avail the benefit of this exemption with regard to such payments. More commonly this is relevant for recepient of GTA Services or in case of import of services where no exemption is entitled.
- Once an option is exercised in regard to this exemption during a financial year, it cannot be changed in the same financial year. [This however does not mean that the claiming of the exemption makes it compulosory to claimfor

the whole year. In between even without reaching Rs.10 lakhs the option to pay canbe made.]

- No cenvat credit can be availed on inputs or input services used in providing such output service for which exemption is being claimed.
- Cenvat credit cannot be availed on capital goods received in the premises of provider of such service during the exemption period.
- The service provider shall pay an amount equivalent to the cenvat credit taken by him in respect of inputs lying in stock or in process on the date of availment of exemption. After paying such an amount, if there is any balance of cenvat credit remaining unutilized, such balance would lapse.
- The exemption shall apply in respect of the aggregate value of all taxable services provided by the service provider (even if from more than one premises) and not individually.
- Exempted services shall be outside the purview of the exemption of this notification. In other words, the value for ascertaining the limit of Rs. 10 Lakhswould be that of taxable services alone on which service tax is payable.
- The aggregate value of such services provided in the preceding financial year should not exceed the aforesaid exemption limit.

Is there any exemption from service tax where the service provider transfers property in goods during the course of provision of services?

The service provider who transfers property in goods during the course of providing taxable service would be entitled to avail the benefit of notification 12/2003 ST dated 20.06.03 as amended from time to time. This notification provides a deduction for the value of materials and goods sold by the service provider to the recipient of service, from the gross amount charged for the service. The service provider in effect is required to pay service tax on the balance amount constituting labour charges alone. However, where the service provider avails the benefit of this notification, he cannot avail cenvat credit of the excise duty paid on goods and materials so sold but can avail credit of service tax paid on input services. Even excise duties paid on capital goods can be availed as credits. One big advantage of this notification is that the same is not restricted to any one single category of service. Thus where the service provider knows the amounts being charged for labour and the amounts towards sale of goods or materials, this notification can be followed.

Is there any other exemption available which can also be used in a scenario where the value of materials/goods sold cannot be quantified or ascertained separately?

Apart from 12/2003 ST, there is another notification applicable to specified service providers. The service providers to whom the notification would apply are mentioned in the notification itself. The concerned notification is 1/2006 ST dated 01.03.06 as amended from time to time. Notification 1/2006 provides for a fixed deduction from the gross amount charged for the service subject to conditions specified being satisfied. The service provider opting for this notification cannot avail cenvat credits at all plus he would also not be entitled to avail the benefit of exemption under notification 12/2003 ST. The specified categories as well as the exemptions available are given in the table below:

Service category	*Exemption %age*	*Remarks if any*
Mandap keeper's service - in relation to use of mandap. It includes services provided by a hotel as mandap keeper	40%	The mandap keeper should also provide catering services i.e. supply of food and the charges for the same should be included in the gross amount and indicated on the invoice
Services provided or to be provided by a tour operator to any person in relation to a package tour.	75%	The bill for the tour should include the charges for travel, transportation, accommodation, guide and food, entry to monuments and other similar facilities extended.
Services provided by a tour operator in relation to booking or arranging of accommoation in relation to a tour	90%	The charges on the bill should also include the cost/charges for such accommodation and not just the service charges.
Services other than the ones specified above provided by a tour operator in relation to a tour	60%	The amount charged on the bill should be the gross amount charged for the services in relation to the tour.
Rent–a-cab scheme operator in relation to renting of cabs	60%	

Holding of a convention where catering service is also involved	40%	The amount on the bill should also include the charges for such catering.
Business auxiliary service in relation to production or processing of parts and accessories used in the manufacture of cycles, cycle rickshaw, hand operated sewing machines for or on behalf of client	30%	Gross amount charged should include cost of inputs and input services whether or not supplied by the client.
Erection, commissioning or installation of plant, machinery, equipment or structures under a contract	67%	The gross amount charged shall include the value of such plant, machinery, equipment, structures and other parts sold. Moreover this exemption is at the option of the service provider
Commercial or industrial construction service	67%	The gross amount shall include the value of goods and materials supplied or provided or even used by the service provider for providing such service. This exemption shall not be available in case of completion and finishing services in relation to building or civil structure.
Outdoor caterer – services in relation to catering	50%	The amount charged should include the value of food supplied as well.
Services by a pandal or shamiana contractor in relation to a pandal or shamiana including services as a caterer	30%	The gross amount for the service should also include the charges towards catering services
Construction of complex	67%	The gross amount shall include the

		value of goods and materials supplied or provided or even used by the service provider for providing such service. This exemption shall not be available in case of completion and finishing services in relation to residential complex.
Transport of goods in containers by rail	70%	

"Food" here means a substantial and satisfying meal.

Exemption on Goods Transport Agency service

Notification 13/2008 ST dated 01.03.2008 provides an exemption of 75% of the gross amount charged towards taxable service in relation to transport of goods by road. In other words, service tax is to be charged on 25% of the gross amount charged towards freight.

Services provided to a developer of Special Economic Zone or a Unit of a Special Economic Zone

The position regarding exemption on taxable services provided to SEZ unit or developer has undergone change. The notification 4/2004 ST dated 31.03.2004 which provided an exemption on such taxable services was rescinded when Notification 9/2009 ST dated 03.03.09 was introduced. This notification withdrew the benefit of exemption of service tax on taxable services provided to SEZ unit or developer.

The SEZ unit or developer receiving such taxable service was required to go in for refund of the service tax paid. Then Notification 15/2009 dated 20.05.2009 was issued which made amendments to the above notification whereby the developer or units of SEZ would now be eligible for exemption from payment of service tax in respect of specified services used in relation to the authorized operations when the same are consumed wholly within the SEZ. In other cases i.e. where specified services are consumed outside the SEZ such exemption would be provided by way of refund of service tax paid. The services would have to be provided in relation to operations which

are authorised in the SEZ and received by the SEZ developer /unit. Hence the place of performance of the taxable service would not be the factor determining the service tax refund until the receiver of the service is a SEZ. The SEZ would be required to maintain proper account of receipt and utilization of the taxable services for which exemption is claimed. The following aspects would be relevant in case of services consumed outside the SEZ:

- The service provider providing the taxable service to SEZ unit or developer in relation to authorised operations in the SEZ would be required to pay service tax and cannot go in for exemption. As far as the service providers are concerned this is a blessing in disguise as they do not have to dispute the same.
- The list of services required for authorised operations would have to be approved by the Approval Committee and the SEZ unit/developer would have to obtain this approval.
- The SEZ developer or unit would have to use the specified services in relation to authorised operations in the SEZ.
- The SEZ developer or unit would have to pay service tax on the specified services to the service provider.
- Cenvat Credit of service tax paid on such specified services cannot be taken by the SEZ developer or unit under Cenvat Credit Rules 2004.
- No exemption or refund of service tax paid on such specified services can be claimed under any other notification.
- Where the SEZ developer or unit happens to be liable under Section 68(2) as a receiver of taxable service, exemption can be claimed from payment of such service tax by the concerned SEZ developer or unit.
- A refund claim would have to be filed by the SEZ developer or unit with the jurisdictional ACCE / DCCE within six months (or extended time) from the date of actual payment of service tax. (The procedures are given in the Chapter on Refunds and Rebates).

Certain other specific exemptions –

Exemption to service provided by Technology Business Incubators or Science and Technology Entreprenuership Parks

Exemption from service tax has been provided to all taxable services provided by Technology Business Incubators (TBI)/ Science and Technology Entrepreneurship Parks

(STEP) recognised by National Science and Technology Entrepreneurship Board of the Department of Science and Technology under notification 9/2007 ST dated 01.03.2007. The incubator availing exemption is required to follow the procedures set out in the said notification. They are also required to furnish the details of incubatees to be obtained from each such incubatee to whom they are providing assistance.

Exemption from service tax is also available to taxable services up to Rs. 50 lakhs in a financial year provided by each incubatee entrepreneur who is located within the premises of an incubator where the total business turnover of the incubatee entrepreneur does not exceed Rs. 50 lakh in a financial year/ preceding financial year. Exemption is available for three years effective from the date of signing an agreement with the incubator vide notification 10/2007 ST dated 01.03.2007.

Exemption to cargo handling services relating to agricultural produce

Cargo handling services relating to agricultural produce or goods intended to be stored in a cold storage are exempt from service tax under notification 10/2002 ST dated 01.08.2002

Exemption to consulting engineer when cess is paid under Section 3 of Research and Development Cess Act 1986

The consulting engineer is entitled to exemption in terms of service tax on taxable services provided on transfer of technology, to the extent of cess paid on transfer of technology under Notification 18/2002 ST dated 16.12.2002

Exemption to commission agent

The business auxiliary service provided by a commission agent in relation to sale or purchase of agricultural produce is exempt from service tax under notification 13/2003 ST dated 20.06.03.

Exemption to mandap keeper

Under Notification 14/2003 ST dated 20.06.2003, a mandap keeper is exempted from service tax on taxable services provided for use of precincts of a religious place as a mandap.

Exemption to mechanised slaughter house

Taxable services provided by a mechanised slaughter house in relation to slaughtering of bovine animals has been exempted from service tax under Notification 2/2000 ST dated 01.03.2000

Exemption to services in relation to collection of duties and taxes of the Central or State governments

Notification 13/2004 ST dated 10.09.2004 exempts taxable services in relation to collection of duties and taxes levied by central and state governments and provided to them by a banking company or NBFC or Financial institutions or body corporate, from the payment of service tax.

Exemption on interest charged by banking company, NBFC, body corporate or Financial Institutions or any other person.

Notification 29/2004 ST dated 22.09.2004 exempts the interest amount charged on overdrafts, cash credits, discounting of bills, bills of exchange or cheques, from service tax. The interest should be shown separately on the invoice or the bill.

Exemption with regard to technical and clinical testing

With effect from 01.03.2007, exemption from service tax is being provided to technical testing and analysis services provided in relation to testing of newly developed drugs including vaccines and herbal remedies on human participants by a clinical research organisation approved to conduct clinical trials by the Drugs Controller General of India vide notification 11/2007 ST dated 01.03.2007

Exemption on technical inspection, certification, technical testing and analysis service

Notification 6/2006 ST dated 01.03.2006 provides exemption from service tax on taxable services of technical testing and analysis of water quality provided or to be provided to any person by a government owned state or district level laboratory.

Exemption to a practising chartered account, practising cost accountant and a practising company secretary

Notification 25/2006 ST dated 13.07.2006 provides exemption from service tax in respect of taxable services in relation to representation of the client before any statutory authority under any proceeding of law initiated by way of issue of notice.

Exemption on service provided by a person having his place of residence outside India

Notification 14/2008 ST dated 01.03.2008 provides an exemption from service tax on taxable service provided by a person resident outside India and received by a hotel in India in relation to booking of accomodation in the said hotel for a person resident outside India. Readers may refer the said notification for the manner of detremination of residential status of the service provider and service receiver.This would have significance for the service receiver as generally he is liable to tax on receipt of taxable services from abroad.

Exemption in respect of services by Resident Welfare Associations

Exemption from service tax is available to services provided by Resident Welfare Associations to their members where the monthly contribution of a member does not exceed Rs.3000/- per month vide notification 8/2007 ST dated 01.03.2007

Exemption in respect of Digital Cinema Service

Exemption from service tax is available with regard to services provided by the digital cinema service provider to the producer or distributor in relation to the delivery of content of cinema in digital form after encryption electronically to a cinema theatre for exhibition through the use of satellite, microwave or terrestrial communication line and not by any physical means including CD or DVD, as per notification 12/2007 ST dated 01.03.2007.

Exemption to Services provided to United nations or an International Organization declared by the government

Taxable services provided by any person to the UN or an International Organisation are exempt from the whole of service tax with effect from 02.08.2002 vide notification 16/2002 ST dated 02.08.2002. The international organisation must be declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities Act 1947) to which the provisions of the Schedule to the said Act apply.

Exemption on business auxiliary service

Notification 14/2004 ST dated 10.09.2004 provides exemption to the following taxable services under category BAS provided in relation to agriculture, printing, textile processing and education from service tax. The taxable services enjoying exemption are-

- Production or processing of goods for or on behalf of the client
- Provision of service on behalf of the client
- Procurement of goods or services which are inputs for the client
- Any service which is incidental or auxiliary to the above mentioned services.

Exemption on business auxiliary service- production or processing of goods for or on behalf of client

Notification 8/2005 ST dated 01.03.2005 exempts taxable service in relation to production or processing of goods for or on behalf of client where the processing is on raw materials or semi finished goods supplied by client and the processed goods are sent back to the client for use in further manufacturing of dutiable goods at his end and clearance on payment of duty.

Exemption in respect of intellectual property service

Notification 17/2004 ST dated 10.09.2004 provides an exemption from service tax on taxable services (intellectual property service) provided by a holder of intellectual property right to the extent of cess paid under R&D Cess Act 1986 towards import of technology.

Exemption to services provided by or to the Reserve Bank of India

The following services have been exempted from service tax vide notification 22/2006 ST dated 31.05.06 -

- Taxable services provided or to be provided to any person, by the RBI
- Taxable services provided or to be provided by any person, to the RBI when the service tax for such services is liable to be paid by RBI u/s 68(2) of Chapter 5 of Finance act read with Rule 2 of Service Tax Rules 1994
- Taxable services received in India from outside India by the RBI u/s 66A of the Finance Act 1994

Exemption in respect of services by a service provider providing general insurance business in relation to insurance of sheep

The taxable services provided by an insurer carrying on general insurance business, to a policy holder in relation to insurance of sheep has been exempted from service tax till 31.12.2009 under Notification 31/2006 ST dated 11.12.2006

Exemption to Goods Transport Agency

Notification 33/2004 ST dated 03.12.2004 provides exemption from service tax to taxable services in relation to transport of fruits, eggs, vegetables, foodgrain, pulses or milk by road in a goods carriage.

Exemption to Goods Transport Agency u/n 34/2004 ST dated 03.12.2004

This notification exempts taxable service in relation to transport of goods by road in a goods carriage from payment of service tax where in case of individual consignments, the gross amount charged for the service does not exceed Rs. 750 and in other cases, the gross amount does not exceed Rs. 1500.

Exemption on certain specified taxable services provided to a GTA

Notification 1/2009 ST dated 05.01.2009 provides exemption from service tax to certain specified taxable services provided to a Goods Transport Agency for use in relation to transport of goods by road service provided by the GTA to its customer.

The specified taxable services are –

- Clearing and forwarding agent's services
- Cargo handling agency service
- Manpower recruitment service
- Storage and warehousing service
- Business auxiliary service
- Packaging service
- Support service of business or commerce
- Supply of tangible goods service

Exemption in relation to financial leasing services

Notification 4/2006 ST dated 01.03.06 provides an exemption in respect of financial leasing services including equipment leasing and hire purchase taxable under the head

banking and other financial services. The exemption is on 90% of the interest amount i.e difference between the installment amount paid towards repayment of the lease amount and the principal amount contained in such installment. The exemption is on interest component alone and not on other charges like lease management fee, processing fee, documentation charges or administration fee.

Exemption to insurer carrying General Insurance Business under Universal Health insurance scheme

Taxable service that is provided by an insurer carrying on general insurance business, to a policy holder in relation to General Insurance Business provided under the Universal Health Insurance Scheme, is exempted from service tax under notification 16/2003 ST dated 11.07.03

Exemption in relation to commercial training or coaching centre

Notification 10/2003 ST dated 20.06.03 exempts taxable services provided by a commercial training or coaching centre in relation to commercial training or coaching forming an essential part of the curriculum or course of any other establishment or institute leading to issuance of certificate, diploma, degree or educational qualification recognised by law, from the whole of service tax unless the charges for such services are paid directly by the person undergoing training, to such commercial training or coaching centre. If paid directly, the services would be liable to service tax.

Exemption to commercial training or coaching by a vocational or recreational training institute

Notification 24/2004 ST dated 10.09.2004 provides exemption from service tax in relation to taxable services in relation to commercial training or coaching provided by a vocational training institute or a recreational training institute. (The former does not include a computer training institute). Notification 03/2010 dated 27.02.2010 (amends notification 24/2004) defines vocational training institute to mean an Industrial training institute or Industrial training centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961 (52 of 1961) and Notification 23/2010 dated 29.04.2010 exempts service provided in relation to Modular Employable Skill courses

approved by the National Council of Vocational Training, by a Vocational Training Provider registered under the Skill Development Initiative Scheme with the Directorate General of Employment and Training, Ministry of Labour and Employment, Government of India,

Exemption to exporters of selected goods on services obtained by them in relation to exhibition of their goods

Notification 43/2007 ST dated 29.11.07 exempts taxable service in relation to business exhibition provided by the organiser of business exhibition to a manufacturer of goods falling under chapter 57, 61, 62 and 63. The goods would have to be exported in order to avail benefit of this exemption. The exemption shall be in accordance with the guidelines and the procedures given in the said notification. The manufacturer should first of all pay the service tax and then go for a claim for refund on the same on export. This notification was valid till 31.03.2009 and one would have to see whether the benefit of exemption would be extended beyond this date.

Exemption on certain taxable services received by an exporter of goods

Notification 17/2009-ST & 18/2009-ST dated 07.07.2009 (earlier notification 41/2007 dated 06.10.07) provides an exemption on the taxable services received by an exporter of goods. Here the exemption is not restricted to manufacturer alone and there is no restriction as to the goods having to fall under select categories under Central Excise Tariff Act. The procedure would be that of paying the service tax on such services and then going for a refund of the same on export of goods. The details of the same have been explained in the chapter on refunds.

Exemption on services provided to diplomatic agents, family members of such agents and career consular officers posted in foreign diplomatic mission or consular post in India

This would be available as per notification 34/2007 ST dated 23.05.07 where the services are for their personal use. The conditions prescribed in the notification are to be followed to secure the exemption. Where it is for the official use of the mission or consular post, the same would be exempt u/n 33/2007 ST dated 23.05.07

Exemption in respect of transport of goods by rail service

This would be available as per notification 8/2010 dated 27.02.2010 in respect of transport of specified goods by rail relating to defense/military equipment, railway equipment or materials, postal mail bags, etc.

Exemption to Central of State Seed Testing Laboratory and Central or State Seed Certification Agency

This would be available as per notification 10/2010 dated 27.02.2010 in respect of service provided in relation to technical testing and analysis and technical inspection and certification.

Exemption for service provided in relation to transmission of electricity

This would be available as per notification 11/2010 dated 27.02.2010 in respect of service provided to any person by any other person for transmission of electricity.

Exemption on services provided in relation to erection, commissioning or installation

This would be available as per notification 12/2010 dated 27.02.2010 in respect of erection, installation or commissioning of:

a. Mechanised food grain handling system
b. Equipment for setting up or substantial expansion of cold storage and

Installation or commissioning of machinery or equipment for initial set up or substantial expansion of units for processing agricultural, apiary, horticulturial, dairy, poultry, aquatic, marine products and meat.

Exemption for service provided by any Indian News Agency

This would be available as per notification 13/2010 dated 27.02.2010 in relation to on-line information and database access or retrieval services and business auxiliary services provided by any Indian news agency. The conditions prescribed in the notification are to be followed to secure the exemption.

Exemption for packaged or canned software

This would be available as per notification 17/2010 dated 27.02.2010 in relation to taxable service providing packaged or canned software intended for single use and packed accordingly for providing the right to use information technology software for

commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products. The conditions prescribed in the notification are to be followed to secure the exemption.

Pointers for practice

- The professional should ensure that where benefits of exemptions are claimed, the conditions prescribed for the same are complied with, failing which the benefit could be denied.
- The professional should also weigh the benefits of all the concerned alternatives before suggesting the exemption to be claimed where he acts in an advisory capacity. The availment of exemptions generally limits/ bars the whole or part of availment of cenvat credits.
- The professional should also confirm that the assessee is really entitled to claim the benefit of exemption and this should be ascertained on a review of the records of the assessee. Where services are wrongly classified, or the values incorrectly determined under service tax, it could have a huge impact on availability of exemptions and service tax liability.

CHAPTER 7. IMPORT AND EXPORT OF SERVICES

Service tax is payable on taxable services provided by a service provider within the country. Now, an assessee in India may also provide taxable services to a service receiver abroad. Export of services is also not taxed just like export of goods. However, the criterion for determining whether services are exported or not cannot be the same as for goods as services are intangible and different from goods. Keeping this in mind the government has framed the Export of Service Rules 2005 to determine whether services are exported or not.

Another feature which stands out in service tax is the taxing of taxable services received in the hands of the service receiver. We have seen earlier that certain categories of services are taxed in the hands of the service receiver where they are received from a service provider within the country. In addition to this, where taxable services are received in India from a service provider outside the country, the same can be taxed in the hands of the service receiver within the country under reverse charge mechanism. The criterion for finding out whether a service is taxable in this regard in the hands of the service receiver or not, has been laid out in the Taxation of Services (Provided from Outside India and Received in India) Rules 2006

It is to be noted that services provided and received outside India would not be the subject matter of the levy itself as this tax is a destination based tax as held in the All India Tax Practitioners decision of the Supreme Court ((2007) (07) STR 625)

When is a service said to have been imported into the country for the purpose of taxing the same in the hands of the service receiver?

The charging section which seeks to tax services received in India from abroad is section 66A. In order to tax the service concerned, it should first of all be a taxable service. Where the taxable service covered u/s 65(105) is -

- Provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be

provided or has his permanent address or usual place of residence, in a country other than India, and

- Received by a person (hereafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India,

Then, such taxable service shall be treated as if the recipient had himself provided the service in India unless such recipient is an individual and the service is received for purposes other than for use in any business or commerce.

Where the service provider has his business establishment both in that country as well as in some other country, the country where the establishment concerned directly with the provision of service is located, shall be treated as the country from where the service is provided or to be provided.

What would be the position where an entity has establishments in India as well as abroad and the entity abroad provides services to the Indian unit?

Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section. In other words, where the establishment abroad provides services finding a mention in section 65(105), to the establishment in India, then such services would be taxed in the hands of the Indian establishment as per the Taxation of Services (Provided from Outside India and Received in India) Rules 2006. It is worthwhile to note that the concept of establishment has not been defined or clarified under service tax and one would have to refer the dictionary meaning of the term establishment.

As per the meaning given by Webster's Unabridged Dictionary, establishment means a place of business together with its employees, merchandise, equipment etc.

The definition u/s 66A (2) contains an explanation as to the cases where there would be deemed to be a business establishment. As per explanation 1 to section 66A (2), where a person carries on a business through a branch or agency in any country, he shall be treated as having a business establishment in that country. Thus even where a branch office say in London provides taxable services to Head Office in Mumbai, the Head

Office would have to consider its liability in accordance with the stated Rules though this concept does not seem very sound.

Explanation 2 to section 66A (2), clarifies the concept of usual place of residence in relation to a body corporate to mean the place where it is incorporated or otherwise legally constituted.

It is interesting to note here that there has been considerable confusion in the past regarding the taxability of services received from abroad and the confusion to a certain extent had arisen due to the amendment to Rule 2 of Service Tax Rules 1994 with effect from 16.08.02. The amendment was in terms of Rule 2(1)(d)(iv) seeking to treat the service receiver in India as the person liable to pay tax where the service provider was a non-resident not having an office in India. However, the tax liability on the service receiver could not be fastened as the amendment in the Rules was held to be not sufficient for introducing a liability in the absence of anything specific in the statute as laid down in Hindustan Zinc Ltd. Vs CCE Jaipur (2008 (11) STR 338 (Tri-LB)). Moreover, departmental Circular 36/04/ 2001-CX (ST) dated 08.10.01 had clarified that service provided beyond the territorial waters of India was not liable to tax keeping in mind the spirit of Section 64. This Circular was withdrawn on 10.05.07 after introduction of Section 66A in Chapter V of Finance Act 1994 as amended from time to time.

Readers can note that the Bombay High Court in Indian National Ship Owners vs UOI (2009 (13) STR 235(Bom)) had allowed a writ petition challenging the levy of service tax on taxable services received from abroad before 18.04.2006. Therefore where a taxable service is provided from outside India and received by a service receiver in India, the liability for such service would be only be from 18.04.2006. This in the authors' view would have to be distinguished from a scenario where a person having his permanent establishment outside India, provides a taxable service in India to the service receiver having his office or permanent establishment in India. In this case, the liability in the hands of the service receiver would exist even for taxable services received before 18.04.06. Readers should note the distinction between the two cases covered here as it boils down to the place of performance of taxable service in respect of taxable services received prior to 18.04.06.

With effect from 18.04.2006, the question whether a taxable service is received in India at all or performed in India or outside would have to be answered after going through the

provisions of Taxation of Services (Provided From Outside India and Received in India) Rules 2006.

What do the Taxation of Services (Provided from outside India and Received in India) Rules 2006 say?

Rule 3 of the said rules basically talks about the basis for treating the taxable services as having been received in the country from abroad. It is worthwhile to note here that the criterion for determining this is not the same for all the taxable services and that the various taxable services have been divided into three basic categories for the purpose.

- The first category deals with the taxable services received in relation to an immovable property. With regard to this category, the taxable services provided or to be provided in relation to an immovable property situated in India shall be regarded as having been received in India. In other words the **location of the immovable property** would be the critical factor. Where it is outside India, the taxable service provided in relation to such property would not be liable in the hands of the receiver.
- The second category deals with taxable services with regard to which the place of **performance** would be the critical factor. Here, the taxable services shall be regarded as having been received in India if such services have been performed in India. Performance here could even be part performance in India.
- The third category deals with taxable services with regard to which the **location of the recipient** himself would be the critical factor. Here, the taxable services shall be regarded as having been received in India if such services have been received by a recipient located in India for use in relation to business or commerce.

It is pertinent to note here that third category would not include the following taxable services:

- Services by an aircraft operator in relation to scheduled or non-scheduled air transport of passengers embarking in India for international journey u/s 65(105)(zzzo)
- Services in relation to transport of persons by a cruise ship, embarking from any port or other port in India u/s 65(105)(zzzv)

The third category would specifically cover the following taxable services where they are not provided in relation to an immovable property -

- General Insurance business service provided by an insurer under section 65(105)(d)
- Survey and map making services u/s 65(105)(zzzc) by a person other than an agency under control of or authorized by the Government,
- Auction of property (whether movable or immovable or tangible or intangible) other than by government or under directions or orders of Court, u/s 65(105)(zzzr)

Note: - It is important to note that the third category requires the services to be for use in relation to business or commerce. Where they are for personal use of the assessee, the same would not be liable under the third category. This clause is not applicable to the earlier two categories. The service receiver liable to pay service tax here would have to get himself registered under Service Tax as per Rule 4 of the said rules. Moreover, for the purpose of payment of such service tax, cenvat credits cannot be utilized as the services would not be considered as output services in the hands of the service provider. But he can avail cenvat credits of the service tax paid on such services once the payment has been made, and this could even be on the basis of the challan through which the payment would have been made earlier, as per Rule 9(1)(e) of Cenvat Credit Rules 2004.

Where the services of management, maintenance or repair or technical testing and analysis or technical inspection and certification falling under clauses (zzg), (zzh) and (zzi) of section 65(105) are provided remotely through internet or an electronic network in relation to any goods or material or any immovable property situated in India at the time of provision of service, such services shall be treated as having been performed in India.

In respect of supply of tangible goods service falling under clause 65(105)(zzzzj), the service would be regarded as having been received by a recipient located in India if the tangible goods are located in India during the period of their use by the recipient.

Provisions in case of export of services

Power of the government to frame rules or to grant exemption or rebate

The Central Government is empowered under section 93 to grant exemption from service tax and the exemption may be whole or partial and may be subject to conditions which may be specified. The Government is also empowered to frame Rules u/s 94 for carrying out the various provisions of Chapter V. The Rules which can be framed by the Government with regard to exports may provide for -

- Determination of export of taxable services
- Exemption to or granting rebate of service tax paid on taxable services exported out of India
- Rebate of service tax paid or payable on the taxable services which have been consumed for or duties paid or deemed to have been paid on goods used for providing taxable services which are exported out of India
- Rebate of service tax paid or payable on the taxable services used as input services in the manufacturing or processing of goods exported out of India u/s 93A.

When would a service provided to a service receiver located outside India be regarded as having been exported?

The service that is provided should be provided in accordance with the requirements of Rule 3 of Export of Service Rules 2005 which have been framed in this regard. An interpretation of this rule would indicate that the following conditions would have to be satisfied in order to treat a taxable service as having been exported –

1. Payment for such service provided outside India is received by the service provider in convertible foreign exchange
2. The additional criterion depending on the category of service involved would have to be satisfied. This requirement is explained below -

For the purpose of meeting this additional criterion, the rule has basically divided the taxable services into three categories for the purpose of determining whether a taxable service is exported or not.

- The first category deals with the taxable services received in relation to an immovable property. With regard to this category, the taxable services provided

or to be provided in relation to an immovable property situated outside India shall be regarded as having been exported from India. In other words the location of the immovable property would be the critical factor.

- The second category deals with taxable services with regard to which the place of performance would be the critical factor. Here, the taxable services shall be regarded as having been exported from India if such services have been performed outside India. Performance here could even be part performance outside India.
- The third category deals with taxable services with regard to which the location of the recipient himself would be the critical factor. Here, the taxable services when provided in relation to business or commerce shall be regarded as having been exported from India if such services have been provided to a recipient located outside India. When not provided in relation to business or commerce, the taxable service shall be regarded as having been exported if the service receiver is outside India at the time of provision of such service.

It is pertinent to once again note here that the third category (recipient based) would not include the following taxable services –

- Services by an aircraft operator in relation to scheduled or non-scheduled air transport of passengers embarking in India for international journey u/s 65(105)(zzzo)
- Services in relation to transport of persons by a cruise ship, embarking from any port or other port in India u/s 65(105)(zzzv)

The third category would specifically cover the taxable services where they are not provided in relation to an immovable property. This would be the same as explained under import of services.

The condition that such service should be provided from India and used outside India has been dispensed with vide notification 06/2010 dated 27.02.2010 thus setting aside a lot of the difficulties that the exporters of services were facing.

Where the recipient has a commercial establishment or any office relating thereto in India, such taxable services provided shall be treated as export of service only when

order for provision of such service is made from any of his commercial establishments or offices located outside India.

"India" includes the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof as declared by the notifications of the Ministry of External Affairs, Government of India.

Where the services of management, maintenance or repair or technical testing and analysis or technical inspection and certification falling under clauses (zzg), (zzh) and (zzi) of section 65(105) are provided remotely through internet or an electronic network in relation to any goods or material or any immovable property situated outside India at the time of provision of service, such services shall be treated as having been performed outside India and treated as export of service.

In respect of supply of tangible goods service falling under clause 65(105)(zzzzj), the service would be regarded as having been exported outside India if the tangible goods are located outside India during the period of their use by the recipient abroad.

No payment of service tax in case of export of service

A taxable service can be exported without payment of service tax by virtue of Rule 4 of Export of Service Rules 2005. Moreover, Rule 5 also provides the facility for the government to grant rebate by a notification through which rebate of service tax paid (if any) on such taxable service or service tax or duty paid on input services or inputs used in providing such taxable service can be allowed subject to conditions prescribed being met.

Grouping of the services

First category services – Taxable services provided in relation to immovable property

- General Insurance business provided by an insurer under section 65(105)(d)
- Services by a mandap keeper (including catering) u/s 65(105)(m)
- Architectural service u/s 65(105)(p)
- Interior decorator's service u/s 65(105)(q)
- Real estate agent's service u/s 65(105)(v)

- Commercial or industrial construction service u/s 65(105)(zzq)
- Site formation, clearance, excavation and earthmoving and demolition services u/s 65(105)(zzza)
- Dredging services u/s 65(105)(zzzb)
- Survey and map making services u/s 65(105)(zzzc)
- Construction of complexes u/s 65(105)(zzzh)
- Auction of property u/s 65(105)(zzzr)
- Mining of mineral, oil and gas 65(105)(zzzy)
- Renting of immovable property 65(105)(zzzz)
- Works contract service 65(105)(zzzza)

Second category services – Taxable services with regard to which place of performance is the key

- Services by a stock broker in connection with sale or purchase of listed securities u/s 65(105)(a)
- Services by a courier agency in relation to door to door transportation of time sensitive documents, goods or articles u/s 65(105)(f)
- Services by a customs house agent in relation to entry or departure of conveyances or the import or export of goods u/s 65(105)(h)
- Services by a steamer agent in relation to a ship's husbandry or dispatch or any administrative work related thereto as well as the booking, advertising, canvassing of cargo u/s 65(105)(i)
- Clearing and forwarding agent's services u/s 65(105)(j)
- Air travel agent's services u/s 65(105)(l)
- Tour operator's services u/s 65(105)(n)
- Services by a rent-a-cab-scheme operator u/s 65(105)(o)
- Security agency's services u/s 65(105)(w)
- Credit rating agency's services u/s 65(105)(x)
- Market research agency's services u/s 65(105)(y)
- Underwriter's services u/s 65(105)(z)
- Photography studio or agency's services u/s 65(105)(zb)
- Services in relation to holding of a convention u/s 65(105)(zc)

- Services by a video production agency in relation to video-tape production u/s 65(105)(zi)
- Sound recording studio or agency's services u/s 65(105)(zj)
- Port services by any person u/s 65(105)(zn)
- Services by an authorised service station in relation to service of motor vehicles u/s 65(105)(zo)
- Beauty parlour's services in relation to beauty treatment u/s 65(105)(zq)
- Cargo handling agency's services u/s 65(105)(zr)
- Dry cleaning services by a dry cleaner u/s 65(105)(zt)
- Event manager's services in relation to event management u/s 65(105)(zu)
- Fashion designer's services u/s 65(105)(zv)
- Health club and fitness centre's services in relation to health and fitness u/s 65(105)(zw)
- Services by a storage or warehouse keeper in relation to storage and warehousing of goods u/s 65(105)(zza)
- Services in relation to commercial training or coaching by a commercial training or coaching centre u/s 65(105)(zzc)
- Services in relation to erection, commissioning or installation by a commissioning and installation agency u/s 65(105)(zzd)
- Services in relation to access of internet by an internet cafe u/s 65(105)(zzf)
- Services in relation to management, maintenance or repair u/s 65(105)(zzg) *(refer para on amendment given earlier)*
- Services in relation to technical testing and analysis by a technical testing and analysis agency u/s 65(105)(zzh) *(refer para on amendment given earlier)*
- Services in relation to technical inspection and certification by a technical inspection and certification agency u/s 65(105)(zzi) *(refer para on amendment given earlier)*
- Port services by other port or person authorised u/s 65(105)(zzl)
- Services by airports authority or person aythorised by it in an airport or a civil enclave u/s 65(105)(zzm)
- Services by an aircraft operator in relation to transport of goods by aircraft u/s 65(105)(zzn)

- Services in relation to business exhibition by the organiser of a business exhibition u/s 65(105)(zzo)
- Services in relation to transport of goods by road in a goods carriage by a goods transport agency u/s 65(105)(zzp)
- Services in relation to opinion poll by an opinion poll agency u/s 65(105)(zzs)
- Services by an outdoor caterer u/s 65(105)(zzt)
- Services in relation to survey and exploration of minerals u/s 65(105)(zzv)
- Services by a pandal and shamiana contractor (including catering) u/s 65(105)(zzw)
- Travel agent's services u/s 65(105)(zzx)
- Services in relation to forward contract by a member of a recognised association or a registered association u/s 65(105)(zzy)
- Services in relation to cleaning activity u/s 65(105)(zzzd)
- Provision of services or facilities or advantages by a club or association to its members for a subscription or any other amount u/s 65(105)(zzze)
- Services in relation to packaging activity u/s 65(105)(zzzf)
- Services in relation to transport of goods in containers by rail in any manner other than Government railways u/s 65(105)(zzzp)
- Stock exchange service 65(105)(zzzzg)
- Services in relation to trading, processing, clearing and settlement of transactions in goods or forward contracts 65(105)(zzzzh)
- Clearing house service 65(105)(zzzzi)

Third category – Taxable services where the location of the recipient would hold good

The services not covered in the aforesaid two categories would be covered here unless there is exclusion with regard to the concerned taxable service under this category as explained earlier. The services covered here consequently would be –

- General insurance business service not for immovable property 65(105)(d)
- Advertising service 65(105)(e)
- Consulting engineer 65(105)(g)
- Manpower recruitment 65(105)(k)
- Management consultant 65(105)(r)

- Scientific or technical consultancy 65(105)(za)
- Online information and database access or retrieval 65(105)(zh)
- Broadcasting services 65(105)(zk)
- Insurance auxiliary service pertaining to general insurance business 65(105)(zl)
- Chartered Accountant in Practice 65 (105)(s)
- Cost Accountant in Practice 65 (105)(t)
- Companies Secretaries 65 (105)(u)
- Banking and other financial services 65(105)(zm)
- Cable operator services 65(105)(zs)
- Life insurance business services 65(105)(zx)
- Insurance auxiliary service pertaining to life insurance business 65(105)(zy)
- Rail travel agent 65(105)(zz)
- Business auxiliary service 65(105)(zzb)
- Franchisee services 65(105)(zze)
- Foreign Exchange Broker 65(105)(zzk)
- Intellectual property service 65(105)(zzr)
- TV or radio program services 65(105)(zzu)
- Transport of goods through pipeline 65(105)(zzz)
- Survey and map making not for immovable property 65(105)(zzzc)
- Mail list compilation 65(105)(zzzg)
- Registrar to an issue 65(105)(zzzi)
- Share transfer agent 65(105)(zzzj)
- ATM operations, maintenance or management 65(105)(zzzk)
- Recovery agent 65(105)(zzzl)
- Sale or time or space services 65(105)(zzzm)
- Sponsorship service 65(105)(zzzn)
- Support service of business or commerce 65(105)(zzzq)
- Auctioneer's service not for immovable property 65(105)(zzzr)
- Public relations services 65(105)(zzzs)
- Ship management services 65(105)(zzzt)
- Credit card, debit card related services 65(105)(zzzw)
- Telecommunications services 65(105)(zzzx)

- Development and supply of content services 65(105)(zzzzb)
- Asset management services 65(105)(zzzzc)
- Design services 65(105)(zzzzd)
- Internet telecommunication services 65(105)(zzzu)
- Information technology software services 65(105)(zzzze)
- Services in relation to management of investment (ULIP) 65(105)(zzzzf)
- Services in relation to supply of tangible goods 65(105)(zzzzj)

Pointers for practice

- The professional should be careful enough to go through the various agreements the client has with his customers to understand the terms and conditions as the status as to Import or Export would be known only on the basis of such facts.
- The billing and sales correspondences can also indicate the real nature of the transaction. It has been observed that at times the explanation, billing as well as the agreement are surprisingly all different.
- The professional is also advised to exercise due care in cases where the performance based criterion applies in order to determine the status as to Import or Export of service as often the cost of non-compliance could be high.
- The criterion for specified service provider, specified service receiver is as relevant as the specified service for the attraction of the levy where received from a non resident.
- The professional should also ensure that the client claims the benefits associated with export of services mainly in the form of refunds, rebates etc.

CHAPTER 8. REFUNDS AND REBATES

Before we can proceed with the discussion on refunds, one should note that there are certain provisions of Central Excise Act 1944 which are applicable to service tax. These provisions have been listed out in the chapter on miscellaneous topics and readers may note that these provisions apply to service tax by virtue of Section 83 of Chapter V of Finance Act 1994 as amended from time to time. One of the sections of Central Excise Act 1944 which has been made applicable to service tax is Section 11B dealing with refunds under central excise. The same section would apply with regard to service tax as it would apply to duty of excise. Refund could be of service tax wrongly paid or paid in excess of the amount required to be paid or of cenvat credits accumulated on account of export of goods or taxable services. Refund of credits would be governed by Rule 5 of CCR 2004 under which Notification 5/2006 CE (NT) dated 14.03.2006 has been issued. As far as rebate is concerned, the central government has been empowered to notify the rules u/s 94. Rule 5 of Export of Service Rules 2005 framed in this regard allows the Government to come out with notifications in this regard and consequently, we have two notifications 11/2005 ST and 12/2005 ST on the subject of rebates.

How does the refund work?

The refund could be of service tax paid in excess or even of cenvat credits which are eligible for refund in accordance with Rule 5 of Cenvat Credit Rules 2004. While the refund claim on cenvat credits accumulated as per Rule 5 of CCR 2004 would be as per the procedure set out in Notification 5/2006 CE (NT), which has now been amended vide the Finance Bill, 2010 to enable the exporters to claim refund of the Cenvat credit of input or input services used in or in relation to manufacture and of input services used for providing output service. Earlier only those credits that had direct nexus to the final product ir output service were eligible for refund. An attempt has been made to remove the differences between the definition of inputs and input services in the CCR, 2004 and the eligible credit in the said notification. Though no amendment is made in Rule 5 of the CCR, 2004. The refund claim on service tax should be made as per the procedure notified under the said section 11B. As per this Section, a claim for refund would generally have to be filed before the ACCE/DCCE before one year from the relevant date. The relevant date would depend on the event which necessitates the claim for

refund. The relevant date generally would be the date of payment of service tax. Where the tax was paid provisionally, the date of adjustment of tax after final assessment, would be the relevant date. Where the tax becomes refundable as a result of an order or decree or judgment or direction of appellate authority or any court, the date of such order, decree or judgment or direction would be relevant. In case of an exemption order being passed u/s 93, the date of issue of such order would be relevant. Where the services are exported in accordance with the Export of Service Rules 2005, the date of export of service would be the relevant date.

Procedure under sec 11B – Refund of service tax paid in excess

In terms of sec 83 of the Finance Act, sec 11B of the Central Excise Act would be applicable for refund of Service Tax. The refund under sec 11B read with sec 83 would apply even in cases where adjustment is not possible rule 6(3) or rule 6(4A) of Service Tax Rules.

Procedure for filing refund claim

- The person claiming refund may make an application for refund to ACCE or DCCE.
- The assessee shall make an application within one year from the relevant date.
- Where the person makes an application for refund of any amount which is paid under protest, the limitation period of one year shall not apply.
- The limitation period of one year is to be calculated from the date of payment of service tax.
- The application shall be made in Form R in triplicate
- The refund application shall be accompanied by such documents to establish that the amount in relation to refund are collected from or paid by him and the incidence of tax has not been passed on to the customer and there is no unjust enrichment.
- The applicant shall clearly state the facts and grounds to substantiate the refund claim.

Procedure for refund of credits u/r 5 of CCR 2004

- The claims are to be made once in a quarter in the calendar year (unless the assessee is an 100% EOU or exports in preceding quarter exceeded 50% of total value, when it can be made monthly)
- The service provider shall submit an application in Form A to the jurisdictional ACCE/DCCE within the time specified u/s 11B of CEA 1944
- The claim shall be accompanied by a copy of the invoice and a bank certificate certifying realization of export proceeds.
- The refund of unutilized input service credits would be as per the formula – (Total Cenvat Credit on input services during the period X (Export Turnover/Total Turnover))
- The service provider shall ensure proper follow up with the authorities till granting of refund.

Note: - The assessees are also advised to submit copies of cenvat registers plus documents on which credits are taken as these may practically be required. The proof as to payment of amounts to the service provider on these bills on which credits are taken, would also have to be furnished to facilitate quicker refunds.

Issues

Whether the time limit of one year is applicable to refunds of service tax paid in excess?

Readers may note that this has already been dealt with by the Tribunal/Courts. The Delhi Tribunal in Indian Ispat Works (P) Ltd Vs CCE Raipur (2006 (03) STR 161 (Tri-Del)) had held that where service tax was not payable, the department had no authority under law to collect the same and therefore the time limit of one year for refund was not applicable. Thus this question is a valid one and the view can be taken by assessees.

Whether refund of accumulated credits possible?

In Idol textiles Ltd Vs CCE Thane (2007 (217) ELT 299 (Tri-Mum)), Rule 5 of Cenvat Credit Rules was held to be a beneficiary piece of legislation and refund of accumulated credit held to be available despite home consumption as it was a substantive right of the assessee. Therefore assessees having accumulated credits on account of exports (goods or taxable services) could go in for the refund option

The claim should normally be accompanied by full documentary proof regarding the payment of appropriate taxes on which the claim for refund is being filed. The refund can be denied where any of the required conditions are not satisfied. The refund would be

granted once an order for the same is passed by the concerned authority. Where the order is against the assessee the same would have to be taken up on appeal with the Commissioner (Appeals).

Where the refund is not granted within three months from the date of application for the same or from the date of the order passed by Commissioner Appeals/Appellate Tribunal/Court, interest shall be payable as per section 11BB of Central Excise Act 1944 from the first day after the expiry of three month period and up to the date of refund at the rates notified which is currently at 6% p.a under Notification 67/2003 CE (NT) dated 12.09.2003

The service tax provisions provide an option for the provider of taxable service who exports his services in accordance with the Export of Service Rules 2005 to opt for refund of the cenvat credits in respect of excise duty paid on inputs and service tax paid on input services (under Rule 5 of CCR 2004) used for providing such taxable services which are exported. This would be useful where the service provider is not in a position to utilise the said credits towards his liability on services provided within the country. Apart from this there is also an option to go for rebates (the procedure for which is explained in this chapter). In the year 2007, the government also notified certain input services normally received by exporters of goods for the purpose of exemption. I.e the exporters of goods now have the option of going in for refund of the service tax paid on specified input services which they use for exporting their goods. In other words, the exemption from service tax is not given to the service provider who provides services to such exporters. The exporter would have to file a claim for refund of the service tax he has paid on his input services once the goods have been exported. The procedures are explained below -

Refund under notification 17/2009-ST dated 07.07.2009 – Available to exporters of goods in respect of specified input services

Conditions

- The goods that are exported can either be excisable or non excisable
- The refund can be claimed either by manufacturer exporter or merchant exporter.
- The exporter may apply to the jurisdictional AC/DC of Central Excise
- The application form for claiming refund of service tax paid on specified services is provided in the notification itself.

- The specified services are indicated below in the note to this paragraph and readers may refer the concerned notifications indicated for the exact set of conditions to be fulfilled. Readers may also note that the services have not been specified from a single date and have been introduced over a period of time which has also been indicated below this paragraph.
- The exemption claimed by the exporter shall be provided by way of refund of service tax paid on the specified services used for export of the said goods;
- The exporter claiming the exemption should actually have paid the service tax on the specified services, to the service provider
- No CENVAT credit of service tax paid on the specified services used for export of said goods has been taken under the CENVAT Credit Rules, 2004;
- Exemption or refund of service tax paid on the specified services used for export of said goods shall not be claimed except under this notification.
- Where the exporter himself is liable to pay service tax under section 68(2) of the Act on the services which gets consumed on the goods that are being exported, the exporter is exempt from paying the service tax.

Note: - The services covered for the purpose of this notification are as follows –

1. General insurance service in relation to export goods – Sec. 65(105)(d)
2. Port services for export of said goods – Sec. 65(105)(zn)
3. Technical testing and analysis of said goods for export – Sec. 65(105)(zzh)
4. Inspection and certification of export goods – Sec. 65(105)(zzi)
5. Other port services for export of goods – Sec. 65(105)(zzl)
6. Transport of goods by road in a goods carriage from ICD to port of export – Sec. 65(105)(zzp)
7. Transport of goods in containers by rail from ICD to port of export - Sec. 65(105)(zzzp)
8. Cleaning services in relation to containers used for export of goods – Sec. 65(105)(zzzd)
9. Storage and warehousing services for export goods – Sec. 65(105)(zza)
10. Courier service in relation to transportation of goods and documents for export – Sec. 65(105)(f)
11. Customs house agent services in relation to export of goods – Sec. 65(105)(h)
12. Banking and other financial services like collection of export bills or export letters of credit – Sec. 65(105)(zm)

13. Foreign exchange broker's service in relation to sale or purchase of foreign currency – Sec. 65(105)(zzk)
14. Supply of tangible goods for use without transfer of control or right as to possession, in relation to export goods – Sec. 65(105)(zzzzj)
15. Clearing and forwarding agent's services in relation to export goods – Sec. 65(105)(j)
16. Payment of service tax paid on services commonly known as terminal handling charges - classified under any sub-clause of clause (105) of section 65

Readers are advised to go through the various notifications available on www.cbec.gov.in to study the conditions to be followed in order to claim the refund. Circular F.No. 341/15/2007 TRU dated 17.04.08 has been issued requiring the officers to process and finalize the claims within 30 days from date of filing of claim.

Attention of the readers is also drawn to Circular 106/09/2008 ST dated 11.12.08 which requires grating of adhoc refund of 80% of the claimed figure within 15 days of filing of claims on an interim basis in case of specified assessees which include those exporters (registered under Central Excise or Service Tax) who have paid duty of excise or service tax of Rs. 1 crore or more during preceding financial year as well as 100% EOUs. Assessees are also advised to go through Circular 112/06/09 ST dated 12.03.09 which clarifies certain specific issues pertaining to documentation and procedure.

Procedure for refund claim

- The exporter can claim the refund of service tax paid by filing the claim as follows-
    - The manufacturer-exporter of the said goods shall file the claim for refund to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture or warehouse, and
    - The exporter, other than a manufacturer-exporter, shall file the claim for refund to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;

- Where the assessee is not registered wither under Central Excise or Service Tax, he shall file a declaration to jurisdictional AC or DC of Central Excise.
- Service Tax code shall be allotted to the exporter by the ACCE or DCCE and it is allotted in cases where the exporter is neither registered under Central Excise nor Service Tax, within 7 days from the date of the receipt of the declaration
- The claim shall be filed on quarterly basis and it shall be filed within six months from the end of the relevant quarter during which the goods have been exported
- The refund claim shall be accompanied by documents evidencing,-
  (i) export of the said goods;
  (ii) payment of service tax on the specified services for which claim for refund of service tax paid is filed;
  (iii) wherever applicable, a copy of the written agreement entered into by the exporter with the buyer of the said goods, as the case may be;

- The goods shall be deemed to have been exported on the date on which the officer of customs makes an order of clearance and loading of said goods for exportation under sec 51 of the Customs Act 1962
- The ACCE or DCCE, as the case may be, shall, after satisfying himself that the said services have been actually used for export of said goods, refund the service tax paid on the specified services used for export of said goods.
- Where any refund of service tax paid on specified services used for export of said goods has been paid to an exporter but the sale proceeds in respect of the said goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such service tax refunded shall be recoverable under the provisions of the said Finance Act and the rules made thereunder, as if it is a recovery of service tax erroneously refunded

Procedure for Claiming the Refund under notification 9/2009 ST dated 03.03.09 by SEZ unit/developer

i. The developer or unit in SEZ shall claim the exemption by filing a claim for refund of service tax paid on specified taxable service.

ii. The developer or units in SEZ shall file the claim for refund to the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise as the case may be.

iii. The developer or the units in SEZ who is neither registered as an assessee under the Central Excise nor Under Service Tax Law, has to file a declaration in form annexed to the notification (Form available in cbec.gov.in) to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise.

iv. The jurisdictional Assistant Commissioner or Deputy Commissioner shall after due verification allot a service tax code (STC) number to the developer or units of SEZ within seven days from the date of receipt of said form.

v. The claim for refund has to be filed within six months or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise as the case may be permit from the date of actual payment of service tax by such developer or unit to service provider.

vi. The Claim for refund shall be accompanied by the following documents:

   i. A copy of the list of specified services required in relation to the authorized operations in the Special Economic Zone as approved by the Approval Committee.

   ii. Payment of Service Tax on the specified services for which claim for refund of service tax paid is filed (Invoice of the service provider and the proof of payment for the said invoice).

   iii. A declaration to the effect that such services received by the developer or unit in SEZ are used in relation to the authorized operation in SEZ.

vii. The Assistant Commissioner or the Deputy Commissioner after **satisfying** that the said services have been actually used in relation to authorized operations in SEZ, refund the service tax paid on the specified services.

Refund under notification 43/2007-ST-Available to manufacturers of specified goods in respect of business exhibition service

Conditions

- This notification exempts the services provided by the organizer in relation to business exhibition services of goods
- Prior to availment of the benefit under this notification, *the manufacturer should have exported the goods falling under chapter 57, 61, 62 and 63 of Central Excise Tariff Act.*
- The manufacturer has to register himself with any of the following organizations

  (i) Apparel Export Promotion Council;

  (ii) Carpet Export Promotion Council;

  (iii) The Cotton Textiles Export Promotion Council;

  (iv) Handloom Export Promotion Council;

  (v) The Indian Silk Export Promotion Council;

  (vi) Powerloom Development & Export Promotion Council;

  (vii) Synthetic & Rayon Textiles Export Promotion Council;

  (viii) Wool & Woollens Export Promotion Council;

  (ix) Wool Industry Export Promotion Council;

  (x) Jute Manufacturers Development Council;

- The exemption shall be by the way of refund of service tax paid on Business Exhibition service
- The manufacturer claiming the refund should have made the payment to the service provider.
- Once the benefit under this notification is claimed, no Cenvat credit under rule 3 should be claimed under Cenvat Credit Rules 2004.

This exemption was till 31.03.09 and one would have to see whether the same would be extended.

Procedure for filing the refund claim

- The said manufacturer shall file the refund claim to the ACCE or DCCE, as the case may be, having jurisdiction over the factory of manufacture or warehouse.
- The refund claim should be accompanied by such documents evidencing the payment of service tax to such service provider.
- The ACCE or DCCE, as the case may be, shall, after satisfying himself that the said service has been actually used by the said manufacturer in relation to business exhibition of the said goods manufactured by him, refund the service tax paid on the said service.
- The benefit under notification is available upto 31st March 2009.

How does the scheme of rebate work?

The rebate can be granted by the central government either on the service tax paid on taxable service exported or service tax paid on input services and/or duty paid on inputs used in providing such taxable service. This rebate shall be subject to conditions and limitations specified in the concerned notification dealing with the rebate.

Rebate of the service tax on taxable services exported

Notification 11/2005 ST dated 19.04.05 as amended grants rebate of service tax and cess (including SHE cess) paid on all taxable services (output services) exported in terms of rule 3 of Export of Services Rules 2005, to any country other than Nepal and Bhutan subject to conditions specified below –

- The taxable service has been exported in terms of rule 3 of the aforesaid rules
- The payment for export of such taxable service has been received in India in convertible foreign exchange
- The service tax and cess of which rebate has been claimed has been paid on the taxable service exported
- The rebate of service tax and cess is not less than rupees five hundred

Where the service tax and cess (including SHE cess) of which rebate has been claimed has not been paid or the taxable service has not been exported, the rebate allowed shall be recoverable with interest.

Procedure for the same -

- The claim for rebate shall be filed with the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise in Form ASTR 1
- The application shall be accompanied by a documentary evidence of receipt of payment against the taxable service exported and the payment of service tax and cess on such taxable service exported.
- There shall also be a declaration that the taxable service has been exported in terms of rule 3 of Export of Services Rules 2005 along with the documents evidencing the export of such taxable service.
- The jurisdictional ACCE/DCCE if satisfied that the claim is in order, shall sanction the rebate either in whole or in part.

Note: - The assessees are also advised to submit the details as to cenvat credits availed with the payments made to the service provider, to facilitate quicker rebate. For this, a cenvat register giving details of the credits availed plus details of the debits against the credits on export of taxable service would have to be maintained. This should be backed up with other documentary evidence in the form of invoices for export, bills for claiming credit, proof of payment to service provider, export realization, etc.

Rebate of the service tax on input services or duty on inputs

Notification 12/2005 ST dated 19.04.05 grants rebate of the whole of duty paid on excisable inputs or whole of service tax and cess (including SHE cess) paid on all taxable input services used in providing taxable service exported in terms of rule 3 of Export of Services Rules 2005, to any country other than Nepal and Bhutan subject to conditions specified below –

- The taxable service has been exported in terms of rule 3 of Export of Service Rule 2005
- The payment for export has been received in India in convertible foreign exchange
- The duty, the rebate of which has been claimed, has been paid on the inputs
- The service tax and cess, the rebate of which has been claimed, have been paid on the input services
- The total amount of rebate of duty, service tax and cess admissible is not less than rupees five hundred
- Cenvat credit should not have been availed on inputs and input services on which rebate is claimed

Where the duty or the service tax, rebate of which has been claimed, have not been paid or the taxable service has not been exported or the cenvat credit has been availed on inputs and input services on which rebate has been claimed, the rebate shall be recoverable with interest.

Procedure for the same -

- The provider of taxable shall, *before the date of export of taxable service*, file a declaration with the jurisdictional ACCE/DCCE describing the taxable services to be exported.
- The declaration shall be accompanied by -

1. A description, quantity, value, rate of duty and the amount of duty payable on the inputs actually required to be used in providing taxable service to be exported.
2. In case of input services, the description, value and the amount of service tax and cess payable on input services actually required to be used in providing taxable services to be exported shall also be given.

- The ACCE/DCCE shall verify the correctness of the declaration and may accept the declaration on being satisfied as to the truth of its contents.
- The inputs shall be procured directly from a registered factory or from a registered dealer accompanied by valid invoices issued under Central Excise Rules 2002
- The input services shall be received along with an invoice, bill or a challan as per the provisions of Service Tax Rules 1994
- The claim for rebate of duty paid on inputs or service tax and cess paid on input services shall be filed with jurisdictional ACCE/DCCE in Form ASTR 2
- The application has to be accompanied by invoices issued under Central Excise Rules 2002 for procurement of inputs, invoices for input services as per Service Tax Rules 1994 , plus documentary proof for payment of duty on inputs and service tax on input services
- Proof of receipt of payment against service exported in convertible foreign exchange
- A declaration shall also be filed stating the service has actually been exported in terms of rule 3 of the Export of Service Rules 2005
- Proof of such export of service

Where the claim is in order, the jurisdictional ACCE/DCCE shall sanction the rebate either in whole or in part.

CHAPTER 9. DEMANDS AND APPEALS

Service providers who also happen to be manufacturers registered under the Central Excise Act 1944, may be familiar with the recovery proceedings under Central Excise. Such assessees would not find the proceedings under service tax intimidating as the procedures are similar. However, it has been observed that assesses who are new to service tax, dread recovery proceedings and the thought of having to face a Show Cause Notice from the department. This fear is at times misused by few unscrupulous officers.

What happens when there is a short levy or short payment of tax or erroneous refund?

Section 73 of Chapter V of Finance Act 1994 as amended from time to time deals with such a scenario where there is case of short payment of service tax or short levy or erroneous refund of tax. In such cases, the Central Excise Officer may within one year from the relevant date, serve a notice on the assessee/person chargeable with such service tax requiring him to show cause as to why he should not pay the amount specified in the notice. The period of one year for issuing such SCN (Show Cause Notice) can be extended up to five years in a case where such non-levy/short levy/erroneous refund/short payment was on account of fraud, collusion, wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the Rules made thereunder with the intention to evade payment of service tax. While computing the period of one year/five years the period for which the service of notice is stayed by an order of a court, shall be excluded.

The assessee would then have to furnish his replies to the said SCN within the time set out in the notice.

Where there is a non-levy, short levy or erroneous refund, the assessee himself can pay the amounts due after ascertaining the dues himself and intimate the Central Excise Officer in writing who shall then not serve a SCN in respect of such amount paid. The Officer is empowered to determine the correct amount and issue SCN for the recovery of

the same and in such cases, the period of one year can be from the date of intimation of payment as stated earlier, by the assessee.

As per section 73(1A), where the non-levy, short levy, erroneous refund was on account of fraud, collusion etc., the assessee can pay the service tax amount in full as per the SCN issued along with the interest u/s 75 and penalty at 25% of the amount of service tax, within 30 days of the receipt of such notice and where so paid, the proceedings initiated shall conclude. Where service tax is paid in part, the Central Excise Officer can continue the proceedings to recover the balance amount due as per the SCN.

What happens when the service provider has collected service tax in excess of the amounts to be collected from the service receiver?

Section 73A deals with such a scenario and the service provider would have to pay the amounts so collected to the Central Government. Where not paid, a SCN can be issued with regard to recovery of such amounts. This provision would apply in all such cases where the service provider has collected in any manner from the service receiver, amounts representing service tax. Once the assessments have been finalised and if the amounts paid have been found to have been paid in excess, a refund claim can be filed for the same within six months from the date of notice by Central Excise Officer.

What is the interest for delay in payment or in cases where amounts have been collected in excess from customers?

The interest rate would have to be adopted in accordance with rate notified u/s 75 and 73B. The rate for both cases at present is 13% per annum.

Is provisional attachment of property possible?

Section 73C makes provisional attachment of property possible during pendency of proceedings u/s 73 or 73A. This can be done to protect the interests of revenue but with the permission of Commissioner of Central Excise. The attachment shall be by an order in writing and of property belonging to the person on whom the SCN is served. The attachment shall be only for six months from the date of the order unless extended by the Chief Commissioner of Central Excise.

Can mistakes apparent from record be rectified?

An order can be amended by the Central Excise Officer within two years from the date of passing the same to correct a mistake apparent from the record, u/s 74. Where any matter has been considered and decided by way of Appeal or Revision relating to the order referred above, any other matter on the order can be rectified with the exception of the matter that has been so decided. Amendment can be on one's own motion or through notice by assessee or CCE/CCE (Appeals). Where the rectification has the effect of reducing refund due to an assessee or increasing his liability, such assessee should be given a reasonable opportunity of being heard in the matter.

Can an order be revised by the Commissioner of Central Excise?

An order passed by a subordinate authority can be taken up and revised after proper enquiries u/s 84. Where the revision is prejudicial to the assessee, he should be given a reasonable opportunity of being heard in the matter. He shall then pass an order in writing. Issues pending before CCE (Appeals) would be outside his purview. No revision can be made after two years from the date of passing of the concerned order.

Where the assessee is aggrieved by the order of an authority subordinate to Commissioner of Central Excise, where would the appeal be made?

As per section 85, the appeals shall be with CCE (Appeals). The Appeal shall be within three months from the date of receipt of the decision or order of such authority. Where the assessee has reasonable cause for delay in filing the appeal, the time limit can be extended by CCE (Appeals) for further period of 3 months. Beyond the said 3 months there is no provision for condonation of delay. Supreme court has ruled that beyond that period no condonation is possible. Orders would be passed in writing after a proper hearing.

When shall the appeal be with the Appellate Tribunal?

The appeal shall be against the order passed by the Commissioner of Central Excise or the CCE (Appeals). The appeal shall be within three months from the date of the order sought to be appealed against. The respondent shall then be required to file a memorandum of cross objections within 45 days of the receipt of notice as to appeal by the appellant. The prescribed fee would have to be paid at the time of Appeal. The scale would be as follows -

- Where the amount of tax + interest + penalty is Rs. 5 lakhs or less – Rs. 1000/-
- Where the amount of tax+ interest + penalty is more than Rs. 5 lakhs but less than Rs. 50 lakhs – Rs. 5000/-
- Where the amount of tax + interest + penalty is more than Rs. 50 lakhs – Rs. 10000/-

The application for grant of stay, rectification of mistakes, restoration of appeal or an application or any other purpose would have a fee of Rs. 500/-

The Board is also empowered to constitute a Committee of Commissioners/Chief Commissioners to refer matters to Board or to jurisdictional Chief Commissioner where it differs with the order passed by CCE or CCE (Appeals)

Where appeals are filed, the amount of tax in dispute would have to be deposited by the assessee unless it can cause undue hardship in which case, an application would have to be filed with the CCE (Appeals) or the Appellate Tribunal as the case may be for dispensing with the requirement by virtue of section 35F of CEA 1944 read with section 83.

Appeal to High Court

The appeal can be made against the order of the Appellate Tribunal when it involves a substantial question of law. Whether it involves a substantial question of law or not is something to be decided by the High Court. The appeal is to be made within 180 days from the date of receipt of the order sought to be appealed against with a fee of rupees 200 u/s 35G of CEA 1944 read with section 83 of Chapter V of Finance Act 1994 as amended from time to time. The High Court may even determine an issue which has not been determined by the Appellate Tribunal. The order of the High Court shall be appealable to the Supreme Court if the High Court certifies it to be fit for appeal.

CHAPTER 10. PROCEDURES WITH REGARD TO REGISTRATION

The provisions under service tax with regard to registration not only require the assessee to register himself when he starts providing a taxable service, but also to amend his certificate of registration every time there is a change in his business profile. He is also required to state at the time of registering as whether he wants to opt for centralized registration or not. This option can be exercised even at a later date in which case, he would have to get his Registration Certificate amended. Apart from a service provider, even a service receiver who is liable to pay service tax u/s 68(2) of Chapter V of Finance Act 1994 would be required to register himself under service tax for the purpose of paying service tax. The requirement as to registration would also extend to an Input Service Distributor who would want to distribute Cenvat credits on inputs, input services or capital goods to the unit providing taxable service or engaging in manufacturing of dutiable final products. The procedures with regard to registration under service tax in each of the scenarios would basically be the same with very minor changes which would be evident on the application for registration.

What is the procedure for registration?

1. The assessee shall make an application in form ST 1 to the Superintendent of Central Excise in duplicate. Such application can be filed online www.aces.gov.in. For this the following procedure shall be adhered to :
    a. The user shall first log onto the site aces.gov.in and select “Service Tax” option on the left side of the screen
    b. He shall then register himself by clicking on “New users to click here to register with ACES” option. On clicking the same he will be required to give certain basic details and a e-mail id. The password for such registration will be sent to this mail id.
    c. On submitting the form the password will be sent to the ID above and the user shall login into ACES with this password. Such a password is only to gain access to ACES and it does not imply that registration with the department is done.

d. In the case of an existing assessee, he shall fill in the “Declaration Form for ACES” (in Appendix I) and submit it to the respective commissionerate. The assessee will then receive a user ID and password at the mail ID specified in such form to activate his registration number in ACES. An existing assessee is NOT required to fill Form ST-1 again in ACES.

e. For a new assessee who does not have a service tax registration certificate, shall register with ACES with the ID and password that is sent as mentioned in ‘c’ above and select the option “REG” and “Fill ST-1”.

f. The form shall be filed online with all the required details and submitted online itself.

g. A print of the form submitted online shall be taken and along with this the documents as mentioned in 5 below shall be submitted to the department at the concerned commissionerate.

2. The application shall be filed within 30 days from the date of providing taxable service and shall bear the address sought to be registered
3. The application should be filled up carefully without errors and columns and boxes which are not applicable may contain “NA” stated across them. All the taxable services provided should be mentioned on the application and there would not be separate applications for each of such taxable services
4. The Form should be signed by the director/partner/sole proprietor as the case may be or the authorized signatory.
5. The application shall be accompanied by copies of the following documents -
    - Self certified copy of PAN, (where allotment is pending, copy of the application for PAN may be given)
    - Copy of MOA/AOA in case of Companies
    - Copy of Board Resolution in case of Companies
    - Copy of Lease deed/Rental agreement of the premises
    - A brief technical write up on the services provided
    - Registration certificate of Partnership firm

- Copy of a valid Power of Attorney where the owner/MD/Managing Partner does not file the application

6. Once filed, the acknowledgement for having filed the application is to be obtained on the duplicate copy for one's own reference
7. If the Particulars stated in the Form are correct, then the registration certificate would be provided within a period of seven days. Where not so provided, the registration is deemed to have been granted.

How is centralized registration different?

Centralised registration is opted for in a case where the accounting and billing operations of the assessee are centralized in an administrative office which may be a branch or Head Office despite the services being provided from more than one location. The premises that is registered here is the one where the centralized accounting and billing is done. This decision is at the option of the tax payer and he can also opt to have multiple registration which however may not be advisable.

The procedure would be the same as explained above with a few exceptions -

- The registration in case of centralized registration would be granted by the Commissioner of Central Excise having jurisdiction over the centralized premises
- The registration formality at the department's end takes a little longer than the period stated above and the concept of deemed registration need not apply here

The following documents are required in addition to the documents needed under the aforesaid procedure -

a. Proof of address of each such premises or branches for which centralised registration is sought
b. Proof of address of branches, new offices opened if any

How to make amendments with regard to changes in particulars?

Amendment would be required where there is any change in the particulars furnished in the ST 1 at the time of registration.

- The changes shall be intimated to the department within 30 days of such change
- The fact that the ST 1 is being filed for an amendment, should be clearly highlighted on the form
- The assessee shall submit a certified copy of the Registration Certificate

- The application may also be accompanied by a covering note explaining the circumstances that led to the change with copies of relevant documents being given.
- Such amendment can be done online as well which will then have to be submitted to the department with the required documents.

CHAPTER 11. PROCEDURE WITH REGARD TO INVOICING

The invoicing procedure with regard to service tax is something that is not assigned adequate importance by certain service providers. As far as possible where the records of the assessee are fully computerized, invoices may be generated from the system itself. Many of the accounting packages available in the country support invoicing and the invoicing option under these softwares may be selected. But in quite a few cases it has been found that though the records of the assessees are computerized, the invoicing is manual or through independent software package leading to unconnected islands, which do not speak to each other. At times the choice of invoicing method / formats maybe at the behest of the customers.

How to raise a proper invoice?

The assessee can follow the guidelines laid down below for the purpose of ensuring a proper invoicing methodology. The invoicing requirement is governed by Rule 4A of Service Tax Rules 1994.

- The invoice is to be issued within 14 days of completion of taxable service or receipt of amount which ever is earlier.
- The invoice / bill / challan should be signed by such service provider or a person authorised by him.
- The invoice shall be serially numbered and should contain the following information -
  - The name, address and registration number of the service provider.
  - The name and address of the service receiver
  - Date of raising of invoice
  - Details of the customer's/client's work order/purchase order
  - Description, classification and value of taxable service provided.
  - The amount of ST and Education cess/SHE Cess charged on such service tax
- Break up of the amount charged towards the service
- Details as to exemption being claimed with reference to the concerned notification

Note: - The assessee is advised to indicate the values clearly where he claims deduction for value of goods or materials transferred during the course of providing the service. If he is following the benefit of notification 12/2003 ST, the material value is to be indicated

clearly so as to avoid disputes with the department. The service provider is also required to raise an invoice on receipt of advances towards the taxable services to be provided though very few assessees practically follow this requirement.

Illustrative format for the service invoice is given below –

Tax Invoice/Invoice U/r 4A of Service Tax Rules 1994 (Name and address of the service provider) ST Registration number	Invoice Number Date
(Name and address of the service receiver)	PO Ref Date
Particulars	*Amount in Rs*
Description of service provided	
Gross amount	
Exemption being claimed (details)	
Amount to be subjected to service tax	
Service tax at 12%	
Education cess	
Secondary and Higher Education cess	
Total service tax *(In words)*	
Total VAT/sales tax	
Others	
Total bill amount	

CHAPTER 12. RECORD KEEPING

Record keeping under service tax is one of the most critical factors from the point of view of compliance. The assessee should have a sound record-keeping system if he is to avoid a scenario where he struggles at a later date to ensure compliance with the law. Considering the level and scale of computerization in India, it is shocking to note that the assessees who struggle the most with record keeping are those who have fully computerized system or even the ERP environment. Quite often assessees end up using customized software either developed in-house or sourced from abroad, which do not fully cater to the reporting requirements under service tax. Surprisingly the entire indirect tax compliance would be outside the ERP, which means that none of the checks and balances is within the system.

Assessees also struggle due to ignorance as to the provisions of law as well as to the reporting requirements thereunder. Until and unless the assessee himself is clear about the concepts of service tax and the reporting requirements thereunder, he would not be in a position to educate the systems analysts and the programmers to make changes to the software in order to ensure better reporting.

What are the records to be kept and whether there are any statutory records to be maintained?

There is no statutory record prescribed under service tax as far as record keeping is concerned. The assessee should follow the basic guidelines laid down here –

- A proper record should be kept of the materials received and used for the purpose of providing taxable services. The basic documents for this would be the Goods Received Notes and the Raw materials ledger in stores. Where the service provider has both taxable as well as exempted services, separate material accounts may be kept and Cenvat credits availed only on those materials used for providing taxable services. This can be done by segregating the material receipts at the GRN stage itself by having separate series for materials meant for use in taxable services. This should be followed up with proper physical control over stocks. Where stocks are transferred from one location to another, a system of having requisition slips can be followed in

addition to stock transfer notes/invoices which would indicate the intended usage of the stocks so transferred.

- Next would be the task of identifying the input services to be used for providing services. To the extent possible, the services to be used for providing taxable services should be identified so that full credits can be claimed on the same. Where segregation is not possible, the same would have to be flagged off for applying the formula laid down in Rule 6 of CCR 2004
- As far as input services are concerned, they may be assigned codes while accounting the same in the financial ledgers to identify them in terms of the intended usage. Another effective way of doing this is by documenting the reasons for procuring the service at the time of raising of the work order on vendors/service providers which would facilitate proper tracking of such input services at subsequent stages.
- Proper recording of Cenvat credits in respect of inputs and input services. The assessee here can maintain a Cenvat credit register which would give in detail the amounts of credits availed. The register can furnish the following details – Entry serial number, vendor name, item description and description of input service, basic value of goods/services, basic excise duty or service tax, cess on duty/tax, GRN reference for receipts, payment reference for having paid the service charges + service tax to the input service provider, total credits available, amount debited, invoice/bill for such debit, closing balance of credits. The assessee should also record the credit figures correctly in financial ledgers which can then facilitate a system of reconciliation between the Cenvat registers and the financial ledgers.
- Care should be taken with regard to invoicing to ensure that proper breakups are given for the values so that the correct amount liable to service tax may be determined. For the purpose of filing of the ST 3 returns, detailed work sheets would have to be maintained clearly indicating the value of services billed, the amounts received towards such services billed, the amount of VAT/sales tax paid, the value of materials sold and the amounts charged towards labour so that the correct amount of service tax payable may be ascertained.
- The assessee should also have a proper referencing system through which the various documents are linked. This linking can be brought about through quoting

the bill numbers and the voucher references on the registers being maintained which would also ensure that no bill or voucher has been left out.

- The list of records is to be declared within the end of the month in which the first return being filed.

CHAPTER 13. PAYMENT OF SERVICE TAX

Service tax is payable on the amount or value of taxable service received and not on the gross amount billed. But even today there are quite a few assessees who pay on the amount billed. In case any advance is received for service to be provided then the service provider shall pay the service tax on the amount received. Where the service is not provided and the amounts are refunded to the payer, such service tax paid can be adjusted in the returns by the assessee.

Service tax is to be paid on the gross value of taxable service, and not on the net amount realized from the service receiver after TDS under Income Tax Act 1961.
The service tax amount collected during the calendar month has to be paid to the credit of central government by 5th of the subsequent month (6th of the subsequent month if done electronically) and the amount is to be paid by 31st of March for the month of March of the financial year. From 01.04.2010 e-payment of service tax is mandatory for those who had paid central excise duty or service tax of Rs. 10 lakhs or more in the preceding financial year, whether by cash or debit in Cenvat credit account or both vide circular No. 919/09/2010-CX dated 23.03.2010.
If the service provider happens to be individual or proprietary firm or partnership firm the service tax amount has to be paid by 5th of the subsequent month, following the quarter (6th of the month following the quarter if done electronically) and 31st of March for the quarter ending March of the financial year. When the payment is made through cheque, then the date of presentation shall be deemed to be the date of payment.

How to pay service tax?

- The service provider shall himself assess the tax payable for the month or quarter as the case may be on the basis of the amounts received towards taxable services
- He shall then ascertain the amount of credits left in balance at the end of the period stated above for which payment is being made. He shall then reduce the credits balance to the extent available or to the extent of his liability whichever is lesser

- Where any amount is remaining payable after the adjustment discussed above against the credits, the same shall be remitted within the due dates explained above.
- The amount shall be paid into the designated bank account using the form GAR 7 which is filled up. The amounts are to be rounded off to the nearest rupee. Separate accounting codes have been notified for service tax, education cess, secondary and higher education cess, interest, penalties etc. The service provider remitting the tax shall segregate these amounts and pay the same under the respective codes

Note: - If excess payment is made, then the amount paid in excess shall be adjusted in the subsequent month provided the excess payment is not more than one lakh due to arithmetical error.

For the service providers paying service tax amount exceeding fifty lakhs and above during the preceding previous year, the service tax liability shall be remitted through e-payment. Penalty of Rs. 5000/- is leviable for failure to make payment through e-payment u/s 77(1)(d).

The service provider on his failure to pay the amount within the notified date shall be liable to pay interest at the rate of 13% p.a.

If the service provider is unable to quantify the amount of service tax payable, then he may request AC/DC of Central Excise to allow the service provider to pay on provisional basis along with the reasons.

Now rule 6(1A) allows the service providers liable to pay service tax to make the payment in advance and adjust the same for the liability in subsequent period. However such payment in advance has to be intimated to the department within 15 days from the date of making such payment and the details of such advance payment and adjustment thereof shall be indicated in the returns.

CHAPTER 14. SERVICE TAX RETURNS

Filing of service tax returns has been one aspect in service tax compliance which has been posing considerable problems for assessees. One of the main reasons is that service tax has to be paid not on billing basis but on receipt of consideration from customers. Thus all organizations especially those where transaction are in thousands should have a good accounting system in order to enable them to link the bills with the amounts received. The concept sounds simple but few organisations really implement the same in spirit. As a result, they face considerable problems in filing the service tax returns as one is expected to give details as to the amounts received towards taxable services.

The delays in filing entail fines and non filing an enquiry under best judgment.. Other than that it would be one of the criterion for picking up the unit for audit under the risk based selection proposed for the service tax audit.

How to file the service tax return?

- Form ST 3 or ST 3A as the case may be has to be filed in triplicate to the Superintendent of Central Excise. From 01.04.2010 e-filing of return is mandatory for those who had paid central excise duty or service tax of Rs. 10 lakhs or more in the preceding financial year, whether by cash or debit in Cenvat credit account or both vide circular No. 919/09/2010-CX dated 23.03.2010. (Refer Appendix – II for case studies on filing of Form ST-3)
- The return has to be filed once in six months and it contains the particulars of all the six months
- The value of taxable services should be computed on the basis of gross amount received or advance received for the services provided/to be provided
- A nil return is required to be filed if there are no transactions
- GAR 7 evidencing payment has to be filed along with the return
- If any amount representing interest or penalty is paid, then references of such payment along with the particulars are required to be made.
- The ST 3 return is to be submitted within 25th of the subsequent month following the quarter i.e. For the half year April to September, the due date is 25Th of October and 25th of April for the next half year.

- If the day happens to be a public holiday, then the return can be submitted on the next working day immediately following the holiday.
- The return may either be submitted in hand or sent through Registered Post Acknowledgement Due

What is the procedure to file the returns online?

The assesses can electronically Form ST-3 by choosing one of the two facilities being offered: (a) they can file it online, or

(b) download the off-line return utilities which can be filled-in off-line and uploaded to the system through the internet.

Steps for preparing and filing returns:-

(i) Assessee can download the Offline return preparation utility available at http://www.aces.gov.in (Under Download)

(ii) Fill the return offline using this utility. The return preparation utility contains preliminary validations which are thrown up by the utility from time to time.

(iii) Assessee then should log in using the User ID and password.

(iv) Select "RET" option from the main menu and further choose required activity such as e-filing/ amending/Revise return as the case may be and upload the return.

(v) Returns uploaded through this procedure are validated by the ACES before acceptance into the system which may take up to one business day. Assessee can track the status of the return by selecting the appropriate option in the RET sub menu. The status will appear as "uploaded" meaning under process by ACES, "Filed" meaning successfully accepted by the system or "Rejected" meaning the ACES has rejected the return due to validation error. The rejected returns can be resubmitted after corrections.

(vi) Returns can also be prepared and filed on line by selecting the 'File Return' option under RET module after logging into the ACES.

(vii) All validations are thrown up during the preparation of the return in this mode and the status of the return filed using the online mode is instantaneously shown by ACES.

It is recommended that assessees who are for the first time filing returns through ACES shall do it through the offline utility so that the mistakes and the changes can be done instantly.

Can a revised return be filed?

Yes. Rule 7B of Service tax Rules 1994 allow an assessee to revise the return filed under Rule 7 to correct any error, omission or mistake within 90 days from the date of filing the return u/r 7.

Note: -

- *An annexure is provided to the said form (ST 3 return) providing tips for filing up the particulars of the return*
- *The form can be downloaded from the departmental website (www.cbec.gov.in)*
- *ST 3A is used when the assessee opts for provisional assessment. The assessee shall for this purpose make a request in writing to the ACCE/DCCE giving reasons for payment of service tax on provisional basis and the payment can be made on the taxable value as specified by ACCE/DCCE on provisional basis. The assessment would be finalised later and the provisions of Central Excise Rules with regard to provisional assessment would apply here. However, execution of bond would not be required here.*
- *A single return is sufficient even though the service provider is providing more than one taxable service.*
- *The ST 3 return can either be filed manually or electronically*

CHAPTER 15. SERVICE TAX AUDITS BY PROFESSIONALS

A service provider simply cannot ignore compliance with the legal provisions for the simple reason that if he does so, the non-compliance could hit his business hard considering the competitive margins involved as well as the impact of interest and penalty which are becoming increasingly harsh day by day.

It has been the experience that very often assessees are not even aware of the fact that they are not complying with the legal provisions till such time when they are called upon by the department to furnish some clarifications or their unit is taken up for an audit.

Assessees in this regard should note that considering the uncertain nature of the law, the frequent amendments by way of notification, clarifications by the Tax Research Unit (TRU), Central Board of Excise & Customs (CBEC), Director General Service Tax (DGST) other than Regional Advisory Committee and Commissioners clarification the law would continue to be unclear. Many advocates of the Supreme Court with decades of standing in the Indirect taxes opine that there is no surety in this segment. Therefore a mechanism would have to be built in to ensure that compliance is maintained at high levels all the times. This would require a comprehensive framework to be put in place which would ensure proper training of employees as well as seeking professional opinion from time to time on matters of doubt plus a review of the documentation, records pertaining to service tax by either the internal audit team of the concern or by an independent professional.

What is required of the auditor?

An auditor who handles service tax should be thorough in his knowledge of the subject as well as the latest auditing procedures and techniques to be adopted so that he can maximize the benefits to his client from the audit exercise. Use of the audit tools especially the generalized audit software for large concerns would enhance the results. Apart from this he should have the ability to understand the assessee's business and the activities performed in order to study the impact of service tax on the same. As far as carrying out the audit itself is concerned, he can follow the guidelines given below:

1. *Ascertaining scope of the assignment*

The auditor should first of all be very clear as to the scope of the audit assignment. This is to avoid a scenario where the client perceives the audit effort in a different way from the one it actually is. This is quite common in the service sector as the concept of service tax audit is new to them as well as the fact that clients are specialists in their respective fields with no much of exposure to subject of accounting or auditing. At times the client may wish a pre- audit or shifting of the responsibility of compliance on the auditor. Further many a time assessees in the service sector mistake auditing for outsourcing and expect the auditor to engage in an outsourcing job rather than reporting to the management on compliance related issues. The scope can be ascertained and confirmed by preparing a letter/scope document entailing the areas which would be covered and the aspects which would not be taken up during the audit.

2. Knowledge of the business and the activities performed

This is one of the most important aspects to be taken care of by the auditor. He/she should first of all understand the assessee's business, the services he provides, the activities that are involved at various levels of the organisation in providing these services, the customer profile whether sub contracted or not etc. before he can start his review/verification. For this purpose, he may interview the key management personnel in the organisation besides going through major contracts and agreements, organisation chart, manuals and publications of the organisation. He should also make it a point to visit the premises from where the services are provided, to the extent possible and interview the technicians / engineers who actually perform the tasks (where ever applicable) to get a first hand information of the nature of the processes involved in case of services of a technical nature.

3. Obtaining relevant information for a preliminary review and risk analysis

The auditor should make it a point to understand the financial performance of the entity in the recent past as well as the during the audit period, apart from analyzing the same so that he can devise his procedures accordingly. He/she should also make it a point to perform a quick review of the concerned records like the service tax returns, cenvat bills, invoices and agreements with major clients'/customers so that the risk arising from non-compliance can be assessed. The following aspects assume significance –

- Review of the past audited financial statements for understanding the past financial performance in terms of incomes, expenses, receipts and payments apart from accounting policies and nature of investments
- Review of the ledgers for the period under audit to check the income and expenditure pattern besides understanding the customer profile and the pattern of billing
- Review of the cenvat invoices, agreements with major customers, service bills raised on customers by the assessee, Excise invoices if any raised by the assessee, review of the fixed asset registers to form an idea as to record keeping and compliance with the law.

The auditor would have to document his findings so that he can effectively move on to the next stage. For this purpose, he/she may use an assessee profile which would consist of all relevant information needed for a desk review. The assessee profile should be drawn up in such a way that apart from financial indicators, even the non-financial indicators like existence of branches, manner of providing services etc are also reflected. This could form part of the permanent audit file to be used even in subsequent audits. (Draft Asseessee Profile at the end of this chapter)

4. Desk review of the information obtained and preliminary meeting

The auditor, on the basis of his/her findings at the previous stage, should carry out a desk review of the information available with him to arrive at proper conclusions as far as the possible risk levels involved, are concerned. The desk review should ideally indicate to the auditor the level of checking required and the areas he should concentrate upon in order to arrive at proper conclusions at the end of the audit. On the basis of the review he should document the risk level prevalent in the audit. Once this has been done, he should identify the audit team that would take up the task and discuss the preliminary findings with the members of the team to appraise them of the likely issues that could crop up during the audit apart from explaining the impact the legal provisions would have on the assessee's business and his activities.

5. Devising the audit programme for carrying out compliance and substantive tests

The auditor should devise a proper audit program only after carrying out a desk review so that the same would be more effective than a program which is common to all audits irrespective of the differences in services and related activities and the risk levels

involved. This would enable the auditor to concentrate on key areas which would be relevant to arrive at proper conclusions at the end of the audit. The audit programme should indicate the areas to be covered and the individuals who are supposed to take it up. (See at end of Chapter)

6. Documentation and proper supervision of audit effort

The auditor should ensure that the audit findings and the explanations given from the assessee's side are documented properly by his audit team. The team should ideally consist of individuals at various stages of a learning curve. The team can consist of three members with one of the members being a senior with sufficient experience and two juniors. The responsibility of supervising the team on a daily basis would be with the senior and the entire audit effort would have to be supervised at regular intervals by the qualified professional. The audit findings should be discussed at periodic intervals (if not on daily basis) with the executive designated from the assessee's side so as to ensure assessee's cooperation. This would also ensure that the audit is headed along the right path with every likely-hood of achieving its intended objectives at the conclusion stage.

7. Formulation of the draft report and discussions with the management

Once the audit has been completed, the draft report containing the draft of the observations should be formulated and a copy sent to the management. This would then be followed up with a discussion of the points in order to ascertain the future course of action to be taken, which should also be documented. The auditor could come up with valuable suggestions here in order to secure effective compliance with the law and in order to avoid pit falls in future. This discussion is critical for the acceptance of the observation and its correction.

8. Finalising the draft and ensuring audit follow up

Once the draft has been prepared, the points discussed with the management and future course of action ascertained, the final report is to be sent with all the relevant details like the observations, the reply from the assessee's side, the corrective action taken up by the assessee, the course of action which is to be taken in the future. The auditor's responsibility does not end here and he would have to ensure proper follow up by going through the steps taken up by the assessee for the purpose of ensuring compliance with the law.

Pointers for practice

- The auditor should be well versed in the matters pertaining to service tax and to a certain extent central excise and should have a clear understanding of the legal provisions and its possible implications on an assessee's business depending upon the activities performed.
- He should have the ability to get the required information from the assessee in a way that would enable him to ascertain the legal impact on the assessee's business. This in fact could be a big challenge as he would have to pose his queries in a way the assessee understands the same so that the right answers and explanations can be obtained from him.
- The auditor should also be careful not to treat the audit like a fault finding exercise as it would result in the client losing interest in the audit itself and thereby negating the very purpose of audit.
- These audits could be said to be consultative exercise as differentiated from a regular internal audit. Therefore it maybe a good idea for the auditor to appraise the client on the latest amendments and Tribunal judgments in regard to the issues of interest/ concerns.

Illustrative audit program for Service Tax Audit

Name of the auditee: - *Address: -* *Contact persons: -* *Contact numbers: -* *E-mail: -*	*Period under audit: -* *Reviewed by: -*	
Area covered during audit	*Checked by*	*No of days taken*
1. Initial reviews and visits		
a) Review of the past audited financial statements		
b) Review of the activities of the enterprise *Site visits/department visits if any* *Interviewing functional chiefs/mgnt personnel* *Review of process charts/publications of the assessee*		

c) Review of the ledgers and trial balances for the current period		
d) Review of the agreements with the major customers/clients of the enterprise		
e) Review of the cenvat bills and bills for provisions of services		
f) Review of the correspondences with the authorities		
g) Review of the Service Tax Returns to scan for details as to classification of services and payments		
h) Review the methodology being adopted for taxing the value towards materials in case of works contract		
i) Check for transactions with associated enterprises which may attract service tax levy		
j) Check whether the assessee has import or export of services in accordance with the relevant rules and whether there are payments in excess or shortfall in payments made?		
2. Review of the liabilities on account of service tax		
a) Review the expenses accounts for traces of payments made in foreign currencies. If found to exist - *Check the nature of payments by going through agreements* *Check whether applicable service tax paid by cross verifying with the returns*		
b) Review the income accounts to check the impact on service tax. Check the possibility of the activities being regarded as taxable services by ascertaining the nature of services from agreements/orders with customers.		

Check the valuation methodology-whether all charges included for tax?		
c) Check for freight payments. If they exist, *Cross verify with expenses files for consignment notes.* *Cross verify with the returns for details as to payments*		
d) Cross verify the bills for services provided with the statement/workings for filing of service tax returns. Check the accuracy as to – *Value of service* *Service tax amounts including cess* *Exemptions being claimed*		
e) Cross verify the statements/accounts facilitating furnishing of returns with the totals as per returns in terms of – *Value of taxable services* *Exemptions/abatements* *Service tax amounts with cess*		
f) Check for traces of payment of sponsorship money and the purpose for which it has been paid		
3. Review of Cenvat and possible reversals		
a) Review the fixed assets register to list out the assets being used for providing taxable services. *Check whether cenvat Credits have been claimed on non-productive assets by cross verifying the purchase details with that in the Cenvat register* *Check the physical location of assets* *Check whether assets sent out and if so, whether a record of the same is available. Whether it is returnable?*		
b) Cross verify the cenvat invoices with the cenvat register. Verify details –		

Cenvat amount *Basic values, addressor, addressee* *Item/service description* *Cross check the totals as per Cenvat register with the figures as per returns* *Check whether –* *In case of input services, whether the credit has been availed after payment to input service provider?* *In case of inputs whether inputs really received?* *Check whether the assessee has opted for centralised registration or Input Service Distributor route.*		
c) Check whether inputs/capital goods/tools removed for job work and if so whether a register has been kept for the same and whether the same are sent on returnable basis? *Whether applicable credits have been reversed where ever necessary?*		
d) Check whether the assessee has balance of credits pertaining to export of services which cannot be utilized. If so, *Check whether the assessee has gone in for rebate, refund of the credits or rebate of service tax paid?*		
e) Check whether the credits admissible have been calculated correctly where Rule 6 of CCR 2004 applies in respect of both taxable an exempted services being provided?		
f) Check the documentation in case of availment of credits on bills of ISD. Check the returns filed		
4. Other areas		
a) Check whether the assessee has a system of		

reconciliation between the figures as per financial ledgers and those as per returns		
b) Check whether the assessee is also a manufacturer and if so whether applicable duties of CE are charged? *If not, whether there is any process carried out which can be deemed to amount to manufacture or which amounts to manufacture as per CEA 1944.*		
c) Where exemptions are claimed, whether any condition of the notifications have been flouted? Cross check with the appropriate notification		

Note: A more comprehensive/ modified programs maybe required depending on the nature, decentalised method of operation, mode of recording, level of management involvement in accounting among other factors.

ILLUSTRATIVE SERVICE TAX ASSESSEE PROFILE

Name and address of the assessee: - *Contact persons: -* *Contact number and e-mail ID*	*Profile reviewed by: -*

Area being covered	*Remarks*
1. Ascertain the past record pertaining to matters litigated or demands raised by the department and complied by the assessee	
Assess risk level – High, Low or Moderate	
2. Ascertain the nature of services provided by the assessee and detail the classification adopted by the assessee for payment.	
Assess risk level – High, Low or Moderate	
3. Whether any manufacturing involved? If so, whether assessee is registered under CE?	
Assess risk level – High, Low or Moderate	

4. Whether the assessee has incurred expenditure in foreign currency and if so – Whether the assessee has registered for paying applicable taxes?	
Assess risk level – High, Low or Moderate	
5. Whether the assessee has associates or companies within the same group with whom transactions exist?	
Assess risk level – High, Low or Moderate	
6. Whether assessee has expenditure within India on services with regard to which the service receiver is liable? If so, whether assessee is registered for paying applicable taxes?	
Assess risk level – High, Low or Moderate	
7. Ascertain the method adopted by the assessee to calculate his liability under the local sales tax/VAT law of the concerned state.	
Assess risk level – High, Low or Moderate	
8. Ascertain whether the assessee has multiple units/branches to provide services or for operations and the documentation handled by these offices/units.	
Assess risk level – High, Low or Moderate	
9. Ascertain whether service tax matters handled by select individuals. If so, whether they are knowledgeable?	
Assess risk level – High, Low or Moderate	
10. Ascertain the reporting frame work within the organisation and the existence of proper MIS.	
Assess risk level – High, Low or Moderate	
Overall audit risk on the basis of points noted – High, Low or Moderate	

CHAPTER 16. FREQUENT ERRORS COMMITTED IN SERVICE TAX

Since service tax was introduced recently as compared to Central Excise Act and Customs Act which have been in force for more than three decades now, and since the subject has been seeing a lot of changes every year, the chances of the assessees (especially those who are new to service tax) going wrong or committing mistakes at the initial stages of compliance are quite high. In this segment we shall take a close look at some of the errors we have noticed from the assessees. The assessees are advised to be careful in this regard to ensure that they do not commit the mistakes given here –

1. Wrongly classifying the services under a category which is not applicable to them.
2. Wrong availment of cenvat credit on ineligible documents.
3. Wrong availment of cenvat credits on services which do not qualify as input services within the definition of input service as given in Cenvat Credit Rules 2004
4. Short payment or excess payment of service tax due to improper accounting of the amounts collected from the customers/clients especially on account of service tax
5. Non-payment of service tax liability for the month of March by 31st March.
6. Mistakes being committed while filling up the ST 3 returns with regard to the value of taxable services, amounts received and the exemptions availed
7. Treating the services provided from India to a person abroad as Export of Service when it is not an export of service as per Export of Service Rules 2005
8. Failing to pay tax u/s 68(2) on services received in India from abroad when the same constitutes an import of service
9. Paying service tax on the gross value including amounts charged for transfer of property in goods when the assessee could have claimed deduction for such transfer of property in goods
10. Exporting services but not going in for either the rebate of service tax under Export of Service Rules or refund under Cenvat Credit Rules

11. Claiming full cenvat credit when the service provider has both taxable as well as exempted services
12. Utilising the cenvat credits in respect of the exempted services which are exported
13. Paying service tax as well as excise duty on service charges where the manufactured goods are installed at the customer's premises
14. Excluding the expenses reimbursed by the service receiver from the purview of service tax where the same is not incurred by the service provider as a pure agent of the service receiver
15. Non segregation of the education cess and Secondary Higher Education cess amounts from the basic portion of service tax
16. Not fulfilling the conditions laid down by the exemption notifications while claiming exemption benefits
17. Collecting service tax from the customers/clients but not paying the same to the government
18. Not registering and paying service tax in respect of those services where the service receiver is liable to pay tax u/s 68(2)
19. Availing input service credits before the payments of service tax and value of services can be made to the input service provider
20. Not availing cenvat credits in respect of input services on a timely basis thereby necessitating the payment of taxes in cash

These are some of many and a deeper analysis would lead to more issues which are quite common especially in each of the individual services.

CHAPTER 17. OTHER MISCELLANEOUS ASPECTS IN SERVICE TAX

Interest and penalty calculations

The Finance Act 1994 has prescribed interest and penal clauses for contravention of any provisions or rules made under the act. No penalty is leviable under sec 76, 77 or 78 if the assessee proves that there was reasonable cause for such failure. The relaxation is provided in sec 80. As per statutory provisions only one penalty can be imposed for delay in taking single registration for more than one taxable service or for delay in filing of return by assessee providing more than one taxable service. Interest payments are mandatory and cannot be waived however penalty can be waived partially. Penalty u/s 76, which is levied for failure to pay tax, cannot exceed the tax payable.

Illustration 1: Mr. NS Sidhu was liable to remit the service tax to the tune of Rs 75000 for the month of March., Mr. NS Sidhu was a tax compliant service provider and he was of the understanding that the due date is 5th of subsequent month and paid the amount by Apr 5th. Later on Mr. NS Sidhu realizes his mistake and wants to pay the interest for delayed portion.

Solution:

Particulars	Amount
Due date for payment	31st March
Date of Payment	5th of April
Days of Delay	5
Rate of interest	13%
Amount of interest to be paid	Rs 75000 X 13% X 5/365 = 133/-

Illustration 2: Mr. Prince, service provider fails to pay service tax of Rs 8 lakhs payable by 5th January. Mr. Prince pays it on 20th January. The default has continued for 15 days. Quantify the penalty to be paid by Mr. Prince.

Solution:

Particulars	Amount

Default in amount	8 lakhs
Days of default	15 days
Penalty (a)	2% X 8 lakhs X 15/31 =7741
(b)	200 per day X 15 days= 3000
Penalty under sec 76 is higher of (a) and 9b)	Rs 7741/-

Provisions as to penalty

The provisions as to penalty under service tax are as follows –

- Section 76 – Deals with penalty to pay service tax at Rs. 200 per day of failure or at 2% of such tax per month which ever is higher, from the first day after due date up to the date of actual payment. Penalty however cannot exceed service tax payable.
- Section 78 – Deals with penalty for suppression of value of taxable service and the penalty shall not be less than the service tax and shall not exceed twice the amount of service tax payable. This can be reduced on payment of tax and interest within the stated period of 30 days as explained earlier, along with the penalty determined. (*Where penalty is levied u/s 78, no penalty shall apply u/s 76)*
- Section 77 – Deals with penalty for a contravention where no penalty is prescribed and is shown in table below -

Particulars	***Amount of penalty in Rs.***
On account of failure to make payment and take registration under service tax	Rs. 200 per day of default or a sum of Rs. 5000 whichever is higher
On account of failure to make electronic payment of tax	Rs. 5000
Failure to maintain proper records or books	Rs. 5000
Failure to furnish information called for under this chapter or Failure to furnish documents required under this chapter or Failure to appear before CEO when issued summons to appear or produce documents in an inquiry	Rs 200 per day of default or a sum of Rs. 5000 which ever is higher
Failure to issue proper invoice or issuing invoice with	Rs. 5000

incorrect or incomplete details or failure to account invoice in books	
Other cases	Rs. 5000

Searching of premises by authorized officers

The Commissioner of Central Excise u/s 82 can authorize any ACCE/DCCE to search for and seize documents or books or things, which have been secreted in any place and which in his opinion would be useful for or relevant to any proceeding under this chapter. He may even take up the task himself. The Code of Criminal Procedure 1973 shall also apply here.

Other recovery provisions

Section 87 of the Finance Act 1994, empowers the Central Excise Officer (CEO) to require any other person or other CEO to deduct the amounts due to the government from the assessee and pay the same. This deduction would be relevant where the person to whom a notice has been issued, owes something to the person who owes money to the government. Where the person to whom a notice is issued does not pay the amount, he himself would be treated as an assessee in default. The CEO can even send a certificate specifying the amount due, to the collector of the district where the person liable to pay resides or has his property. This would be so where the district is different from the one over which the CEO has jurisdiction.

Application of the provisions of the Central Excise Act 1944

The assessee should note that certain provisions of Central Excise Act 1944 would also apply with regard to service tax by virtue of section 83. Thus with regard to these aspects, the aforesaid law would have to be referred. Some of the important aspects with regard to which the provisions of CEA 1994 would apply are as follows –

- Presumption of culpable mental state (Sec 9C)
- Relevancy of statements under certain circumstances (Sec 9D)
- Claim for refund of duty (Sec 11B)
- Interest on delayed refunds (Sec 11BB)
- Power not to recover duty of excise not levied or short-levied as a result of general practice (Sec 11C)
- Declaration of the amount of duty on invoice (Sec 12A)

- Presumption that the incidence of duty has been passed on to the buyer (Sec 12B)
- Crediting of refunds to Consumer Welfare Fund (Sec 12C)
- Power to summon persons to give evidence and produce documents in inquiries under this Act (Sec 14)
- Special audit in cases where credits availed or utilized are not within normal limits (Sec 14AA)
- Procedure for adjudication (Sec 33A)
- Deposit of duty pending appeal (Sec 35F)
- Sections 35FF to 35 –O dealing with Appeals Instruction to officers (Sec. 37B)

- Service of decisions, orders, summons etc (Sec 37C)
- Effect of amendments of rules, notifications etc (Sec 38A)

The professional who advises on service tax should be aware of the implications of the above provisions which maybe judicially clear as they have gone through a number of years of modifications.

CHAPTER 18. SOME OF THE IMPORTANT COMMON SERVICES

The limitation in the size of this book constrains us from discussing many/ all the services. We restrict to the ones where we find there is more potential for advise and consultancy.

Renting of Immovable Property Services

Renting of immovable property service was brought under service tax net with effect from 01.06.07. This levy has led to a lot of confusion as one does not associate letting out of immovable property with the concept of service for the simple reason that there is strictly speaking, no service involved. This aspect however this year has been addressed by the Delhi High Court in responding to the writ petition filed by certain assessees who had challenged the levy of service tax on the renting of immovable property. The High Court has in Home Solution Retail India Ltd Vs Union of India (2009-TIOL-196-DEL-HC-ST) sought to draw a distinction between "service in relation to renting of immovable property" and "renting of immovable property" and held that renting in itself would not amount to provision of taxable service and held both notification 24/2007 ST and circular 98/1/2007 ST to be ultra vires the Act as far as requirement for levy of service tax on renting is concerned. In the meantime the Finance Act 2010 has amended the definition of the taxable service in this respect, retrospectively from the date of introduction of the service, to include mere renting of immovable property also in the tax net. But Delhi High Court has again granted stay to Home Solution Retail (I) Ltd. in W.P. (c) No 3398 of 2010 on 18.05.2010 from payment of service tax on mere renting of immovable property. This, in view of the authors is an indicator as to the interpretation which could possibly be taken up the Courts though the Supreme Court is yet to reply in respect of writ petitions lying before it and there could be questions as to the applicability of the stance of the High Court to areas outside its jurisdiction if one were to consider Article 226 of the Constitution of India. Service providers who have been charging service tax would be better off continuing to do so until the matter is finally decided by the Supreme Court.

One of the main drivers in taxing this category could have been the fact that in developed countries which are under a unified VAT the rents are also liable.

One saving grace is that the property should be used for business or commerce. In other words where letting out is not for business or commerce, there would be no liability.

Renting by or to a religious body has been exempted as well as renting to an educational body other than commercial training or coaching centre. Moreover, renting of vacant land would not be liable except where vacant land is given on lease or license and a building or a temporary structure is constructed for use in furtherance of business or commerce. Buildings used solely for residential purposes or for accommodation including hotels, hostels, boarding houses, tents, camping facilities etc. would also not be liable.

From the gross amount charged, deduction would be available for the property tax levied and collected by the local authorities with the calculation of deduction being on a proportionate basis under Notification 24/2007 ST dated 22.05.07 There is no deduction for interest and penalty and what is deductible is property tax paid.

Where there is a case of co-ownership, one should proceed on a reasonable basis to ascertain his respective share in the property and the basis being adopted for Income Tax assessment could possibly be followed here. However the agreements would be critical here. Even those cases where there is temporary letting out of spaces without there being an associated transfer of the right of possession and effective control over such space, to the user, is to be covered under the tax net. Thus spaces let out in malls for vending machines, cinema theatres etc, would be liable.

Management, Maintenance or Repair Services

The activities covered here would be maintenance or management of properties whether movable or immovable, maintenance or repair of goods. The activity should be under a contract or agreement unless we have maintenance or repair of goods/properties by a manufacturer in which case, an agreement would not be a pre-requisite.

Where there is transfer of property in goods during the course of provision of service, service tax would have to be paid on the labour charges alone. The service provider can therefore examine availing the benefit of notification 12/2003 ST as per which, deduction would be given for the value of materials or goods sold. The assessee in such cases would not be able to avail cenvat credit of excise duties paid on such goods and

materials though the credit of service tax on input services and excise duties on capital goods would be available.

Assessees may note that the scope of this category would be very wide and most of the repair activities undertaken on goods would be liable under this category. A classic example could be that of reconditioning of goods undertaken by a manufacturer on rejection by his customer where the same does not amount to manufacture under the Central Excise Act 1944. Where the manufacturer bills the customer for the same especially when not covered by the warranty period, the same could be liable to service tax under this category.

Even maintenance of software and computer hardware would be liable under this category. With regard to software what is taxed is maintenance of computer software wherein the functionality of the modules/software is not enhanced beyond the existing capacity. The maintenance activity should be under a contract/agreement. Readers may also note that there may be cases of contracts for composite services in which case the essential nature of the service/contract would have to be determined. Where it is not one of taxable service, it could not be taxable at all. In CMS (India) Operations & Maintenance Company (P) Ltd Vs CCE Pondicherry (2007 (07) STR 369 (Tri-Chennai)), the contention of the department regarding breaking up of a operation and maintenance contract for operating and maintaining a facility for generating and supplying electricity to TNEB was discarded by the Tribunal which held the said contract to be a works contract for manufacture of goods viz., electricity.

Assessees should be careful enough to distinguish this category of service from that of Business Auxiliary Service as what is taxed here is repair or maintenance activity and not processing of goods which would be liable under BAS.

Information Technology Software Services

A review of the definition of taxable service under the new category of Information Technology Software service which has come into effect from 16.05.08 reveals that the said category seeks to levy service tax on customized software developmental activity. This has also been clarified by the department through its letter F.No. 334/1/2008 TRU dated 29.02.08. Moreover, IT software services must be provided for use in business or commerce and where they are for personal use, such services for personal use would not be liable to service tax. Most of the activities which form part of the Systems Development Lifecycle and required to develop and implement software from the

conceptualization stage and up to the stage of final implementation would be covered under this category. Notification 17/2010 dated 27.02.2010 provides for exemption for service provided for packaged or canned software intended for single use subject to certain conditions mentioned therein.

As highlighted above even the process of acquiring the right to use information technology software for commercial exploitation including the right to reproduce or to distribute or to sell the same has been covered by the definition under this category. Even acquisition of the right to use software components for the creation of and inclusion in other IT software products has been included. This could lead to considerable litigation in future if one were to also take into consideration the verdict given by the Supreme Court in Tata Consultancy Services Vs State of Andhra Pradesh (2004 (178) ELT 22 (SC)) where both canned and uncanned software were held to be capable of being regarded as goods. This was also reinforced by the decision of the Madras High Court in Infosys Technologies Ltd Vs CTO (2009 (233) ELT 56 (HC-Mad)) where both tangible and intangible property (including customized or non-customized software) were held to be capable of being goods if they had the required attributes to hold them as goods. If that were the case, then acquisition of the right to use software or software components whether it is canned software or uncanned software could also be held liable under the sales tax law by the concerned authorities. Here where sales tax is leviable, the assessee would have to contend that the right is with regard to goods and that the acquisition of right with regard to the same cannot be subjected to service tax.

Whether the service provider who exports IT software services abroad would be eligible to opt for refund?

One advantage of the introduction of service tax levy on IT software services has been the opening up of options available for an exporter of services. The service provider exporting IT software services in accordance with the Export of Service Rules 2005 can have the option of going in for refund of the cenvat credit under Rule 5 of Cenvat Credit Rules 2004. Another alternative could be to go in for rebate of service tax paid under Rule 5 of Export of Service Rules 2005. (Note – the service has been put under the third category i.e recipient based criterion for the purpose of determining whether the service

has really been exported out of India in accordance with the Export of Service Rules 2005 where the services are provided from India to a person residing abroad.)

Goods Transport Agency Services

This is one category which has been found to be posing problems to most of the assessees under service tax. The common perception among the assessees is that the service provider alone is liable to service tax. The assessees often overlook the provisions of section 68(2) of Chapter V of Finance Act 1994 as amended from time to time as per which a service receiver can also be held liable by the government in certain cases by issuing a notification in this regard. The notification would apply to certain categories of services rather than categories of assessees.

One of the categories with regard to which the service receiver is held liable is that of Goods Transport Agency service. Here the consignor or the consignee whoever pays the freight would be liable to service tax. But first of all, the service provider should be a GTA. I.e. a person providing services in relation to transport of goods by road and issuing a consignment note. In the opinion of the paper writers, the goods transport owner or operator who works under a contract or who bills on weekly / daily basis or is paid per trip may not be covered under this levy as per the FM speech as well as the Committee established in 2004 who opined that only booking agents would be liable. Also in the case of K.M.B. Granites P. Ltd. v Comm. of Central Excise, Salem [2010] 25 STT 141 it was held that that transport undertaken by individuals owning and operating lorry and trucks is not subject to service tax.

The liability would be on the person paying the freight is the payer happens to be any one of the following –

- Factory registered under or governed by Factories Act 1948
- Company established under Companies Act 1956
- Corporation established by or under any law
- Society registered under Societies Registration Act 1860
- Any cooperative society established by or under any law
- A dealer registered under Central Excise Act 1944
- Body corporate established or a partnership firm registered by or under any law

The person who is liable to pay the freight is liable and the person who pays on behalf of another would not be liable.

The service tax would not have to be paid on the entire amount and the payer can avail a deduction of 75% of the gross amount charged as freight. The condition as to getting the declaration as to non availment of Cenvat credits from the GTA which existed earlier has been done away with..

The liability would arise where the freight charged exceeds Rs. 750 for individual consignments and Rs. 1500 for other consignments. The intention here is not to tax freight paid to local tempo operators who do not issue a consignment note.

The payment would have to be made in cash and once payment has been made, the service tax paid can be availed as credits if the service constitutes input service to the payer. A controversy that the outward freight is not allowed has been precipitated by the bureaucrats of this country going against the concepts of Cenvat credit and movement to GST.

Works contract service

This entry would be applicable to the following existing service providers:

- Industrial and Commercial Construction
- Construction of Complex
- Erection, installation and Commissioning

If there are works contracts which cover activities not coming under the ones specified above, they would have to be taxed under other existing heads and consequently, the composition benefit in such cases would not be available. In such a scenario, the existing notifications such as 12/2003 ST and 1/2006 ST would have to be relied upon to get any deduction.

For pure labour services where there is no material involved the service would continue to be covered under the above categories as the definition of works contract makes it clear *as to the requirement of transfer of property in goods for a contract to be liable under this category*.

Whether joint development liable?

One thing the assessees have to analyse is whether there exists a service provider who provides the works contract service and a service receiver who receives such service. In the absence of such service, there would not be a liability under service tax. Sometimes, the construction activity may not be undertaken on behalf of a client/customer but may

be undertaken by the builder/developer on his own account and the constructed property sold to buyers. In such situations, there would be no liability under service tax as there is no distinct service provider and service receiver and the builder/developer cannot provide service to himself. This has also been decided by the Gauhati High Court in Magus Construction (P) Ltd Vs UOI (2008 (11) STR 225 (Gau))

The assessees are advised to be careful even where partly constructed property plus land is transferred to prospective buyers and then the remainder of construction work undertaken on their behalf as the entire amount involved in the project would not be liable to service tax because of the land and partly built up unit being sold/transferred to the buyers and then works contract service in relation to construction being provided. Due care is to be taken to ensure that the agreements are properly drawn up to indicate the various components and the amounts being charged for the same.

Composition Scheme

Works contract (Composition Scheme for Payment of Service Tax) Rules 2007 has been notified vide notification 32/2007 ST dated 22.05.2007 by the Central Government for the purpose of specifying the scheme for composition. The person executing works contract has the option to pay tax under the composition scheme at the rate of four percent (rate changed from earlier rate of 2% by notification 7/2008 ST wef 01.03.2008) on the gross amount charged for the works contract. Gross amount shall not include the VAT or sales tax paid on the goods transferred during the execution of such works contract but shall include the value of all goods used in or in relation the works contract whether supplied under any the contract for a consideration or otherwise and all services used for execution of the works contract (notification 23/2009 dated 07.07.2009). The option is to be exercised prior to payment of service tax in respect of the said works contract and once exercised, shall be in force till the completion of the works contract.

Exemption

Services in relation to execution of works contract provided by any person to any other person in relation to construction of ports or other ports has been exempted from service tax. This exemption shall not extend to services of completion, finishing, repair, alteration, renovation, restoration, maintenance or repair.

Valuation

A new Rule 2A has been inserted by notification 29/2007 ST dated 22.05.2007, which prescribes the valuation method in case of works contract service. The value of works contract service shall be equivalent to the gross amount charged for works contract less the value of goods transferred in respect of which VAT/sales tax has been paid, during the course of execution of works contract. The gross amount shall not include the VAT and sales tax paid on the goods transferred. The service provider shall ensure that the value of works contract service as aforesaid shall include the following –

- Labour charges for execution of the works
- Amount paid to a sub-contractor for labour and services
- Charges for planning, designing and architect's fees
- Charges for obtaining on hire or otherwise, machinery and tools used for execution of the works contract
- Cost of consumables such as water, electricity, fuel used in the execution of the works contract
- Cost of establishment of the contractor relatable to supply of labour and services
- Other similar expenses relatable to supply of labour and services and
- Profit earned by the service provider relatable to supply of labour and services

Cenvat credit

Where the service provider opts for the composition scheme for the purpose of payment of service tax, he shall not take cenvat credit of duty and cess paid on inputs used in relation to such works contract. However the credit on capital goods used for providing the service as well as the input service credit (sub contractors, insurance, telephone, manpower supply, architect, security, supply of tangible goods, etc) would be available.

Where the service provider does not opt for composition scheme, he should be entitled to cenvat credit on inputs, input services and capital goods used in execution of such works contract.

Possible Issues

1. Whether the works contractor can continue under the existing entries for ongoing contracts?

   Comments: Since there is a new entry it is presumed that service providers may have to choose considering the principles of Section 65A on classification. However if they do not transfer any materials they would continue under

construction or erection categories. Herein it is important to note that the department letter F.No. B1/16/2007 TRU dated 22.05.2007 goes on to say that contracts which are treated as works contract for levying VAT/sales tax shall also be treated as works contract for levying service tax. However, this letter would have to be seen in the light of the explanation to section 65(105)(zzzza), which deals with the contracts which can be regarded as works contract under this category.

2. Whether the works contracts involving materials in progress can also opt for the new entry though earlier they were registered under the old entries?

   Comments: Assessees may note that the department had come out with circular 98/1/2008 ST dated 04.01.2008 which clarified that where service providers had classified their services under other categories viz., erection, commissioning or commercial or industrial construction or construction of complexes, they could not reclassify the single composite service under works contract. This circular also emphasized the fact that a works contract could not be vivisected and that the same was not legally sustainable.

3. Whether the option of availing the credit on all the inputs (cement, steel, glazing, tiles etc) and paying the service tax on the gross amount is still available?

   Comments: The composition scheme is optional and the works contractor can even pay service tax on a value arrived at as aforesaid at the normal rate. The law as it stands today is silent regarding the cenvat credit on inputs in such a scenario as the credit has been expressly barred only in case of an assessee opting for composition scheme. The assessee can as per the humble view of the authors, pay service tax on the gross amount for the service which should include the value of materials transferred if they are to avail Cenvat credit of the excise duties on the materials used for the construction work/works contract service. This could enable the contractor to bring down his construction costs and the benefit of such reduced costs, can be passed on to his buyer.

4. Whether the option chosen under VAT law has any bearing for the classification or valuation under this new entry?

   Comments: The WC option provides for the option of deducting the value on which VAT has been paid and on the balance the service tax would be leviable. This option if chosen would require that the regular scheme under VAT has been

opted for. However for the composition scheme the method under VAT is not relevant.

5. Whether the service providers under the specified categories were not liable for works contracts earlier to this entry?

   Comments: The entry read with the department circular indicates that works contracts were not earlier covered. The purpose for which this entry was bought in also is favorable to this interpretation. Therefore it can be construed that there was no liability earlier. This could lead to a situation where the service provider who has paid the service tax from their pockets (not recovered from the customers) could go for a refund especially if the same was done in pursuance of an investigation.

6. Whether the sub contractors would be exempt as the main contractor is paying the service tax?

   Comments: The sub contractors would also have to discharge the ST under works contract or other categories and would be liable for the tax unless they are below Rs. 10 Lakhs.

Supply of tangible goods for use service

As per Section 65(105)(zzzzj) of Chapter V of Finance Act as amended, taxable service means any service provided or to be provided to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances. Thus if one purely goes by the definition, it may also be possible to argue that what is liable is service in relation to supply of tangible goods without transferring right of possession and effective control of such machinery and not the supply itself.

Concept of tangible goods

The term “tangible goods” has not been defined under the Finance Act and one would have to refer the definition of “Goods” as per Sale of Goods Act. Here, it has been defined to mean every kind of movable property other than actionable claims and money; and including stock and shares, growing crops, grass and things attached to or forming part of the land, which are agreed to be severed before sale or under the

contract of sale. Goods should thus be movable property capable of being bought and sold and capable of being transmitted, transferred, delivered, stored and possessed. Immovable property is not being taxed under this category and would have to be examined under the category Renting of Immovable Property service under service tax.

The term “tangible” would have to be seen in light of the meaning assigned by English Dictionary. As per Random House Webster’s Unabridged Dictionary, tangible means capable of being touched or discernible by the touch. The goods being supplied should be tangible goods i.e. having physical existence and form, in order to attract liability under this category.

Concept of supply, control etc

The term “supply” means to furnish or provide (a person, establishment or place etc) with what is lacking or requisite. The word supply need not necessarily indicate transfer of the right of possession or effective control over the goods/materials in question.

The term “transfer” means “to make over the possession or control of” or “to convey or remove from one place, person to another”.

The term “possession” has been defined as “actual holding or occupancy, either with or without rights of ownership”.

The term “control” has been defined as “to exercise restraint or direction over; dominate, regulate, or command.”

In order to make a transaction of supply of tangible goods not liable under this category, there should be a transfer of both possession as well as effective control over the said goods, to the user. The presumption here seems to be that VAT/sales tax is levied in cases where both right of possession as well as effective control over the goods is transferred to the user. The risk and reward of ownership would lie with the person who enjoys the possession.

Concept of deemed sale

In this regard, it would be interesting to go through Article 366(29A) of the Constitution of India as well as the decision of the Supreme Court in Bharat Sanchar Nigam Ltd and Another Vs Union of India and Others (2006-TIOL-15-SC-CT-LB) wherein the concept of sale, deemed sale and the powers of the states to levy sales tax on deemed sales had

been discussed in detail in light of the 46th amendment to our Constitution. Article 366(29A) after the said amendment, goes thus – "tax on the sale or purchase of goods" includes –

- a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
- a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- a tax on the delivery of goods on hire-purchase or any system of payment by installments;
- a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- a tax on the supply of goods by any unincorporated association or body of person to a member thereof for cash, deferred payment or other valuable consideration;
- a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration;

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made.

The Supreme Court in the aforesaid case (BSNL Vs UOI) had reiterated that the sale element in those contracts not falling under the aforesaid six clauses would be taxed depending on the substance of the contract (i.e. applying dominant nature test). Here, the intention of the parties entering into the particular transaction of sale would be important. However, in cases where the contract falls under any of the six categories specified above under Article 366(29A) of the Constitution of India, the dominant nature test need not apply and the sale element of those contracts can be subjected to sales tax by the concerned state even if one or more of the ingredients for sale as specified by Section 4 of Sale of Goods Act 1930 are absent. Thus one would have to examine the nature of transactions that one intends to bring under this category of service as the

same would also have to be seen from the sales tax/VAT angle to know the overall liability for the assessee.

The departmental letter talks about certain cases where both, right as to possession and effective control may not be transferred to the user. These could cover the present practice of hiring of excavators, wheel loaders, dump trucks, crawler carriers, compaction equipment, cranes, offshore construction vessels and barges, geotechnical vessels, tug and barge flotillas, rigs, airplanes and high value machineries. There may however, be cases where hiring of equipment involves exercising of control over such equipment albeit temporarily, by the user without physically operating the same. In such a scenario, the transaction would be liable under service tax. Here, there is a danger of the transaction inviting scrutiny of the LVO as well.

Assessees may here note that transfer of right to use goods for any purpose falls under clause (d) of Article 366(29A) of Constitution of India which can be subjected to sales tax by the concerned states as a deemed sale. Here, the right in question is legal right to use goods. As discussed in BSNL Vs UOI case, to constitute a transaction for the transfer of the right to use the goods the transaction must have the following attributes –

- There must be goods available for delivery
- There must be consensus *ad idem* as to the identity of the goods
- The transferee should have a legal right to use the goods – consequently all legal consequences of such use including any permissions or licenses required therefore should be available to the transferee
- For the period during which the transferee has such legal right, it has to be to the exclusion of the transferor
- Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others

Where the aforesaid criteria are satisfied in a transaction, the same would fall under clause (d) of Article 366(29A) of Constitution of India and would attract sales tax. When the transaction is subject to sales tax, the same cannot be subject to service tax. Even where the transaction is one of hiring, the question of levying sales tax/VAT would arise where full possession and control is given to the hirer/user as per the decision rendered in Rashtriya Ispat Nigam Vs State of Andhra Pradesh (2002-TIOL-560-SC-CT).

Exemptions

The supply of goods carriage to a Goods Transport Agency for carriage of goods by road liable under GTA service, without transferring the right as to possession and effective control, has been exempted under notification 1/2009 ST. The usage of the vehicle should be by the said GTA.

Benefits – Cenvat Credits

The service provider is entitled to claim cenvat credits on the input services used for providing such taxable service, in the opinion of the authors. Input services could be in the nature of manpower recruitment and supply services, authorized service station services, security services etc. The credit of excise duty on capital goods would also be admissible where the equipments are procured by the assessee/service provider from a manufacturer or a dealer registered under Central Excise and then supplied to the user. However, the goods in question should not fall under the category of motor vehicles as credit would not be available on them. Credits would also be admissible in terms of the excise duty on the spares.

Construction of complexes

Section 65(91a) defines “residential complex” to mean any complex comprising of -

(a) A building or buildings, having more than 12 residential units;

(b) A common area; and

(c) Any one or more of facilities or services ***such as*** park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force,

but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for **personal use** as residence by such person.

Further an explanation is added to the construction of complex service definition vide the Finance Bill, 2010 in section 65(105)(zzzh) which states that where the complex is intended for sale, wholly or partly, then any sum received from the prospective buyer by the builder, before, during or after construction; before the grant of the

completion certificate by the competent authority would be deemed to be service provided and hence taxable.

There are two explanations to this clause which are as follows –

(a) “personal use” includes permitting the complex for use as residence by another person on rent or without consideration;

(b) “residential unit” means a single house or a single apartment intended for use as a place of residence

Thus, in order to be regarded as a residential complex, a complex should have more than 12 residential units. Where this condition is not satisfied, there cannot be a liability under this heading. Readers may note that the definition of “residential complex” given above would hold good even under works contract category. Thus where the service of construction of complex is involved with transfer of property in goods during such execution, the said complex is required to have more than 12 residential units in the absence of which, the said service would not be liable even under works contract service.

The term “complex” has not been defined and if one refers Random House Webster’s Unabridged Dictionary, “complex” has been defined to be composing of many interconnected parts.

Service provider-service receiver relationship

Circular No. 96/7/2007 ST dated 23.08.2007 talks about the importance of service provider and service receiver relationship existing in order to attract liability under service tax. This circular clears doubts about liability when the builder/developer himself constructs the residential complex. When the construction work is not taken up by another contractor and the builder/developer/promoter himself undertakes the same, there is no service provider-service receiver relationship and the services are in the nature of self supply and hence not liable to service tax.

Whether sub-contractor liable?

The aforesaid circular also clarifies the liability of the sub-contractor who provides taxable service in relation to construction of residential complex (i.e. complex having more than 12 residential units). Where the builder/developer/promoter appoints a

contractor for carrying out the construction work, such contractor would be liable to service tax. The liability would be on the gross amount for the taxable service. The circular also goes on to clarify that wherever a portion of the work is sub-contracted and the sub-contractor provides taxable service, he would be liable to pay service tax.

In Magus Construction Pvt. Ltd. Vs UOI (2008 (11) STR 225 (Gau.)), the High Court held that where the flats/premises were constructed and then transferred to the buyers/customers under a sale agreement on completion of construction and the agreements had been relied on by the registering authorities and stamp duty levied on the basis of such agreement, the transaction was one of sale and not service and hence service tax could not be levied. This position had also been maintained earlier by the Allahabad High Court in Assotech realty Pvt. Ltd Vs State of UP (2007 (07) STR 129 (All)).

Circular 108/02/2009 ST 29.01.2009

This circular discusses the liability where the flats/properties are transferred by the builders/promoters/developers after completion of construction by them and transfer is by executing a sale deed after receipt of full payment. Where the property is so transferred, there would not be service tax liability.

However, if the construction work is undertaken by another contractor hired by the builder / promoter / developer, then such contractor would be liable to service tax as the service provider-service receiver relationship would come into play. This has also been indicated by the circular 96/7/2007 ST stated earlier.

Another aspect which has been clarified by the circular is with regard to liability where the construction, planning and design are undertaken by the builder or promoter or developer in pursuance of a contract with the ultimate owners (being the flat owner/residents). In such a scenario, the service tax liability would not arise where the property is intended for personal use of the ultimate owner. This is an important clarification as the builder/ flat owners can now examine the option of refund where service tax had been collected from them.

Where however, a contractor is hired for construction by the developer/builder, the position for the contractor would be the same as explained earlier i.e. the contractor would be liable to service tax.

Exemption

Assessees who are liable under this heading would be entitled to the benefit of notification 1/2006 ST dated 01.03.2006 which exempts taxable service of the value of 67% of the gross amount charged from service tax. In other words, service tax would be payable on 33% of the gross amount. The assessee would have to keep couple of points in mind –

1. This exemption is not available in respect of completion and finishing services alone being provided
2. The gross amount shall have to include the value of materials and goods transferred during construction as well
3. The service provider would not be entitled to benefit of Cenvat credits on inputs, input services and capital goods used for the said service as well as benefit of notification 12/2003 ST

Assessees are also advised to be careful while opting for the benefit of this notification where the contract involves transfer of property in goods which are of high value. In such circumstances, the assessee would lose out on the credits of excise duties on construction materials as the benefit of credits can be claimed only when the service provider pays service tax at the normal rate i.e. 10.3%. This can at times prove to be a better option as the excise duties would go towards reducing the cost of materials used in construction, a benefit which can be passed on to the service receiver.

What is the distinction between the category of works contract service and this category?

Readers may note that there are two categories which virtually cover the same set of activities though with a difference. The works contract category covers the activities specified in clauses (a), (b) and (c) in the definition of “construction of complex” given above within its scope. However, assessees would have to ensure that the service they provide is classifiable under the heading works contract service. This can happen where the service in relation to construction of complex involves transfer of property in goods

during its execution. Unless there is transfer of property in goods, the same would not be classifiable under works contract.

Whether the buyers of the apartment can opt for claiming refund of service tax?
Yes, if the buyer has borne the incidence of the amount collected as service tax they can apply for the refund. The amounts paid for the past 1 year as set out in Section 11B would be clearly available. However for the period prior to that the matter may have to be litigated on the argument that the amount was not a tax at all as there was no liability under law for the same.

Special Service by Builder

This service intends to cover the charges collected by the builder from the prospective buyer for providing preferential location or for the development of residential complex, or a commercial complex. This service does not include the service provided in relation to Repairs, Management or Maintenance, commercial or industrial construction, construction of complex and in relation to parking place.

Explanation defines ‘‘preferential location to mean to have any location having extra advantage which attracts extra payment over and above the basic sale price. The definition is very wide to cover the development of commercial or residential complex. However the TRU circular has clarified that scope of tax under this service to be internal or external development charges which are collected for

a. developing/maintaining parks,
b. laying of sewerage and water pipelines,
c. providing access roads and common lighting etc;
d. fire-fighting installation charges;
e. power back up charges etc

Hence any amount collected by the builder in this respect will not get taxed prior to the introduction of this service.

TRU circular also clarifies Development charges, to the extent they are paid to State Government or local bodies, will be would be excluded from the taxable value levy, however the notification for the same is not in place as of now.

Business Auxiliary Service

Business auxiliary service is perhaps one of the most important services liable to service tax. This is one category which should be noted by manufacturers under Central Excise as well. The activities liable here would be production, processing of goods for or on behalf of client, provision of services on behalf of client, promoting or marketing the service/goods of client, customer care service on behalf of client, procurement of goods or services which are inputs for the client plus a service incidental or auxiliary to services covered above. Production or processing would not cover activities amounting to manufacture, as per Central Excise Act 1944 of excisable goods.

Thus where one provides services on behalf of another party or production is done for a client, the same would be liable to service tax here. With regard to production or processing of goods undertaken there is a notification (8/2005 ST) which provides an exemption from service tax where the goods so processed or produced are used in subsequent manufacturing of dutiable goods by the client. This would basically provide relief to job workers who undertake processing of goods, which does not amount to manufacture as per Central Excise law.

Many of the services provided by BPO industry would be falling under this category as services are provided to third parties on behalf of the client.

One of the activities liable here is that of procurement of goods and services, which are inputs for the client. This service has to be distinguished from the services of a clearing and forwarding agent. The C&F agency services also include the services provided by a consignment agent. While commission agents would be liable under BAS, consignment agents would be liable under C&F agent's services. While both commission agent and consignment agent are agents, there are differences between the scope of their activities and their relationship with the principal as well as their dealings with third parties concerned.

The commission agent can either act on behalf of the principal in his dealings with third parties or act in his own name and deals with goods or services or documents of title to such goods or services, collects payment of sale price of such goods and services, guarantees for collection of payment for such goods and services, undertakes activities in relation to sale or purchase of such goods or services. The scope of consignment

agent's work is narrower as compared to that of a commission agent and may be restricted to mere handling of goods or taking custody on a temporary basis for facilitating either storage or movement of goods. There may be cases where a consignment agent also acts as a commission agent in which case, the classification would have to be done keeping in mind the essential characteristics of the agreement.

Support services of business or commerce

The term "business" has not been defined for the purposes of this clause and one would have to go by the meaning assigned by a standard dictionary. As per Random House Webster's Dictionary, the term "business" means an occupation, profession or trade. "Commerce" has been defined as an interchange of goods or commodities between different countries or between areas of the same country. Thus in order to render the service provided liable to service tax as a taxable service under this clause, the service should be one which supports the service receiver's business or commerce. Where the service cannot be related to his business or commerce, the service provided, in our view, cannot be brought under this heading.

For the purposes of this clause, "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security. The term "infrastructure" has been defined by Random House Webster's Dictionary as the basic underlying framework or features of a system or organisation.

BAS Vs BSS

Assessees should note the distinction between the two categories being discussed here. Compared to the Business Support Service category, the category of Business Auxiliary Service is more specific seeking to tax specified activities/services. There can be confusion at times where the services provided are those such as billing, issue or collection or recovery of cheques, payments or maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relations service, management or supervision as these too are services in relation to business or commerce. But one essential difference between the two categories being discussed here is that while business support service seeks to tax outsourced service in relation to business or commerce, business auxiliary service would apply to those services which are ***incidental or auxiliary*** to services of promotion or marketing of goods or service provided by client, customer care service provided on

behalf of the client, procurement of goods or services which are inputs for the client, production or processing of goods for or on behalf of the client or provision of service on behalf of the client.

One should also see whether services are provided to a client or on behalf of the client to a third party. Where the services covered here are provided on behalf of the client to a third party, the same would be liable under business auxiliary service as services provided on behalf of the client.

BSS Vs Renting of Immovable property service

Business Support Service also includes infrastructural support services within its purview. At the same time assessees should note the presence of another service category and that is renting of immovable property service which was amended recently to include the service of letting out space temporarily. Where space is let out temporarily without transferring the right as to ownership and control over such space to the service receiver, the same would be liable under the category renting of immovable property. Now a situation can arise say, where space is provided in an office to an entity to either set up its counter for promoting its business/service or even a help desk to assist the employees of the organisation. In such a scenario one would have to scan the agreement if it is available, to understand the exact nature of service involved. In order to tax the service under BSS, the setting up of the counter or help desk should qualify as a service which would support or supports the organisation's business or commerce. Sometimes answering this question could prove to be tricky where the service may not support the organisation's business directly though it may help its employees as in case of the help desk mentioned above.

BSS Vs Consulting Engineer Service Vs Business & Management Consultancy

Sometimes advice as well as services which support service receiver's business, may be provided by the service provider. In such cases, the service agreements would have to be reviewed to see whether the service is really a composite one or the services involved can be identified separately. In case of composite services, the service would be classified on the basis of the service which gives it the essential character. Here it would be worthwhile to note the circumstances under which advice, consultancy or technical assistance can fall under consulting engineer's category. Such advice, consultancy or technical assistance should be provided by a consulting engineer i.e. professionally qualified engineer or a body corporate or firm providing such service, in one or more disciplines of engineering.

Sometimes we may also have a scenario where advice in relation to management is given by the service provider. In that case, we would have to look at another taxable service namely, management or business consultant's service. Once again in case of composite service involving advice as well as services supporting business, the classification would have to be on the basis of the service which gives the same its essential character. Here one would have to distinguish between services in relation to management and those which merely support the business. Services which enable the service receiver to effectively manage or organise his business can be said to fall under management or business consultant's service.

BSS Vs Mailing List compilation and Mailing Services

Assessees should note that where the services are provided in relation to mailing list compilation and mailing, the said service would have to be seen in light of the taxable service of mailing list compilation and mailing service. For this, the assessee would have to analyse whether the service is one of pure mailing or whether it is part of a larger bouquet of services. In case of the latter, the classification would have to be done as explained earlier i.e. using the essential character test. Where the service is only in relation to compiling and providing list of name and address and any other information from any source or merely sending document, information, goods or any other material in a packet by whatever name called, by addressing, stuffing, sealing, metering or mailing, the same would be classifiable under mailing list compilation and mailing service.

BSS Vs Development and Supply of Content

The activity of telemarketing i.e. selling or advertising over telephone would be liable under BSS. However there can be a scenario where a service provider develops the content for such advertising and then takes up the activity of telemarketing as well. When the essential character of the service or arrangement is one of telemarketing, the same would be liable under BSS in our view. But where the service is essentially one of development and supply of content, the same would have to be seen under another heading. Services in relation to development of supply of content for use in telecommunication services, advertising agency services and on-line information and database access or retrieval services would be taxed under the separate heading development and supply of content service.

BSS Vs Manpower Recruitment or Supply agency's service

Another aspect which merits attention is the manner in which support services of business or commerce are obtained. The analysis of Service level Agreements along with the Statement of Work (for examining what are the deliverables) in most of the cases where processes are outsourced, would assume significance as there have been cases where the agreements were essentially for supply of manpower though the activities undertaken were intended to support the service receiver's business. Where the agreement is one for supply of manpower where the personnel continue to be the service provider's employees but work on support services to service receiver's business under receivers supervision would be liable under manpower recruitment or supply agency's service. In this case the service is merely of supplying people with the requisite skill / qualifications. Such supply may be temporary or otherwise. This would have some implications as manpower recruitment or supply agency's services has been in existence for quite sometime now though BSS was introduced only with effect from 01.05.06.

BSS Vs On-line information and Database Access and/or Retrieval service

Support services of business or commerce may also involve usage of computer network by the service provider, for the purpose of sending/receiving information to/from the service receiver. As per the views of the paper writers, one would have to see whether such usage of computer network is only incidental to carrying out the support services for business or commerce. This would have to be evident from a reading of the agreement. Where the main intention is to carry out the activities laid down under this category, it should be possible to hold the service provided as liable under business support service though revenue may try to classify the same under on-line information and data base access or retrieval service.

Sale of goods

Service providers may at times end up transferring property in goods during the course of providing taxable service. Where this happens, the benefit of notification 12/2003 ST which provides an abatement for the value of goods and materials sold, can be availed by the service provider where he charges VAT/CST on the value such goods sold.

In SR Kalyanakrishnan & Sree Krishna Mandiram Vs CCE Cochin (2007-TIOL-1914-CESTAT-Bang), the service of verification of correctness, fairness and authenticity of information furnished by those seeking loan from ICICI bank was distinguished from activity of promoting the client's business and held to be liable under Business Support Service and taxable from 01.05.06 and not under Business Auxiliary Service and therefore not taxed for the service provided prior to 01.05.06

In Jaded Siddappa & Co Vs CCE Mangalore (2007 (09) LCX 0201 Tri-Bang), the activity of outsourcing of meter reading, billing and ledger posting was held not to fall within the ambit of professional activity of Chartered Accountants and was held to be classifiable under business support service. Thus, in other words, just because support services happen to be provided by professionals, the same would not be assessable as a professional service unless the professional is really called upon to bring in his professional expertise in carrying out or performing the service.

Interior decorator

It may be seen from the definitions that the interior decorator may be any person including an individual and need not be a firm/corporate assessee. The interior decorator should be providing the services of planning, designing or beautification of spaces and this service may be by way of advice, consultancy, technical assistance or may also be provided in any other manner. Landscape designers have also been made liable under this category even though the services they render is generally outdoor in nature.

In order to tax the service under this head, the presence of advice, consultancy or technical assistance is a requirement and in the absence of these requirements, the liability cannot be under this head. In this regard, the advisory function as is covered here should be distinguished from the function of execution. Where an assessee executes the task of beautification of spaces or landscaping on the basis of the advice of a consultant, he would not be liable and the liability would be on the consultant for providing such advice.

Whether Vaastu / Feng Shui consultants liable?

These consultants normally offer advisory services in relation to planning, designing or beautification of spaces and therefore would be liable under this category.

Whether sub contractor liable?

Yes. Post 23.08.07, even sub contractors are required to pay the service tax and the principal is to avail the credit at his option, on the service tax paid.

Value for service tax

The interior decorator may wherever possible, try to bifurcate the contract into one of advice and one of supply and execution/supply of materials. This would enable him to identify the charges towards advice which can then be taxed under the interior decorator category with supply of materials suffering VAT/CST as this would reduce the scope for

litigation. The interior decorator in such a case would be entitled to benefit of notification 12/2003 ST with regard to sale of materials subject to payment of VAT/CST.

Renting of cabs

The service provider may be any person engaged in renting of motorcab, maxicab or motor vehicle as put down in the definition explained above. Thus even an individual would be liable if he is engaged in renting of cabs. As per the clarification given by the Chief Commissioner of Central Excise Coimbatore, rent a cab does not cover metered taxis or radio taxis used for transportation from one place to another, as they are not rented as such for a period of time.

It is worthwhile to note here that the definition of rent a cab operator had been amended in 1998 and till such time the levy was only on a person who held a license under the Rent a cab scheme 1989 framed by the central government under Motor Vehicles Act 1988. Consequently, persons having a minimum of 50 cabs alone were taxed as such persons alone were given licenses.

With effect from 01.06.07 the clause relating to motor vehicles carrying more than twelve persons was inserted to expand the scope of levy under this category. At the same time, a relaxation has been introduced by way of exclusion of renting of maxi cabs and motor vehicles by an educational body. Educational body for this purpose shall not include commercial training or coaching center. Thus with effect from 01.06.07 while renting out of motor vehicles other than motor cabs and maxi cabs would be liable, renting of maxi cabs and motor vehicles (designed to carry more than twelve passengers excluding the driver) by educational bodies would be exempt.

Ownership of vehicles not the criteria for charging service tax

As decided in Transport Solution Group Vs. CCE Mumbai ((2006) 1 STR (309) – Tr—Mumbai) case, the service provider would be liable even if he does not own the motor vehicles. However where he does not own the motor vehicles, credit on such vehicles as capital goods might not be available as the definition of capital goods under Cenvat Credit Rules 2004 requires vehicles to be registered in the name of the service provider.

Whether transport of employees from office is liable or is to be distinguished?

It is interesting to note that the decisions given by the Tribunals have led to considerable confusion in this regard. In Shiva Travels Vs. CCE, Meerut case ((2006) (4) STR (588) (Tri-Del)), the assessee was held liable even though he tried to argue that the

possession of the vehicle had not been transferred to the client and that his own driver was in control of the vehicle/cab. This decision was also followed in Sonia Travels Vs. CCE Jaipur, case.

However in Kuldip Singh Gill Vs. CCE, Jalandhar ((2006) (3) STR 689 (Tri-Del)) case, the Tribunal sought to distinguish between renting of cabs and hiring of cabs for transportation under a contract where the vehicles were not leased to the client for use at his discretion. In this case, only renting of cabs was held liable and not all manner of transport or vehicle hire services. As per the discussion held under this case, where the vehicles are not rented or leased for use by the client at his discretion, service tax need not be levied. The same stance was also adopted by the Ahmedabad Tribunal in Dharmabhakti Travels Vs. CCE, Rajkot case.

In Surya Tours and Travels Vs CCE Jaipur II (2008-TIOL-2035-CESTAT-DEL), the activity of providing a cab on hire on per-kilometre basis by providing driver and retaining control of vehicle, was held not to be liable to service tax.

Mere hiring of cabs could be liable under supply of tangible goods for use service, and that too, if one were to strictly follow the said category without question the levy.

Readers are also advised to refer chapter on exemptions for the exemptions on this category.

Tour operator's service

The service provider is required to be a tour operator. Where the service provider holds a tourist permit granted under the Motor Vehicles Act 1988, he shall automatically be covered under the definition of tour operator. One may note that the earlier definition of tour operator had been amended in 2004 to expand the scope of the category by including transport by any mode as being liable rather than the earlier concept of operating tours in a tourist vehicle (as per Motor Vehicles Act 1988) alone being liable.

What is liable is not just package tour but even mere booking or arranging of accommodation by the tour operator as well as other services provided in relation to a tour by the tour operator. Services provided in relation to tours abroad would not be taxed and in case of composite tours one would have to refer Export of Service Rules 2005 to find out whether the same would amount to export of service. The liability extends to contract carriage as well.

The concept of “tour” does not include a journey organized or arranged for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field.

Whether tour in a vehicle having stage carriage permit is liable?

The definition with effect from 16.05.08 does not cover transport under stage carriage permit and therefore the same would not be liable. Transport under contract carriage would be liable provided the operator engages in planning, scheduling, organizing or arranging tours.

In Tamil Nadu State Transport Corporation Ltd Vs CCE Trichy (2009-TIOL-623-CESTAT-Mad), the activity of deploying the Tamil Nadu State Transport Corporation buses to transport employess of BHEL from various points was held not to be liable to service tax under this category.

Whether services in relation to composite journeys where part of travel is abroad and part of it is in India be liable?

If one goes through circular 96/6/2007 dated 23.08.07 issued by the department, the gross amount would be liable where the ultimate destination is outside India or it is a round the world trip and one lump sum amount is charged.

Readers should also refer the chapter on exemptions for exemptions under this category.

Commercial training or coaching

A review of the definitions would reveal that any institute or establishment imparting skill or knowledge or lessons on any subject other than sports would be liable. The service in relation to commercial training or coaching may be provided to any person. But where the said institute or establishment issues any certificate or diploma or degree or any educational qualification recognized by law, there would be no liability under this category on such coaching/training. Here, readers should note that where the institute or establishment issues a degree or diploma or certificate or educational qualification recognized by law, the said institute or establishment would not be regarded as a commercial training or coaching centre at all and therefore even other coaching services like preparation of candidates for entrance exams or competitive exams would not be liable to service tax. This has also been clarified by Circular 59/8/2003 ST dated 20.06.2003. Preschool coaching would also not be liable.

Thus where the taxability is to be examined under this heading, one should first of all ascertain whether the service provider can be regarded as a commercial training or coaching centre at all. Vide the Finance Bill, 2010 an explanation was added, with effect from 01.07.2003, that a commercial training or coaching centre shall include any training centre or institute whether registered as a trust or society or not and whether having profit motive or not. Hence now exclusion cannot be claimed by non-profit organizations. Where the service provider cannot be regarded as a commercial training or coaching centre, the service provided cannot be held to be liable under this category. In this regard, the meaning of the terms "establishment" and "institute" would have to be studied. These terms have not been defined under service tax but if one were to refer Random House Webster's Dictionary, the following would emerge –

"Establishment" can mean a permanent civil, military or other force or organisation. "Institute" in this context, means a society or organisation for carrying on a particular work, as of a literary, scientific or educational character. So, unless the service provider can be regarded as being an establishment or institute, there cannot be a liability under this heading.

Services provided in relation to commercial training or coaching by a vocational training institute or a recreational training institute

The services in relation to commercial training or coaching provided by a vocational training institute or a recreational training institute to any person, has been exempted from service tax vide Notification 24/2004 ST dated 10.09.2004. For this purpose, "vocational training institute" means a commercial training or coaching centre which provides vocational training or coaching that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching. A "recreational training institute" means a commercial training or coaching centre which provides training or coaching relating to recreational activities such as dance, singing, martial arts or hobbies.

Services provided by a commercial training or coaching centre to an institute or establishment leading to issue of degree or certificate or educational qualification recognized by law

The services in relation to commercial training or coaching provided by the commercial training or coaching centre would be exempt from service tax where the same forms an essential part of the curriculum or course of the other institute or establishment leading to an issue of degree or certificate or diploma or educational qualification recognized by

law for the time being in force. This exemption has been in force from 01.07.2003 under Notification 10/2003 ST dated 20.06.2003.

Services in relation to commercial training or coaching provided by a computer training institute

Notification 19/2005 ST dated 07.06.2005 was issued by the Government which specifically excludes services in relation to commercial training or coaching provided by a computer training institute, from the purview of exemption notification 24/2004 ST. In other words where a computer training institute provides vocational training, the same would not be exempt from service tax. Though this amendment was made in 2005, the services referred to here, enjoyed specific exemption under notification 9/2003 dated 20.06.03 whose validity had been extended up to 30.06.2004. For this purpose, the "computer training institute" was defined to be a commercial training or coaching centre which provides coaching or training relating to computer software or hardware.

Whether the service of pre-screening of candidates and conducting assessment tests in order to admit them to specific courses, is liable under this category?

No. This activity cannot be liable under this heading where no skill or knowledge transfer is involved. The activity would have to be seen under the heading Manpower recruitment or supply agency's services where once again the same would not be liable as the service is not in relation to recruitment/supply.

Whether the computer training provided to clients now would be taxable?

Yes. The exemption on vocational training under notification 24/2004 ST was revoked in 2005 with regard to training provided by a computer training institute. Therefore, computer training (whether in relation to software or hardware) provided now would be taxable even if the same is to enable the client to take up employment or to engage himself in self-employment.

Whether higher education is to be distinguished from commercial training and coaching as defined under Finance Act

The decision given in Great Lakes Institute case has also been followed in Magnus Society Vs Comm. Of Customs, Service Tax and Central Excise Hyderabad (2008-TIOL-1812-CESTAT-Bang) where the Tribunal went one step further to distinguish higher education (like MBA and Management in Computer Science or other disciplines) from commercial training and coaching as defined under Finance Act as higher education was far more comprehensive as compared to training in particular skill. Higher education could include coaching and training but vice-versa was not possible. But whether this

view would prevail in the long run is something that would have to be seen in due course of time.

Whether commercial training or coaching institutes which prepare applicants for Board Exams or competitive exams or entrance exams etc are liable to service tax?

Yes. This matter had been specifically clarified by Circular 59/8/2003 ST dated 20.06.2003 which held the said service of preparing applicants for competitive exams, liable to service tax.

Postal coaching

Even postal coaching i.e. distance education where coaching is done by sending across materials to the candidates would be liable to service tax. The service provider would however have to examine the option of availing the benefit of Notification 12/2003 ST in respect of the value of the goods and materials sold to the service receiver. Circular 59/8/2003 ST clarifies that where the service provider sells standard text books which are priced, the same can be excluded for the purpose of charging service tax. The value being charged for sale of books should be separately identifiable. Readers may however note that the Tribunal had granted a stay on recovery of service tax in Chate Coaching Classes (P) Ltd Vs CCE Aurangabad (2008 (09) STR 207 (Tri-Mum)) where the department had sought to deny benefit of notification 12/2003 ST where the books sold were not standard text books. The Tribunal held that the circular cannot whittle down the effect of a notification. The assessee would however do well to wait for some more clarity in this regard if benefit is to be claimed without any hassles.

Circular 107/1/2009 ST dated 28.01.2009

This Circular seeks to clarify many of the doubts that have arisen with regard to taxability of commercial training or coaching services under his category. The following aspects have been clarified –

Objective of the institute or establishment providing commercial training or coaching

The objective of the institute or establishment may not be to make profit. In other words, even not for profit organizations would be liable to service tax. The circular draws distinction between the nature of training provided by the institute and the motive of the institute in providing such training. The training should however be for a consideration as there cannot be service tax liability in the absence of consideration.

There may be a view contrary to the one given above if one were to go by the decision of the Tribunal in Great Lakes Institute of Management Ltd Vs CST Chennai (2008 (10) STR 202 (Tri-Chennai)) where service tax was held to be applicable only where the

institute providing education was a commercial concern. This view of the Tribunal was contradictory to the Commissioner's view that what was essential was the commercial nature of the services provided and not the nature of the entity itself i.e. whether the entity could be regarded as a commercial concern or not. Interestingly, this view of the department has now been put forth in the new circular 107/1/2009 ST which could lead to some more litigation in this area.

The view of the department regarding the training and coaching service having to be commercial would also have to be studied. Presently this is not clear.

Where private institutes issue a diploma or certificate of educational qualification to students which are recognized abroad and which enable them to secure jobs, the same would not be covered under the exempted category and would be liable to service tax unless such qualification is recognized by statutory authorities like UGC or AICTE.

Institutes providing general course on improving certain skills

The circular specifically covers certain general courses aimed at personality development, improving general grooming, communication skills, effectiveness in group discussion and in facing personal interviews, provided by institutes and holds such courses liable to service tax by distinguishing them from vocational courses which would equip the candidates to take up employment or engage themselves in self-employment. Thus institutes providing general courses and not paying service tax run the risk of facing SCNs from the department where none has been issued so far.

Management or business consultant's services

What is sought to be taxed under this category is the taxable service provided by a management or business consultant in connection with the management of any organisation or business. The areas which are generally dealt with are those spanning – financial management, human resource management, marketing management, production management, logistics management procurement and management of information technology resources or other similar areas of management.

While the service provider is to be a management or business consultant, there is no specific requirement as to educational qualification and this was also highlighted in Parasmal Bam Vs CCE Indore (2006 (03) STR 73 (Tri-Del)).

Management consultancy Vs Consulting engineer Vs Scientific or technical consultancy service

Readers should be able to distinguish between management consultancy services and that of consulting engineer. The classification of the taxable service would be under the latter category when the service involves advice, consultancy or technical assistance in any manner in one or more disciplines of engineering including computer hardware engineering. The consultancy can be by a professionally qualified engineer or by any body corporate or firm. The liability would be under management or business consultant's service where the advice, consultancy or technical assistance is in relation to management as explained earlier. This would have to be ascertained by reviewing the agreement. Sometimes there could be some confusion especially in terms of production related advice or consulting in case of a manufacturer and the dominant nature of the service would have to be ascertained as to whether it is one of advice in engineering field or one of advice in relation to management of the function itself.

The question of the service being liable under scientific or technical consultancy service would arise where advice, consultancy or scientific or technical assistance in one or more disciplines of science or technology is provided by scientist or technocrat or a science or technology institution or organisation. Thus a proper understanding of the contract would be critical.

Composite services

Readers may also note that there may be cases where a composite contract is entered into like for instance an agreement/contract for operating and maintaining a power plant. In such a scenario, one question that arises is whether such an agreement can be broken up/ vivisected in order to identify possible service elements and tax the same. In CMS (I) Operations & Maintenance Co. (P) Ltd Vs CCE Pondicherry (2007 (07) STR 369 (Tri-Chennai)), the Tribunal held that the contract was for generation of power and that no taxable service was provided and that generation of electricity was within the meaning of manufacture under Central Excise.

Health Service

This service intends to cover the service provided by any hospital, nursing home or a multi-specialty clinic in relation to health check-up, preventive care or treatment in certain cases. Such services would be taxable only when:

a. Any health check-up or preventive care is given to an employee of a business entity and the payment for the same is made by such business entity

b. Any health check-up or treatment is given to a person covered by health insurance scheme and the payment for the is made by the insurance company.

This service was introduced by the Finance Bill, 2010 and the effective date of taxing this service is yet to be notified.

With the introduction of this service, now the hospitals are also into tax net and they would be eligible to take the CENVAT credit on the excise duty paid on capital goods, input service and service tax paid on input service. On the other hand the Insurance Company or the Business Entity (if manufacturer or taxable service provide) would be eligible take the credit of the same.

In the Finance Act 2009 the service provided in relation to cosmetic surgery was covered and this time this service has been introduced, which gives an indication that slowly this service may expand substantially. However the hospitals will be benefited by this service being taxable if the credit planning is done effectively.

Legal Consultancy service

This services covers services provided in relation to advice, consultancy or assistance in any branch of law, in any manner but does not include any service of appearance before any court of law or statutory authority. Further the service provider and service recipient shall be business entity for the same to be taxable. Hence where service is provided by an individual or service is received by an individual then there is no liability.

Business entity includes an association of persons, body of individuals, company or firm but does not include an individual.

This service was introduced by the Finance Act, 2009 and the effective date of taxing this service is yet to be notified.

Services that would be exempt under this head

The circular 334/13/2009 dated 06.07.2009 clarifies the exclusion of appearance before any court of law or appearance before any statutory authority from service tax. So preparation of memorandum appeal which are submissions before statutory authority in support of the case would also not be liable. Further preparation and certification of affidavit, acting as an official liquidator etc. would be outside the purview of service tax.

Services that might get covered under this head

Preparation of notice by lawyer firm would get covered as it would be in the nature of technical assistance and any consultancy or advice provided by non individual to a non individual would get covered.

In opinion of the authors, lawyers are professionals as they are not engaged in any activity of trade, but render service to the clients as they are governed by the code of ethics similar to the Chartered Accountants. Therefore they may not be considered as business entities and consequently may not be covered.

Brand Promotion service

This service intends to cover the under mentioned activity done by appearing in advertisement and promotional event or carrying out any promotional activity for such goods, service or event

a. promotion or marketing of a brand of :
    i. goods,
    ii. service,
    iii. event
b. endorsement of name including a :
    i. trade name,
    ii. logo of a business entity
    iii. house mark of a business entity

Brand has also been defined for this purpose to include symbol, monogram, label, signature or invented words which indicate connection with the said goods, service, event or business entity.

The service in relation to promoting or marketing or sale of goods is already covered under the category “Business Auxiliary Service”, however the cases of promotion of the brand of the company per say and not related to any product was escaping tax net, to tap this type of promotion, a new service has been introduced. The TRU circular expresses the intention of introduction of this service as to tax the celebrities (film stars, cricketers etc) who acts a brand ambassador

CHAPTER 19 - TABLE OF SERVICES TAXABLE U/S 65(105)

Category	***Levied from***	***Scope***
Advertising Agency Service	1-11-1996	Taxable service in this regard is defined under section 65(105)(e) as any service provided or to be provided to any person, by an advertising agency in relation to advertisement, in any manner;
Advertisement – Sale of space or time Services	1-5-2006	Taxable service in this regard is defined under section 65(105)(zzzm) as any service provided or to be provided to any person, by any other person, in relation to sale of space or time for advertisement, in any manner; but does not include sale of space for advertisement in print media and sale of time slots by a broadcasting agency or organization ***Explanation 1***. — For the purposes of this sub-clause, economy class in an aircraft meant for scheduled air transport of passengers means, — (i) where there is more than one class of travel, the class attracting the lowest standard fare; or (ii) where there is only one class of travel, that class. ***Explanation 2***. — For the purposes of this sub-clause, in an aircraft meant for non-scheduled air transport of passengers, no class of travel shall be treated as economy class;
Air Travel Agent's Services	1-7-1997	Taxable service in this regard is defined under section 65(105)(l) as any service provided or to be provided to any person, by an air travel agent in relation to the booking of passage for travel by air;
Airport Services	10-9-2004	Taxable service in this regard is defined under section 65(105)(zzm) as any service provided or to be provided to any person, by airports authority or any person, in an airport or a civil enclave;

		Provided that the provisions of section 65A shall not apply to any service when the same is rendered wholly within the airport or civil enclave.
Architect's Services	16-10-1998	Taxable service in this regard is defined under section 65(105)(p) as any service provided or to be provided to any person, by an architect in his professional capacity, in any manner;
Asset Management Service By Individuals	1-6-2007	Taxable service in this regard is defined under section 65(105)(zzzzc) as any service provided or to be provided to any person, by any other person, other than by an agency under the control of, or authorised by, the Government, in relation to survey and map-making;
ATM operation, Maintenance or Management service	01.05.2006	Taxable service in this regard is defined under section 65(105)(zzzk) as any service provided or to be provided to any person, by any other person, in relation to automated teller machine operations, maintenance or management service, in any manner;
Auction Services	1-5-2006	Taxable service in this regard is defined under section 65(105)(zzzr) as any service provided or to be provided to any person, by any other person, in relation to auction of property, movable or immovable, tangible or intangible, in any manner, but does not include auction of property under the directions or orders of a court of law or auction by the Government; ***Explanation***.—For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "auction by the Government" means the Government property being auctioned by any person acting as auctioneer.
Banking and other Financial Services	16-7-2004(Forex broker w.e.f. 1-7-2003)	Taxable service in this regard is defined under section 65(105)(zm) as any service provided or to be provided to any person, by a banking company or a financial institution including a non-banking financial company, or any other body corporate or commercial concern, in relation to

		banking and other financial services;
Beauty Treatment Services	16-8-2002	Taxable service in this regard is defined under section 65(105)(zq) as any service provided or to be provided to any person, by a beauty parlour in relation to beauty treatment
Broadcasting (Radio and Television)Services	16-7-2001	Taxable service in this regard is defined under section 65(105)(zk) as any service provided or to be provided to a client, by a broadcasting agency or organisation in relation to broadcasting in any manner and, in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes service provided by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or [collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electro-magnetic waves through space or through cables, direct to home signals or by any other means to cable operator, including multisystem operator or any other person on behalf of the said agency] or organisation. ***Explanation***. — For the removal of doubts, it is hereby declared that so long as the radio or television programme broadcast is received in India and intended for listening or viewing, as the case may be, by the public, such service shall be a taxable service in relation to broadcasting, even if the encryption of signals or beaming thereof through the satellite might have taken place outside India;
Brand Promotion service	To be notified	Taxable service in this regard is defined under section 65(105)(zzzzq) as any service provided or to be provided to

		any person, by any other person, through a business entity or otherwise, under a contract for promotion or marketing of a brand of goods, service, event or endorsement of name, including a trade name, logo or house mark of a business entity by appearing in advertisement and promotional event or carrying out any promotional activity for such goods, service or event. ***Explanation***.—For the purposes of this sub-clause, "brand" includes symbol, monogram, label, signature or invented words which indicate connection with the said goods, service, event or business entity
Business Auxiliary Services	1-7-2003	Taxable service in this regard is defined under section 65(105)(zzb) as any service provided or to be provided to a client, by any person in relation to business auxiliary service;
Business Exhibition Services	10-9-2004	Taxable service in this regard is defined under section 65(105)(zzo) as any service provided or to be provided to an exhibitor, by the organiser of a business exhibition, in relation to business exhibition;
Business Support service	01.05.2006	Taxable service in this regard is defined under section 65(105)(zzzq) as any service provided or to be provided to any person, by any other person, in relation to support services of business or commerce, in any manner;
Cable Operator's Services	16-8-2002	Taxable service in this regard is defined under section 65(105)(zs) as any service provided or to be provided to any person, by a cable operator, including a multisystem operator in relation to cable services;
Cargo Handling Services	16-8-2002	Taxable service in this regard is defined under section 65(105)(zr) as any service provided or to be provided to any person, by a cargo handling agency in relation to cargo handling services;
Chartered Accountant's	16-10-1998	Taxable service in this regard is defined under section 65(105)(s) as any service provided or to be provided to any

(Practising) Services		person, by a practising chartered accountant in his professional capacity, in any manner;
Builder's special service	To be notified	Taxable service in this regard is defined under section 65(105)(zzzzu) as any service provided or to be provided to a buyer, by a builder of a residential complex, or a commercial complex, or any other person authorised by such builder, for providing preferential location or development of such complex but does not include services covered under sub-clauses (*zzg*), (*zzq*), (*zzzh*) and in relation to parking place. ***Explanation***.—For the purposes of this sub-clause, ''preferential location'' means any location having extra advantage which attracts extra payment over and above the basic sale price
Cleaning Services	16-6-2005	Taxable service in this regard is defined under section 65(105)(zzzd) as any service provided or to be provided to any person, by any other person, in relation to cleaning activity;
Clearing and Forwarding Agent's Services	16-07-1997	Taxable service in this regard is defined under section 65(105)(j) as any service provided or to be provided to any person, by a clearing and forwarding agent in relation to clearing and forwarding operations, in any manner;
Club's Association's Membership Services	16-06-2005	Taxable service in this regard is defined under section 65(105)(zzze) as any service provided or to be provided to its members, by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount;
Commercial Training or Coaching Services	01-07-2003	Taxable service in this regard is defined under section 65(105)(zzc) as any service provided or to be provided to any person, by a commercial training or coaching centre in relation to commercial training or coaching;
Company Secretary's	16-10-1998	Taxable service in this regard is defined under section 65(105)(u) as any service provided or to be provided to any

(Practicing) Services		person, by a practising company secretary in his professional capacity, in any manner;
Construction services	10-09-2004	Taxable service in this regard is defined under section 65(105)(zzq) as any service provided or to be provided to any person, by any other person, in relation to commercial or industrial construction; ***Explanation***.—For the purposes of this sub-clause, the construction of a new building which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorised by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer.
Construction of Complex (Residential) services	16-06-2005	Taxable service in this regard is defined under section 65(105)(zzzh) as any service provided or to be provided to any person, by any other person, in relation to construction of complex; ***Explanation***.—For the purposes of this sub-clause, construction of a complex which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorised by the builder before the grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer
Consulting Engineer's Services	07-07-1997	Taxable service in this regard is defined under section 65(105)(g) as any service provided or to be provided to any person, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one

		or more disciplines of engineering including the discipline of computer hardware engineering. ***Explanation***. — For the purposes of this sub-clause, it is hereby declared that services provided by a consulting engineer in relation to advice, consultancy or technical assistance in the disciplines of both computer hardware engineering and computer software engineering shall also be classifiable under this sub-clause;
Content Development & Supply Service	01-06-2207	Taxable service in this regard is defined under section 65(105)(zzzzb) as any service provided or to be provided to any person, by any other person in relation to development and supply of content for use in telecommunication services, advertising agency services and on-line information and database access or retrieval services;
Convention Services	16-07-2001	Taxable service in this regard is defined under section 65(105)(zc) as any service provided or to be provided to any person, by any person in relation to holding of a convention, in any manner;
Copyright service	To be notified	Taxable service in this regard is defined under section 65(105)(zzzzt) as any service provided or to be provided to any person, by any other person, for— *(a)* transferring temporarily; or *(b)* permitting the use or enjoyment of, any copyright defined in the Copyright Act, 1957, except the rights covered under subclause (*a*) of clause (*1*) of section 13 of the said Act;
Cosmetic and Plastic surgery service	01.09.2009	Taxable service in this regard is defined under section 65(105)(zzzzk) as any service provided or to be provided to any person, by any other person, in relation to cosmetic surgery or plastic surgery, but does not include any surgery undertaken to restore or reconstruct anatomy or functions of body affected due to congenital defects, developmental

		abnormalities, degenerative diseases, injury or trauma.
Cost Accountant's (Practicing) Services	16-10-1998	Taxable service in this regard is defined under section 65(105)(t) as any service provided or to be provided to any person, by a practising cost accountant in his professional capacity, in any manner;
Courier Services	01-11-1996	Taxable service in this regard is defined under section 65(105)(f) as any service provided or to be provided to any person, by a courier agency in relation to door-to-door transportation of time-sensitive documents, goods or articles;
Credit card, debit card, charge card or other payment cars services	01-05-2006	Taxable service in this regard is defined under section 65(105)(zzzw) as any service provided or to be provided to any person, by any other person, in relation to credit card, debit card, charge card or other payment card service, in any manner;
Credit Rating Agency's Services	16-10-1998	Taxable service in this regard is defined under section 65(105)(x) as any service provided or to be provided to any person, by a credit rating agency in relation to credit rating of any financial obligation, instrument or security;
Custom House Agent's Services	15-06-1997	Taxable service in this regard is defined under section 65(105)(h) as any service provided or to be provided to any person, by a custom house agent in relation to the entry or departure of conveyances or the import or export of goods;
Design Service	01-06-2007	Taxable service in this regard is defined under section 65(105)(zzzd) as any service provided or to be provided to any person, by any other person in relation to design services, but does not include service provided by — (i) an interior decorator referred to in sub-clause (q); and (ii) a fashion designer in relation to fashion designing referred to in sub-clause (zv);] and the term "service provider" shall be

		construed accordingly;
Dredging Services	16-06-2005	Taxable service in this regard is defined under section 65(105)(zzzb) as any service provided or to be provided to any person, by any other person, in relation to dredging;
Dry Cleaning Services	16-08-2002	Taxable service in this regard is defined under section 65(105)(zt) as any service provided or to be provided to any person, by a dry cleaner in relation to dry cleaning;
Erection, Commissioning or Installation Services	01-07-2003	Taxable service in this regard is defined under section 65(105)(zzd) as any service provided or to be provided to any person, by a erection, commissioning and installation agency in relation to commissioning or installation;
Event Management Service	16-08-2002	Taxable service in this regard is defined under section 65(105)(zu) as any service provided or to be provided to any person, by an event manager in relation to event management;
Event organization service	To be notified	Taxable service in this regard is defined under section 65(105)(zzzzr) as any service provided or to be provided to any person, by any other person, by granting the right or by permitting commercial use or exploitation of any event including an event relating to art, entertainment, business, sports or marriage organised by such other person
Fashion Designer's Service	16-08-2002	Taxable service in this regard is defined under section 65(105)(zv) as any service provided or to be provided to any person, by a fashion designer in relation to fashion designing;
Forex Broker (Other than Banking Services)	01.7.2003	Taxable service in this regard is defined under section 65(105)(zzk) as any service provided or to be provided to any person, by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorised money changer, other than a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial

		concern referred to in sub-clause (zm);
Forward Contract Service	10-09-2004	Taxable service in this regard is defined under section 65(105)(zzy) as any service provided or to be provided to any person, by a member of a recognised association or a registered association, in relation to a forward contract;
Franchise Services	01-07-2003	Taxable service in this regard is defined under section 65(105)(zze) as any service provided or to be provided to a franchisee, by the franchisor in relation to franchise;
Game of chance service	To be notified	Taxable service in this regard is defined under section 65(105)(zzzzn) as any service provided or to be provided to any person, by any other person, for promotion, marketing, organising or in any other manner assisting in organising games of chance, including lottery, Bingo or Lotto in whatever form or by whatever name called, whether or not conducted through internet or other electronic networks
Habitat Services – Site Formation and Clearance, Excavation and Earthmoving and Demolition Services	16-06-2005	Taxable service in this regard is defined under section 65(105)(zzza) as any service provided or to be provided to any person, by any other person, in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities;
Health Club and Fitness Centre Services	16-08-2002	Taxable service in this regard is defined under section 65(105)(zw) as any service provided or to be provided to any person, by a health club and fitness centre in relation to health and fitness services;
Health service	To be notified	Taxable service in this regard is defined under section 65(105)(zzzzo) as any service provided or to be provided by any hospital, nursing home or multi-specialty clinic,— (*i*) to an employee of any business entity, in relation to health check-up or preventive care, where the payment for such check-up or preventive care is made by such business entity directly to such hospital, nursing home or multi-specialty clinic; or

		(*ii*) to a person covered by health insurance scheme, for any health check-up or treatment, where the payment for such health check-up or treatment is made by the insurance company directly to such hospital, nursing home or multi-specialty clinic
Information Technology Software Services	16.05.08	Taxable service in this regard is defined under section 65(105)(zzzze) as any service provided or to be provided to any person, by any other person in relation to information technology software including, — (i) development of information technology software, (ii) study, analysis, design and programming of information technology software, (iii) adaptation, upgradation, enhancement, implementation and other similar services related to information technology software, (iv) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the start-up phase of a new system, specifications to secure a database, advice on proprietary information technology software, (v) acquiring the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products, (vi) acquiring the right to use information technology software supplied electronically.
Insurance Auxiliary Services • Concerning general	(i) 16-07-2001 (general Insurance) (ii) 16-08-2002	Taxable service in this regard is defined under section 65(105)(zl) as any service provided or to be provided to a policy holder or any person or insurer, including re-insurer, by an actuary, or intermediary or insurance intermediary or

insurance business • Concerning life insurance business	(Life Insurance)	insurance agent, in relation to insurance auxiliary services concerning general insurance business; Taxable service in this regard is defined under section 65(105)(zy) as any service provided or to be provided to a policyholder or any person or insurer, including re-insurer by an actuary, or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services concerning life insurance business;
Insurance Business Services(General Insurance)	01-07-1994	Taxable service in this regard is defined under section 65(105)(d) as any service provided or to be provided to a policy holder or any person, by an insurer, including re-insurer carrying on general insurance business in relation to general insurance business;
Insurance Business Services (life Insurance)	16-08-2002	Taxable service in this regard is defined under section 65(105)(zx) as any service provided or to be provided to a policyholder or any person, by an insurer, including re-insurer carrying on life insurance business in relation to the risk cover in life insurance;
Legal Consultancy Service	01.09.2009	Taxable service in this regard is defined under section 65(105)(zzzzm) as any service provided or to be provided to a business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner: ***Provided*** that any service provided by way of appearance before any court, tribunal or authority shall not amount to taxable service.
Intellectual Property Service	10-09-2004	Taxable service in this regard is defined under section 65(105)(zzr) as any service provided or to be provided to any person, by the holder of intellectual property right, in relation to intellectual property service;
Interior Decorator's Services	16-10-1998	Taxable service in this regard is defined under section 65(105)(q) as any service provided or to be provided to any person, by an interior decorator in relation to planning,

		design or beautification of spaces, whether man-made or otherwise, in any manner;
Internet Café's Services	01-07-2003	Taxable service in this regard is defined under section 65(105)(zzf) as any service provided or to be provided to any person, by an internet cafe in relation to access of internet;
Internet Telephony Services	01-05-2006	Taxable service in this regard is defined under section 65(105)(zzzu) as any service provided or to be provided to any person, by any other person, in relation to internet telecommunication service;
Mailing List Compilation and Mailing Services	16-06-2005	Taxable service in this regard is defined under section 65(105)(zzzg) as any service provided or to be provided to any person, by any other person, in relation to mailing list compilation and mailing;
Maintenance of Medical records service	To be notified	Taxable service in this regard is defined under section 65(105)(zzzzp) as any service provided or to be provided to any business entity, by any other person, in relation to storing, keeping or maintaining of medical records of employees of a business entity
Management, Maintenance or Repair Services for goods, equipments or properties	01-07-2003	Taxable service in this regard is defined under section 65(105)(zzg) as any service provided or to be provided to any person, by any person in relation to management, maintenance or repair;
Management of Investment for ULIP	16.05.2008	Taxable service in this regard is defined under section 65(105)(zzzzf) as any service provided or to be provided to a policy holder, by an insurer carrying on life insurance business, in relation to management of investment, under unit linked insurance business, commonly known as Unit Linked Insurance Plan (ULIP) scheme. ***Explanation.*** — For the purposes of this sub-clause, — (i) management of segregated fund of unit linked insurance business by the insurer shall be deemed to be the service

		provided by the insurer to the policy holder in relation to management of investment under unit linked insurance business; (*ii*) the gross amount charged by the insurer from the policy holder for the said service provided or to be provided shall be equal to the maximum amount fixed by the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999, as fund management charges for unit linked insurance plan or the actual amount charged for the said purpose by the insurer from the policy holder, whichever is higher;
Management or business consultant's Services	16-10-1998	Taxable service in this regard is defined under section 65(105)(r) as any service provided or to be provided to any person, by a management or business consultant in connection with the management of any organisation or business, in any manner;
Mandap Keeper's Services	01-07-1997	Taxable service in this regard is defined under section 65(105)(m) as any service provided or to be provided to any person, by a mandap keeper in relation to the use of mandap in any manner including the facilities provided or to be provided to such person in relation to such use and also the services, if any, provided or to be provided as a caterer;
Manpower Recruitment or Supply Agency's Services	07-07-1997	Taxable service in this regard is defined under section 65(105)(k) as any service provided or to be provided to any person], by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner; ***Explanation.*** — For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, recruitment or supply of manpower includes services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and authenticity of documents submitted by the candidate;

Market Research Agency's Services	16-10-1998	Taxable service in this regard is defined under section 65(105)(y) as any service provided or to be provided to any person, by a market research agency in relation to market research of any product, service or utility, in any manner;
Mining Service	01-06-2007	Taxable service in this regard is defined under section 65(105)(zzzy) as any service provided or to be provided to any person, by any other person in relation to mining of mineral, oil or gas;
Motor Vehicles – Servicing or Repair • Motor cars or two-wheeled motor vehicles • Light motor vehicles	16-07-2001 (motor cars or two-wheeled motor vehicles) 01-07-2003 (light motor vehicles)	Taxable service in this regard is defined under section 65(105)(zo) as any service provided or to be provided to any person, by an authorised service station, in relation to any service , repair, reconditioning or restoration of motor cars, light motor vehicles or two wheeled motor vehicles, in any manner;
On-Line Information and Data Base Access and/or Retrieval Services	16-07-2001	Taxable service in this regard is defined under section 65(105)(zh) as any service provided or to be provided to any person, by any person, in relation to on-line information and database access or retrieval or both in electronic form through computer network, in any manner;
Opinion Poll service	10-09-2004	Taxable service in this regard is defined under section 65(105)(zzs) as any service provided or to be provided to any person, by an opinion poll agency, in relation to opinion poll;
Outdoor Caterer's Services	10-9-2004	Taxable service in this regard is defined under section 65(105)(zzt) as any service provided or to be provided to any person, by an outdoor caterer;
Packaging Services	16-6-2005	Taxable service in this regard is defined under section 65(105)(zzzf) as any service provided or to be provided to any person, by any other person, in relation to packaging activity;

Pandal or shamiana Services	10-9-2004	Taxable service in this regard is defined under section 65(105)(zzw) as any service provided or to be provided to any person, by a pandal or shamiana contractor in relation to a pandal or shamiana in any manner and also includes the services, if any, provided or to be provided as a caterer;
Photography Services	16-7-2001	Taxable service in this regard is defined under section 65(105)(zb) as any service provided or to be provided to any person, by a photography studio or agency in relation to photography, in any manner;
Port Services by Major Ports and by Other Ports	16-7-2001(Major Ports) 1-7-2003(Other ports)	Taxable service in this regard is defined under section 65(105)(zn) as any service provided or to be provided to any person, byany person, in relation to port services, in any manner; **Provided** that the provisions of section 65A shall not apply to any service when the same is rendered wholly within the port
Processing And Clearing House Services	16.5.2008	Taxable service in this regard is defined under section 65(105)(zzzzi) as any service provided or to be provided to any person, by a processing and clearing house in relation to processing, clearing and settlement of transactions in securities, goods or forward contracts including any other matter incidental to, or connected with, such securities, goods and forward contracts;
Public Relation Services	1-5-2006	Taxable service in this regard is defined under section 65(105)(zzzs) as any service provided or to be provided to any person, by any other person, in relation to managing the public relations of such person, in any manner;
Rail travel Agent's Services	16-8-2002	Taxable service in this regard is defined under section 65(105)(zz) as any service provided or to be provided to any person, by a rail travel agent in relation to booking of passage for travel by rail;
Real Estate Agent's Services	16-10-1998	Taxable service in this regard is defined under section 65(105)(v) as any service provided or to be provided to any

		person, by a real estate agent in relation to real estate;
Recognised Association Services	16.05.2008	Taxable service in this regard is defined under section 65(105)(zzzzh) as any service provided or to be provided to any person, by a recognised association or a registered association in relation to assisting, regulating or controlling the business of the sale or purchase of any goods or forward contracts and includes services provided in relation to trading, processing, clearing and settlement of transactions in goods or forward contracts;
Recognised Stock Exchange	16.05.2008	Taxable service in this regard is defined under section 65(105)(zzzzg) as any service provided or to be provided to any person, by a recognised stock exchange in relation to assisting, regulating or controlling the business of buying, selling or dealing in securities and includes services provided in relation to trading, processing, clearing and settlement of transactions in securities;
Recovery Agent's Services	1-5-2006	Taxable service in this regard is defined under section 65(105)(zzzl) as any service provided or to be provided to a banking company or a financial institution including a non-banking financial company or any other body corporate or a firm, by any person, in relation to recovery of any sums due to such banking company or financial institution, including a non-banking financial company, or any other body corporate or a firm, in any manner;
Registrar to an issue Services	1-5-2006	Taxable service in this regard is defined under section 65(105)(zzzi) as any service provided or to be provided to any person, by a registrar to an issue, in relation to sale or purchase of securities;
Rent-a-Cab Scheme Operator's Services	16-7-1997	Taxable service in this regard is defined under section 65(105)(o) as any service provided or to be provided to any person, by a rent-a-cab scheme operator in relation to the renting of a cab;
Renting of	1-6-2007	Taxable service in this regard is defined under section

Immovable Property Services		65(105)(zzzz) as any service provided or to be provided to any person, by any other person, by renting of immovable property or any other service in relation to renting of immovable property for use in the course or furtherance of business or commerce. ***Explanation 1.*** — For the purposes of this sub-clause, "immovable property" includes — (i) building and part of a building, and the land appurtenant thereto; (ii) land incidental to the use of such building or part of a building; (iii) the common or shared areas and facilities relating thereto; and (iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate, (v)vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commercebut does not include — (a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes; (b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land; (c) land used for educational, sports, circus, entertainment and parking purposes; and (d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities. ***Explanation 2.*** — For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be

		immovable property for use in the course or furtherance of business or commerce;
Scientific or Technical Consultancy Services	16-7-2001	Taxable service in this regard is defined under section 65(105)(za) as any service provided or to be provided to any person, by a scientist or a technocrat, or any science or technology institution or organisation, in relation to scientific or technical consultancy;
Security Agency's Service	16.10.1998	Taxable service in this regard is defined under section 65(105)(w) as any service provided or to be provided to any person, by a security agency in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity;
Share transfer agent Service	1-5-2006	Taxable service in this regard is defined under section 65(105)(zzzj) as any service provided or to be provided to any person, by a share transfer agent, in relation to securities;
Ship Management Services	1-5-2006	Taxable service in this regard is defined under section 65(105)(zzzt) as any service provided or to be provided to any person, under a contract or an agreement, by any other person, in relation to ship management service;
Sound Recording Services	16-7-2001	Taxable service in this regard is defined under section 65(105)(zj) as any service provided or to be provided to any person, by a sound recording studio or agency in relation to any kind of sound recording;
Sponsorship Service	1-5-2006 (only body corporate or firm taxable) w.e.f. 8-5-2010 (any person taxable)	Taxable service in this regard is defined under section 65(105)(zzzn) as any service provided or to be provided to any person by any other person receiving sponsorship, in relation to such sponsorship, in any manner.;
Steamer Agent's	15-6-1997	Taxable service in this regard is defined under section

Services		65(105)(i) as any service provided or to be provided to a shipping line, by a steamer agent in relation to a ship's husbandry or dispatch or any administrative work related thereto as well as the booking, advertising or canvassing of cargo, including container feeder services;
Stock Broking services	1-7-1994	Taxable service in this regard is defined under section 65(105)(a) as any service provided or to be provided to any person, by a stock-broker in connection with the sale or purchase of securities listed on a recognised stock exchange;
Storage and Warehousing Services	16-8-2002	Taxable service in this regard is defined under section 65(105)(zza) as any service provided or to be provided to any person, by a storage or warehouse keeper in relation to storage and warehousing of goods;
Supply of Tangible Goods Service	16.05.2008	Taxable service in this regard is defined under section 65(105)(zzzzj) as any service provided or to be provided to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances
Survey and Exploration of Mineral Service	10-9-2004	Taxable service in this regard is defined under section 65(105)(zzv) as any service provided or to be provided to any person, by any person, in relation to survey and exploration of mineral;
Survey and Map Marketing Services	16-06-2005	Taxable service in this regard is defined under section 65(105)(zzzc) as any service provided or to be provided to any person, by any other person, other than by an agency under the control of, or authorised by, the Government, in relation to survey and map-making;
Technical Inspection and Certification Services	01-07-2003	Taxable service in this regard is defined under section 65(105)(zzi) as any service provided or to be provided to any person, by a technical inspection and certification

		agency, in relation to technical inspection and certification;
Technical Testing and Analysis Services	01-07-2003	Taxable service in this regard is defined under section 65(105)(zzh) as any service provided or to be provided to any person, by a technical testing and analysis agency, in relation to technical testing and analysis;
Telecommunication Services	01-06-2007	Taxable service in this regard is defined under section 65(105)(zzzx) as any service provided or to be provided to any person, by the telegraph authority in relation to telecommunication service;
Tour Operator's Services	01-09-1997	Taxable service in this regard is defined under section 65(105)(n) as any service provided or to be provided to any person, by a tour operator in relation to a tour;
Transport of Coastal Goods and Goods Transported Through National Waterways and Inland Waters	01.09.2009	Taxable service in this regard is defined under section 65(105)(zzzzl) as any service provided or to be provided to any person, by any other person, in relation to transport of— (i) coastal goods; (ii) goods through national waterway; or (iii) goods through inland water. ***Explanation***.— For the purposes of this sub-clause,— (a)"coastal goods" has the meaning assigned to it in clause (7) of section 2 of the Customs Act, 1962 (52 of 1962); (b)"national waterway" has the meaning assigned to it in clause (h) of section 2 of the Inland Waterways Authority of India Act, 1985 (82 of 1985); (c) "inland water" has the meaning assigned to it in clause (b) of section 2 of the Inland Vessels Act, 1917 (1 of 1917)
Transport of Goods by Air services	10-09-2004	Taxable service in this regard is defined under section 65(105)(zzn) as any service provided or to be provided to any person, by an aircraft operator, in relation to transport of goods by aircraft;
Transport of goods	01-01-2005	Taxable service in this regard is defined under section

by Road		65(105)(zzp) as any service provided or to be provided to any person, by a goods transport agency, in relation to transport of goods by road in a goods carriage;
Transport of goods in containers by rail	1-5-2006	Taxable service in this regard is defined under section 65(105)(zzzp) as any service provided or to be provided to any person, by any other person in relation to transport of goods in containers by rail, in any manner;
Transport of goods through Pipeline / Conduit Services	16-6-2005	Taxable service in this regard is defined under section 65(105)(zzz) as any service provided or to be provided to any person, by any other person, in relation to transport of goods other than water, through pipeline or other conduit;
Travel Agent's Services	10-9-2004	Taxable service in this regard is defined under section 65(105)(zzx) as any service provided or to be provided to any person, by a travel agent, in relation to the booking of passage for travel;
Travel by Air for International Journey	1-5-2006	Taxable service in this regard is defined under section 65(105)(zzzo) as any service provided or to be provided to any passenger, by an aircraft operator, in relation to scheduled or non-scheduled air transport of such passenger embarking in India for international journey, in any class other than economy class. ***Explanation 1***. — For the purposes of this sub-clause, economy class in an aircraft meant for scheduled air transport of passengers means, — (i) where there is more than one class of travel, the class attracting the lowest standard fare; or (ii) where there is only one class of travel, that class. ***Explanation 2***. — For the purposes of this sub-clause, in an aircraft meant for non-scheduled air transport of passengers, no class of travel shall be treated as economy class;
Travel by Cruise	1-5-2006	Taxable service in this regard is defined under section

Ship		65(105)(zzzv) as any service provided or to be provided to any person, by any other person, in relation to transport of such person embarking from any port or other port in India, by a cruise ship. ***Explanation.*** — For the purposes of this sub-clause, "cruise ship" means a ship or vessel used for providing recreational or pleasure trips, but does not include a ship or vessel used for private purposes or a ship or vessel of, or less than, fifteen net tonnage;
TV or Radio Programme Services	10-9-2004	Taxable service in this regard is defined under section 65(105)(zzu) as any service provided or to be provided to any person, by a programme producer, in relation to a programme;
Underwriter's Services	16-10-1998	Taxable service in this regard is defined under section 65(105)(z) as any service provided or to be provided to any person, by an underwriter in relation to underwriting, in any manner;
Video Tape Production Services	16-7-2000	Taxable service in this regard is defined under section 65(105)(zi) as any service provided or to be provided to any person, by a video production agency in relation to video-tape production, in any manner
Works contract Services	1-6-2007	Taxable service in this regard is defined under section 65(105)(zzzza) as any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams. ***Explanation***. — For the purposes of this sub-clause, "works contract" means a contract wherein, — (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

		(ii) such contract is for the purposes of carrying out, — (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or construction of a new residential complex or a part thereof; (c) or (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or (e) turnkey projects including engineering, procurement and construction or commissioning *(EPC)* projects

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Legends

- CCE – Commissioner of Central Excise
- ACCE – Assistant Commissioner of Central Excise
- DCCE – Deputy Commissioner of Central Excise
- STRP – Service Tax Return Preparer
- CETA – Central Excise Tariff Act
- CTA – Customs Tariff Act
- SHE – Secondary & Higher Education
- IT – Information Technology
- FEMA – Foreign Exchange Management Act
- BAS – Business Auxilliary Service
- BSS – Business Support Service
- WC – Works Contract Service
- GTA – Goods Transport Agency service