

Staying informed Service Tax in India

Tax & Regulatory Services
May 2011

Staying informed

Service Tax in India

PwCIndia
May 2011

Index

Sr. No.	Description	Page No.
1.	Key Service tax provisions with their effective dates	4
2.	Services at a glance	9
3.	Finance Act, 1994	14
4.	Definitions	43
5.	Service Tax Rules, 1994	108
6.	CENVAT Credit Rules, 2004	122
7.	Export of Services Rules, 2005	153
8.	Taxation of Services (Provided from Outside India & Received in India) Rules, 2006 - Import Rules	159
9.	Service Tax (Determination of Value) Rules, 2006 - Valuation Rules	166
10.	Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 - Works Contract Rules	173
11.	Point of Taxation Rules, 2011	176

Key Service Tax Provisions with their Effective Dates

Act/Rules	Provision	Effective Date																												
Chapter V – Finance Act, 1994	Made effective under Notification No.1/ 94 S.T. dated June 20, 1994	1-July-1994																												
	<p>Section 66 – Rate of Service Tax</p> <table border="1"> <thead> <tr> <th>Basic</th> <th>Education Cess</th> <th>SHE Cess</th> <th></th> </tr> </thead> <tbody> <tr> <td>10%</td> <td>2%</td> <td>1%</td> <td>24-Feb-2009</td> </tr> <tr> <td>12%</td> <td>2%</td> <td>1%</td> <td>11-May-2007</td> </tr> <tr> <td>12%</td> <td>2%</td> <td>-</td> <td>18-April-2006</td> </tr> <tr> <td>10%</td> <td>2%</td> <td>-</td> <td>10-September-2004</td> </tr> <tr> <td>8%</td> <td>-</td> <td>-</td> <td>14-May-2003</td> </tr> <tr> <td>5%</td> <td>-</td> <td>-</td> <td>1-July-1994</td> </tr> </tbody> </table>	Basic	Education Cess	SHE Cess		10%	2%	1%	24-Feb-2009	12%	2%	1%	11-May-2007	12%	2%	-	18-April-2006	10%	2%	-	10-September-2004	8%	-	-	14-May-2003	5%	-	-	1-July-1994	
Basic	Education Cess	SHE Cess																												
10%	2%	1%	24-Feb-2009																											
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10%	2%	-	10-September-2004																											
8%	-	-	14-May-2003																											
5%	-	-	1-July-1994																											
	<p>Section 75 – Interest on Delayed Payment of Service Tax</p> <ul style="list-style-type: none"> - 18% p.a. - 13% p.a. - 15% p.a. - 24% p.a. - 1 ½ % per month or part thereof 	<p>1-April-2011</p> <p>10-September-2004</p> <p>16-August-2002</p> <p>16-July-2001</p> <p>1-July-1994</p>																												
	Explanation to Section 65(105) i.e. Definition of taxable services expanded to include services provided by a non-resident service provider	16-June-2005																												
	Section 66A – Charge of service tax on services received from outside India	18-April-2006																												
	Jurisdiction of Service tax law extended to include the installations, structures and vessels in the continental shelf of India and the exclusive economic zone of India	7-July-2009																												
Service Tax Rules, 1994	Introduced by Notification No.2 / 94 S.T. dated June 28, 1994	1-July-1994																												
	Rule 2(1)(d) – Service recipient liable to pay service tax when service availed from non resident service provider	16-August-2002																												
	Service recipients liable to pay service tax notified under Notification No.36/2004 dated December 31,2004	01-January-2005																												

Act/Rules	Provision	Effective Date
	Rule 5B – Date of Determination of Rate Rate of tax shall be the rate prevailing when the services are deemed to be provided as per the Point of Taxation Rules, 2011	1-April-2011
	Rule 6(1) – Payment of Service tax - To be paid by the 6 th of the succeeding month / quarter, in case of electronic payments of service tax - To be paid by the 5 th of the succeeding month / quarter - For the month of March – to be paid by 31 st March - To be paid by 25 th of the succeeding month / quarter (erstwhile provision) - To be paid by 15 th of the succeeding month / quarter (erstwhile provision)	12-September-2007 1-April-2005 1-January-2005 16-October-1998 1-July-1994
	Rule 6(1) – Service tax payable on accrual basis - Service tax payable on accrual basis on transactions with associated enterprises	1-April-2011 10-May- 2008
	Rule 6(2), Proviso - Electronic payment of service tax made mandatory, if service tax payment through cash or CENVAT credit in preceding financial year exceeds Rs. 10 lakh	1-April-2010
	Rule 6(2), Proviso - Electronic payment of service tax made mandatory, if tax payment through cash or CENVAT credit in preceding or current financial year exceeds Rs. 50 lakh (erstwhile provision)	21-September-2006
Filing of Return	Rule 7 – Original Return - Six monthly Return – Within a period of 25 days from the end of the half year - Quarterly Return – Within a period of 25 days from the end of the quarter (erstwhile provision)	16-October-1998 1-July-1994
	Rule 7(2) Proviso - Electronic filing of half yearly returns made mandatory, if service tax payment through cash or CENVAT credit in preceding financial year exceeds Rs. 10 lakh	1-April-2010
	Rule 7B – Revised Return – Within a period of ninety days from the date of submission of the return under Rule 7	1-March-2008

Act/Rules	Provision	Effective Date
CENVAT Credit Rules, 2004	- CENVAT rules amended to allow credit on input services, input and capital goods when used in providing output services.	10-September-2004
	- CENVAT rules amended to allow credit on any input service when used in providing any output service (erstwhile provision)	14-May-2003
	- CENVAT rules introduced allowing credit when input and output services belonged to the same service category. (erstwhile provision)	16-August-2002
	Rule 4(7) – Credit available on receipt of invoice	1-April-2011
	Rule 5 – Refund available to Service Providers / manufacturers on Exports	14-March-2006
	Rule 6 – Options provided for utilisation of credit – <ul style="list-style-type: none"> - To pay service tax @ 5% of the value of exempted services or to pay 5% of the value of exempted goods - To pay an amount equal to CENVAT credit attributable to the inputs/ input services used in exempt services / exempt goods - To maintain separate accounts for availment of CENVAT credit on inputs and pay an amount equal to CENVAT credit attributable to exempt service - Insurance companies required to mandatorily reverse 20% of credit availed on inputs/input services during the month - Banking companies, NBFC's and financial institutions required to mandatorily reverse 50% of credit availed on inputs/input services during the month 	1-April-2011
	Rule 6(3) – Options provided for utilisation of credit – <ul style="list-style-type: none"> - To pay service tax @ 6% of the value of exempted services or to pay 5% of the value of exempted goods (erstwhile provision) - To pay an amount equal to CENVAT credit attributable to the inputs/ input services used in exempt services (erstwhile provision) 	7-July-2009
	Rule 6(3) – Options provided for utilisation of credit – <ul style="list-style-type: none"> - To pay service tax @ 8% of the value of exempted 	1-April-2008

Act/Rules	Provision	Effective Date
	<p>services or pay 10% of the value of exempted goods (erstwhile provision)</p> <p>- To pay an amount equal to CENVAT credit attributable to the inputs/ input services used in exempt services (erstwhile provision)</p>	
Service Tax (Determination of Value) Rules, 2006	Introduced by Notification No 12 / 2006 S.T. dated April 19, 2006	19-April-2006
Export of Service Rules, 2005	<p>Foreign Exchange exemption withdrawn under Notification No.10/2005 - S.T. dated March 3, 2005</p> <p>Introduced by Notification No 9 / 2005 S.T. dated March 3, 2005</p> <p>Rule 5 – Rebate allowed of service tax paid on exempted services (Notification No. 11/2005 – S.T. dated April 19, 2005)</p>	<p>15-March-2005</p> <p>15-March-2005</p> <p>19-April-2005</p>
	Rule 5 – Refund allowed of service tax paid on input services (Notification No.12/2005 – S.T. dated April 19, 2005)	19-April-2005
Amendment to Export of Services Rules, 2005	Condition – Service to be provided from India and used outside India applicable for all the categories (erstwhile provision)	1-March-2007
Amendment to Export of Services Rules, 2005	Condition – Service to be provided from India and used outside India omitted for all the categories	27- February-2010
Taxation of Services (Provided) From Outside India and Received in India Rules, 2006	Introduced by Notification No.11 / 2006 S.T. dated April 19, 2006	19-April-2006
Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007	<p>- Composition rate of tax increased to 4%</p> <p>- Introduced by Notification No.32/2007 S.T. dated May 22, 2007 - Composition rate of tax under this scheme is 2% (erstwhile provision)</p>	<p>1-March-2008</p> <p>1-June-2007</p>

Act/Rules	Provision	Effective Date
Threshold limit for service tax payment	- Rs. 10,00,000 - Notification No.8 / 2008 - S.T. dated March 1, 2008	1-April-2008
	- Rs. 8,00,000 - Notification No.4 / 2007 - S.T. dated March 1, 2007(erstwhile provision)	1-April-2007
	- Rs. 4,00,000 - Notification No.6 / 2005 - S.T. dated March 1, 2005(erstwhile provision)	1-April-2005
SEZ Exemption	1. Notification No.17/2011 - S.T. dated February 28, 2011 - Partially aligned with Export of Services Rules, 2005 - Exemption and refund to apply partially	1-March-2011
	2. Notification No.15/2009 - S.T. dated May 20, 2009 - Exemption and refund to apply partially	20-May-2009
	3. Notification No.9/2009 - S.T. dated March 3, 2009 - Exemption by way of refund	3-March-2009
	4. Notification No.4/2004 - S.T. dated March 31, 2004 - Outright exemption	31- March- 2004
Point of Taxation Rules, 2011	Introduced by Notification No.18/2011 - S.T. dated February 28, 2011 Determines the point at which service is deemed to have been provided / received for determining the time of liability	1-April - 2011

Services at a Glance

Sr. No.	Service Category	Clause of Sec. 65 (105)	Date of Introduction	Page No.
1.	Advertising agency's services	(e)	1-Nov-1996	47
2.	Airport services	(zzm)	10-Sep-2004	47
3.	Air travel agent's services	(l)	1-Jul-1997	48
4.	Architect's services	(p)	16-Oct-1998	48
5.	Asset management service	(zzzzc)	1-Jun-2007	48
6.	Auctioneer's service	(zzzf)	1-May-2006	48
7.	Authorised service station's services	(zo)	16-Jul-2001	49
8.	Automated Teller Machines (ATM) operations, maintenance or management services	(zzzk)	1-May-2006	50
9.	Banking and other financial services Foreign exchange broking service	(zm) (zzk)	16-Jul-2001 1-Jul-2003	50
10.	Beauty treatment service	(zq)	16-Aug-2002	53
11.	Broadcasting services	(zk)	16-Jul-2001	54
12.	Business auxiliary services	(zzb)	1-Jul-2003	55
13.	Business exhibition services	(zzo)	10-Sep-2004	56
14.	Business support services	(zzzq)	1-May-2006	56
15.	Cable services	(zs)	16-Aug-2002	57
16.	Cargo handling service	(zr)	16-Aug-2002	57
17.	Chartered accountant's services	(s)	16-Oct-1998	58
18.	Cleaning activity service	(zzzd)	16-Jun-2005	58
19.	Clearing and forwarding agents' services	(j)	16-Jul-1997	58
20.	Club or association service	(zzze)	16-Jun-2005	59
21.	Commercial or industrial construction services	(zzq)	10-Sep-2004	59
22.	Commercial training or coaching service	(zzc)	1-Jul-2003	60
23.	Commodity exchange service	(zzzzh)	16-May-2008	60
24.	Company secretary's services	(u)	16-Oct-1998	61
25.	Computer network services (On-line information and database access or retrieval services)	(zh)	16-Jul-2001	61

Sr. No.	Service Category	Clause of Sec. 65 (105)	Date of Introduction	Page No.
26.	Construction of complex service	(zzzh)	16-Jun-2005	62
27.	Consulting engineer's services	(g)	7-Jul-1997	63
28.	Convention services	(zc)	16-Jul-2001	64
29.	Copyright service	(zzzzt)	1-Jul-2010	64
30.	Cosmetic and plastic surgery service	(zzzzk)	1-Sept-2009	64
31.	Cost accountant's services	(t)	16-Oct-1998	64
32.	Courier service	(f)	1-Nov-1996	65
33.	Credit card, debit card, charge card or other payment card service	(zzzw)	1-May-2006	65
34.	Credit rating agency's services	(x)	16-Oct-1998	66
35.	Custom house agent's services	(h)	15-Jun-1997	66
36.	Design services	(zzzzd)	1-Jun-2007	67
37.	Development and supply of contents service	(zzzzb)	1-Jun-2007	67
38.	Dredging service	(zzzb)	16-Jun-2005	67
39.	Dry cleaning services	(zt)	16-Aug-2002	67
40.	Electricity exchange service	(zzzzs)	1-Jul-2010	68
41.	Erection, commissioning or installation service	(zzd)	1-Jul-2003	68
42.	Event management service	(zu)	16-Aug-2002	69
43.	Fashion designing service	(zv)	16-Aug-2002	69
44.	Forward contract service	(zzy)	10-Sep-2004	69
45.	Franchise service	(zze)	1-Jul-2003	70
46.	General insurance service	(d)	1-Jul-1994	70
47.	Health club and fitness services	(zw)	16-Aug-2002	71
48.	Health services	(zzzzo)	1-Jul-2010	71
49.	Information technology software service	(zzzze)	16-May-2008	72
50.	Insurance auxiliary services (General Insurance)	(zl)	16-Jul-2001	72
	Insurance auxiliary services (Life Insurance)	(zy)	16-Aug-2002	
51.	Intellectual property services	(zzr)	10-Sep-2004	74

Sr. No.	Service Category	Clause of Sec. 65 (105)	Date of Introduction	Page No.
52.	Interior decorator's services	(q)	16-Oct-1998	74
53.	Internet cafe service	(zzf)	1-Jul-2003	74
54.	Internet telecommunication services	(zzzu)	1-May-2006	75
55.	Legal consultancy service	(zzzzm)	1-Sept-2009	75
56.	Life insurance service	(zx)	16-Aug-2002	75
57.	Mailing list compilation and mailing service	(zzzg)	16-Jun-2005	76
58.	Maintenance of medical records service	(zzzzp)	1-Jul-2010	77
59.	Management or business consultant's services	(r)	16-Oct-1998	77
60.	Management, maintenance or repair service	(zzg)	1-Jul-2003	77
61.	Management of investment under ULIP service	(zzzzf)	16-May-2008	78
62.	Mandap keeper's services	(m)	1-Jul-1997	78
63.	Manpower recruitment or supply agency's services	(k)	7-Jul-1997	79
64.	Market research agency's services	(y)	16-Oct-1998	79
65.	Mining of mineral, oil or gas service	(zzzy)	1-Jun-2007	79
66.	Opinion poll services	(zzs)	10-Sep-2004	79
67.	Other port services	(zzl)	1-Jul-2003	80
68.	Outdoor caterer's service	(zzt)	10-Sep-2004	80
69.	Packaging activity services	(zzzf)	16-Jun-2005	80
70.	Pandal or shamiana contractor's service	(zzw)	10-Sep-2004	81
71.	Permitting commercial use or exploitation of any event	(zzzzr)	1-Jul-2010	81
72.	Photography services	(zb)	16-Jul-2001	81
73.	Port services	(zn)	16-Jul-2001	82
74.	Processing and clearing house service	(zzzzi)	16-May-2008	82
75.	Programme producer's services	(zzu)	10-Sep-2004	83
76.	Promoting, Marketing or organizing of games of chance, including lottery services	(zzzzn)	1-Jul-2010	83

Sr. No.	Service Category	Clause of Sec. 65 (105)	Date of Introduction	Page No.
77.	Promoting a brand of goods, services, events, business entity etc. services	(zzzzq)	1-Jul-2010	83
78.	Public relation management service	(zzzs)	1-May-2006	84
79.	Rail travel agent's services	(zz)	16-Aug-2002	84
80.	Real estate agent's services	(v)	16-Oct-1998	84
81.	Renting of immovable property service	(zzzz)	1-Jun-2007	84
82.	Recovery agent's service	(zzzl)	1-May-2006	85
83.	Registrar to an issue's service	(zzzi)	1-May-2006	86
84.	Rent-a-cab scheme operator's service	(o)	1-Apr-2000	86
85.	Sale of space or time for advertisement services	(zzzm)	1-May-2006	87
86.	Scientific or technical consultancy services	(za)	16-Jul-2001	88
87.	Security agency's services	(w)	16-Oct-1998	88
88.	Services by air-conditioned restaurants having licence to serve liquor	(zzzzv)	1-May-2011	88
89.	Services by hotels / inns / clubs / guest houses, etc for short-term accommodation	(zzzzw)	1-May-2011	88
90.	Share transfer agent's service	(zzzj)	1-May-2006	88
91.	Ship management services	(zzzt)	1-May-2006	89
92.	Site formation and clearance, excavation and earth moving and demolition services	(zzza)	16-Jun-2005	89
93.	Special services provided by builders	(zzzzu)	1-Jul-2010	90
94.	Sponsorship services	(zzzn)	1-May-2006	90
95.	Sound recording studio or agency services	(zj)	16-Jul-2001	90
96.	Steamer agent's services	(i)	15-Jun-1997	91
97.	Stock-broker's services	(a)	1-Jul-1994	92
98.	Stock Exchange service	(zzzzg)	16-May-2008	92
99.	Storage and warehousing service	(zza)	16-Aug-2002	93
100.	Supply of tangible goods service	(zzzzj)	16-May-2008	93
101.	Survey and exploration of mineral, oil and gas service	(zzv)	10-Sep-2004	93

Sr. No.	Service Category	Clause of Sec. 65 (105)	Date of Introduction	Page No.
102.	Survey and map-making service	(zzzc)	16-Jun-2005	94
103.	Technical inspection and certification service	(zzi)	1-Jul-2003	94
104.	Technical testing and analysis service	(zzh)	1-Jul-2003	94
105.	Telecommunication service	(zzzx)	1-Jun-2007	95
106.	Transport of coastal goods; and goods transported through inland water service	(zzzzl)	1-Sep-2009	96
107.	Tour operator's service	(n)	1-Apr-2000	96
108.	Transport of goods by air service	(zzn)	10-Sep-2004	97
109.	Transport of goods by rail service	(zzzp)	1-May-2006	98
110.	Transport of goods by road service	(zzp)	1-Jan-2005	98
111.	Transport of goods, other than water, through pipeline or other conduit service	(zzz)	16-Jun-2005	99
112.	Transport of passengers embarking in India for domestic or international journey by air service	(zzzo)	1-May-2006	99
113.	Transport of persons embarking from port in India by cruise ship service	(zzzv)	1-May-2006	100
114.	Travel agent's service	(zzx)	10-Sep-2004	100
115.	Underwriter's service	(z)	16-Oct-1998	100
116.	Video production agency's services	(zi)	16-Jul-2001	101
117.	Works contract service	(zzzza)	1-Jun-2007	101
118.	Miscellaneous definitions			102

Finance Act, 1994

Section Reference	Chapter V of the Finance Act, 1994	Page No.
64.	Extent, commencement and application	16
65.	Definitions	16
65A.	Classification of taxable services	16
66.	Charge of service tax	16
66A.	Charge of service tax on services received from outside India	17
67.	Valuation of taxable services for charging service tax	17
68.	Payment of service tax	18
69.	Registration	18
70.	Furnishing of returns	18
71.	Scheme for submission of returns through service tax return preparers	19
72.	Best judgment assessment	19
73.	Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded	20
73A.	Service tax collected from any person to be deposited with Central Government.	22
73B.	Interest on amount collected in excess	23
73C.	Provisional attachment to protect revenue in certain cases	23
73D.	Publication of information in respect of persons in certain cases	24
74.	Rectification of mistake	24
75.	Interest on delayed payment of service tax	25
75A.	Omitted vide Finance (No.2) Act, 2004, w.e.f. 10-09-2004	25
76.	Penalty for failure to pay service tax	25
77.	Penalty for contravention of any provision for which no penalty is provided	26
78.	Penalty for suppressing, etc. of value of taxable service	26
79.	Omitted vide Finance (No.2) Act, 2004, w.e.f. 10-09-2004	27
80.	Penalty not to be imposed in certain cases	27
81.	Omitted	28
82.	Power to search premises	28

Section Reference	Chapter V of the Finance Act, 1994	Page No.
83.	Application of certain provisions of Act 1 of 1944	28
83A.	Power of adjudication	28
84.	Appeals to the Commissioner of Central Excise (Appeals) under directions of Commissioner	28
85.	Appeals to the Commissioner of Central Excise (Appeals)	29
86.	Appeals to Appellate Tribunal	29
87.	Recovery of any amount due to Central Government	31
88.	Liability under Act to be first charge	32
89.	Offences and penalties	32
90 to 92.	Omitted by Finance Act, 1998	33
93.	Power to grant exemption from service tax	33
93A.	Power to grant rebate	34
94.	Power to make rules	34
95.	Power to remove difficulties	35
96.	Consequential amendment	37

Chapter VA-Advance Rulings		
96A.	Definitions	38
96B.	Vacancies, etc., not to invalidate proceedings	38
96C.	Application for advance ruling	39
96D.	Procedure on receipt of application	39
96E.	Applicability of advance ruling	40
96F.	Advance ruling to be void in certain circumstances	40
96G.	Powers of Authority	40
96H.	Procedure of Authority	41
96-I.	Power of Central Government to make rules	41
96-J.	Special exemption from service tax in certain cases	41

Chapter V of the Finance Act, 1994

64. EXTENT, COMMENCEMENT AND APPLICATION

- (1) This Chapter extends to the whole of India except the State of Jammu and Kashmir.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- (3) It shall apply to taxable services provided on or after the commencement of this Chapter.

65. DEFINITIONS

Please refer to Definitions Section at page 43.

65A. CLASSIFICATION OF TAXABLE SERVICES

- (1) For the purposes of this Chapter, classification of taxable services shall be determined according to the terms of the sub-clauses of clause (105) of section 65.
- (2) When for any reason, a taxable service is, prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected as follows:-
 - (a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;
 - (b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, in so far as this criterion is applicable;
 - (c) when a service cannot be classified in the manner specified in clause (a) or clause (b) it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merit consideration.

66. CHARGE OF SERVICE TAX

There shall be levied a tax (hereinafter referred to as the service tax) at the rate of ten per cent of the value of taxable services referred to in sub-clauses (a), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (za), (zb), (zc), (zh), (zi), (zj), (zk), (zl), (zm), (zn), (zo), (zq), (zr), (zs), (zt), (zu), (zv), (zw), (zx), (zy), (zz), (zza), (zzb), (zzc), (zzd), (zze), (zzf), (zzg), (zzh), (zzi), (zzk), (zsl), (zsm), (zsn), (zso), (zsp), (zsq), (zsr), (zss), (zst), (zsu), (zsv), (zsw), (zsx), (zsy), (zzz), (zzza), (zzzb), (zzzc), (zzzd), (zzze), (zzzf), (zzzg), (zzzh), (zzzi), (zzzj), (zzzk), (zzzl), (zzzm), (zzzn), (zzzo), (zzzp), (zzzq), (zzzr), (zzzs), (zzzt), (zzzu), (zzzv), (zzzw), (zzzx), (zzzy), (zzzz), (zzzza), (zzzzb), (zzzzc), (zzzsd), (zzzse), (zzzsf), (zzzsg), (zzzsh), (zzzzi), (zzzsj), (zzzsk), (zzzsl), (zzzsm), (zzzsn), (zzzso), (zzzsp), (zzzsq), (zzzsr), (zzzss), (zzzst), (zzzsu), (zzzsv), (zzzsw), (zzzsx), (zzzsy), (zzzz), (zzzza), (zzzzb), (zzzzc), (zzzsd), (zzzse), (zzzsf), (zzzsg), (zzzsh), (zzzzi), (zzzsj), (zzzsk), (zzzsl), (zzzsm), (zzzsn), (zzzso), (zzzsp), (zzzsq), (zzzsr), (zzzss), (zzzst), (zzzsu), (zzzsv), (zzzsw) and (zzzwx) of clause (105) of section 65 and collected in such manner as may be prescribed.

66A. CHARGE OF SERVICE TAX ON SERVICES RECEIVED FROM OUTSIDE INDIA

- (1) Where any service specified in clause (105) of section 65 is,—
- (a) 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
 - (b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India, such service shall, for the purposes of this section, be taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply:

Provided that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply:

Provided further that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.

- (2) 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.

Explanation 1. -A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.

Explanation 2. - Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted.

(For Import Rules, please refer page no.159)

67. VALUATION OF TAXABLE SERVICES FOR CHARGING SERVICE TAX

- (1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, -
- (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;
 - (ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;
 - (iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

- (2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.
- (3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.
- (4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation - For the purposes of this section, -

- (a) “consideration” includes any amount that is payable for the taxable services provided or to be provided;
- (b) “money” includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;
- (c) “gross amount charged” 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, and any amount credited or debited, as the case may be, to any account, whether called “Suspense account” or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

(For Valuation Rules, please refer page no. 166)

68. PAYMENT OF SERVICE TAX

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

69. REGISTRATION

- (1) Every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.
- (2) The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed.

70. FURNISHING OF RETURNS

- (1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such

form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.

- (2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

71. SCHEME FOR SUBMISSION OF RETURNS THROUGH SERVICE TAX *[RETURNS] PREPARERS

- (1) Without prejudice to the provisions of section 70, the Board may, by notification in the Official Gazette, frame a Scheme for the purposes of enabling any person or class of persons to prepare and furnish a return under section 70, and authorize a Service Tax Return Preparer to act as such under the Scheme.
- (2) A Service Tax Return Preparer shall assist the person or class of persons to prepare and furnish the return in such manner as may be specified in the Scheme framed under this section.
- (3) For the purposes of this section,-
 - (a) “Service Tax Return Preparer” means any individual, who has been authorised to act as a Service Tax Return Preparer under the Scheme framed under this section;
 - (b) “person or class of persons” means such person, as may be specified in the Scheme, who is required to furnish a return required to be filed under section 70.
- (4) The Scheme framed by the Board under this section may provide for the following, namely:-
 - (a) the manner in which and the period for which the Service Tax Return Preparer shall be authorised under sub-section (1);
 - (b) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Service Tax Return Preparer;
 - (c) the code of conduct for the Service Tax Return Preparer;
 - (d) the duties and obligations of the Service Tax Return Preparer;
 - (e) the circumstances under which the authorisation given to a Service Tax Return Preparer may be withdrawn;
 - (f) any other manner which is required to be, or may be, specified by the Scheme for the purposes of this section.

** word ‘returns’ is supplied by the Editors*

72. BEST JUDGMENT ASSESSMENT

If any person, liable to pay service tax,-

- (a) fails to furnish the return under section 70;
- (b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder,

the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

73. RECOVERY OF SERVICE TAX NOT LEVIED OR PAID OR SHORT-LEVIED OR SHORT-PAID OR ERRONEOUSLY REFUNDED

- (1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

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

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words “one year”, the words “five years” had been substituted.

Explanation - Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of one year or five years, as the case may be.

- (1A) Omitted
- (2) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from, or erroneously refunded to, such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined:
- (3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid:

Provided that the Central Excise Officer may determine the amount of short payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, the Central Excise Officer shall proceed to recover such amount in the manner specified in this section, and the period of “one year” referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

Explanation 1- For the removal of doubts, it is hereby declared that the interest under section 75 shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of service tax or erroneously refunded service tax, if any, as may be determined by the Central Excise Officer, but for this sub-section.

Explanation 2.—For the removal of doubts, it is hereby declared that no penalty under any of the provisions of this Act or the rules made thereunder shall be imposed in respect of payment of service-tax under this sub-section and interest thereon.

- (4) Nothing contained in sub-section (3) shall apply to a case where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of-
- (a) fraud; or
 - (b) collusion; or
 - (c) wilful mis-statement; or
 - (d) suppression of facts; or
 - (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax.
- (4A) Notwithstanding anything contained in sub-sections (3) and (4), where during the course of any audit, investigation or verification, it is found that any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, but the true and complete details of transactions are available in the specified records, the person chargeable to service tax or to whom erroneous refund has been made, may pay the service tax in full or in part, as he may accept to be the amount of tax chargeable or erroneously refunded along with interest payable thereon under section 75 and penalty equal to one per cent of such tax, for each month, for the period during which the default continues, up to a maximum of twenty-five per cent of the tax amount, before service of notice on him and inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the amount so paid and proceedings in respect of the said amount of service tax shall be deemed to have been concluded:

Provided that the Central Excise Officer may determine the amount of service tax, if any, due from such person, which in his opinion remains to be paid by such person and shall proceed to recover such amount in the manner specified in sub-section (1).

Explanation – For the purposes of this sub-section and section 78, “specified records” means records including computerized data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of account shall be considered as the specified records.

- (5) The provisions of sub-section (3) shall not apply to any case where the service tax had become payable or ought to have been paid before the 14th day of May, 2003.
- (6) For the purposes of this section, “relevant date” means, -
- (i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid -
 - (a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;
 - (b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;
 - (c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;
 - (ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;
 - (iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.

73A. SERVICE TAX COLLECTED FROM ANY PERSON TO BE DEPOSITED WITH CENTRAL GOVERNMENT

- (1) Any person who is liable to pay service tax under the provisions of this Chapter or the rules made thereunder, and has collected any amount in excess of the service tax assessed or determined and paid on any taxable service under the provisions of this Chapter or the rules made thereunder from the recipient of taxable service in any manner as representing service tax, shall forthwith pay the amount so collected to the credit of the Central Government.
- (2) Where any person who has collected any amount, which is not required to be collected, from any other person, in any manner as representing service tax, such person shall forthwith pay the amount so collected to the credit of the Central Government.
- (3) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (2) and the same has not been so paid, the Central Excise Officer shall serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.
- (4) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (3), determine the amount due from such person, not being in excess of the amount specified in the notice, and thereupon such person shall pay the amount so determined.
- (5) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (2) or sub-section (4), shall be adjusted against the service tax payable by the person on finalisation of assessment or any other proceeding for determination of service tax relating to the taxable service referred to in sub-section (1).

- (6) Where any surplus amount is left after the adjustment under sub-section (5), such amount shall either be credited to the Consumer Welfare Fund referred to in section 12C of the Central Excise Act, 1944(1 of 1944) or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B of the said Act and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Central Excise Officer for the refund of such surplus amount.

73B. INTEREST ON AMOUNT COLLECTED IN EXCESS

Where an amount has been collected in excess of the tax assessed or determined and paid for any taxable service under this Chapter or the rules made thereunder from the recipient of such service, the person who is liable to pay such amount as determined under sub-section (4) of section 73A, shall, in addition to the amount, be liable to pay interest at such rate not below ten per cent and not exceeding twenty-four per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the amount ought to have been paid under this Chapter, but for the provisions contained in sub-section (4) of section 73A, till the date of payment of such amount:

Provided that in such cases where the amount becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B of the Central Excise Act, 1944 (1 of 1944), and such amount payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction, as the case may be, no interest shall be payable and in other cases, the interest shall be payable on the whole amount, including the amount already paid.

Provided further that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice issued under sub-section (3) of section 73A or during the last preceding financial year, as the case may be, such rate of interest shall be reduced by three per cent per annum.

Explanation 1. - Where the amount determined under sub-section (4) of section 73A is reduced by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under this section shall be on such reduced amount.

Explanation 2. - Where the amount determined under sub-section (4) of section 73A is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under this section shall be on such increased amount.

73C. PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES

- (1) Where, during the pendency of any proceeding under section 73 or section 73A, the Central Excise Officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Central Excise, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 73 or sub-section (3) of section 73A, as the case may be, in such manner as may be prescribed.

- (2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

Provided that the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years.

73D. PUBLICATION OF INFORMATION IN RESPECT OF PERSONS IN CERTAIN CASES

- (1) If the Central Government is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings under this Chapter in respect of such person, it may cause to be published such names and particulars in such manner as may be prescribed.
- (2) No publication under this section shall be made in relation to any penalty imposed under this Chapter until the time for presenting an appeal to the Commissioner (Appeals) under section 85 or the Appellate Tribunal under section 86, as the case may be, has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation. - In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, shall also be published if, in the opinion of the Central Government, circumstances of the case justify it.

74. RECTIFICATION OF MISTAKE

- (1) With a view to rectifying any mistake apparent from the record, the Central Excise Officer who passed any order under the provisions of this Chapter may, within two years of the date on which such order was passed, amend the order.
- (2) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the Central Excise Officer passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.
- (3) Subject to the other provisions of this section, the Central Excise Officer concerned-
 - (a) may make an amendment under sub-section (1) of his own motion; or
 - (b) shall make such amendment if any mistake is brought to his notice by the assessee or the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals).
- (4) An amendment, which has the effect of enhancing the liability of the assessee or reducing a refund, shall not be made under this section unless the Central Excise Officer concerned has given notice to the assessee of his intention so to do and has allowed the assessee a reasonable opportunity of being heard.
- (5) Where an amendment is made under this section, an order shall be passed in writing by the Central Excise Officer concerned.

- (6) Subject to the other provisions of this Chapter where any such amendment has the effect of reducing the liability of an assessee or increasing the refund, the Central Excise Officer shall make any refund which may be due to such assessee.
- (7) Where any such amendment has the effect of enhancing the liability of the assessee or reducing the refund already made, the Central Excise Officer shall make an order specifying the sum payable by the assessee and the provisions of this Chapter shall apply accordingly.

75. INTEREST ON DELAYED PAYMENT OF SERVICE TAX

Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette, for the period by which such crediting of the tax or any part thereof is delayed.

Provided that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice or during the last preceding financial year, as the case may be, such rate of interest, shall be reduced by three percent per annum.

75A. PENALTY FOR FAILURE OF REGISTRATION

Omitted

76. PENALTY FOR FAILURE TO PAY SERVICE TAX

Any person, liable to pay service tax in accordance with the provisions of section 68 or the rules made under this Chapter, who fails to pay such tax, shall pay, in addition to such tax and the interest on that tax in accordance with the provisions of section 75, a penalty which shall not be less than one hundred rupees for every day during which such failure continues or at the rate of one per cent of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax:

Provided that the total amount of the penalty payable in terms of this section shall not exceed fifty per cent of the service tax payable.

Illustration

X, an assessee, fails to pay service tax of ten lakh rupees payable by 5th March. X pays the amount on the 15th March. The default has continued for ten days. The penalty payable by X is computed as follows: -

1% of the amount of default for 10 days = $1/100 \times 10,00,000 \times 10/31 = \text{Rs. } 3,226.00$

Penalty calculated @ Rs. 100 per day for 10 days = Rs. 1,000

Penalty liable to be paid is Rs. 3,226.00.

77. PENALTY FOR CONTRAVENTION OF RULES AND PROVISIONS OF ACT FOR WHICH NO PENALTY IS SPECIFIED ELSEWHERE

- (1) Any person,-
- (a) who is liable to pay service tax, or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to pay a penalty which may extend to ten thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;
 - (b) who fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made thereunder, shall be liable to a penalty which may extend to ten thousand rupees;
 - (c) who fails to –
 - (i) furnish information called by an officer in accordance with the provisions of this Chapter or rules made thereunder; or
 - (ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder; or
 - (iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry, shall be liable to a penalty which may extend to ten thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;
 - (d) who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to ten thousand rupees;
 - (e) who issues invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to ten thousand rupees.
- (2) Any person who contravenes any of the provisions of this Chapter or any rules made thereunder for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to ten thousand rupees.

78. PENALTY FOR SUPPRESSING, ETC. OF VALUE OF TAXABLE SERVICE

- (1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of –
- (a) fraud; or
 - (b) collusion; or
 - (c) willful mis-statement; or
 - (d) suppression of facts; or
 - (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax,

the person, liable to pay such service tax or erroneous refund, as determined under sub-section (2) of section 73, shall also be liable to pay a penalty, in addition to such service tax and interest thereon, if any, payable by him, which shall be equal to the amount of service tax so not levied or paid or short-levied or short-paid or erroneously refunded:

Provided that where true and complete details of the transactions are available in the specified records, penalty shall be reduced to fifty per cent of the service tax so not levied or paid or short-levied or short-paid or erroneously refunded:

Provided further that where such service tax and the interest payable thereon is paid within thirty days from the date of communication of order of the Central Excise Officer determining such service tax, the amount of penalty liable to be paid by such person under the first proviso shall be twenty-five per cent of such service tax:

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that in case of a service provider whose value of taxable services does not exceed sixty lakh rupees during any of the years covered by the notice or during the last preceding financial year, the period of thirty days shall be extended to ninety days.

- (2) Where the service tax determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the service tax as reduced or increased, as the case may be, shall be taken into account:

Provided that in case where the service tax to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the second proviso to sub-section (1), shall be available, if the amount of service tax so increased, the interest payable thereon and twenty-five per cent of the consequential increase of penalty have also been paid within thirty days or ninety days, as the case may be, of communication of the order by which such increase in service tax takes effect:

Provided further that if the penalty is payable under this section, the provisions of section 76 shall not apply.

Explanation – For the removal of doubts, it is hereby declared that any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the second proviso to sub-section (1) or the first proviso to sub-section (2) shall be adjusted against the total amount due from such person.

79. PENALTY FOR FAILURE TO COMPLY WITH NOTICE

Omitted

80. PENALTY NOT TO BE IMPOSED IN CERTAIN CASES

Notwithstanding anything contained in the provisions of section 76, section 77 or first proviso to sub-section (1) of section 78, no penalty shall be imposable on the assessee for any failure referred to in the said provisions, if the assessee proves that there was reasonable cause for the said failure.

81. OFFENCES BY COMPANIES

Omitted

82. POWER TO SEARCH PREMISES

- (1) If the Joint Commissioner of Central Excise has reason to believe that any documents or books or things which in his opinion will be useful for or relevant to any proceeding under this Chapter are secreted in any place, he may authorise any Superintendent of Central Excise to search for and seize or may himself search for and seize, such documents or books or things.
- (2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches, shall, so far as may be, apply to searches under this section as they apply to searches under that Code.

83. APPLICATION OF CERTAIN PROVISIONS OF ACT 1 OF 1944

The provisions of the following sections of the Central Excise Act, 1944 (1 of 1944), as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise: -

9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 14AA, 15, 33A, 34A, 35F, 35FF to 35O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, 37C, 37D, 38A and 40.

83A. POWER OF ADJUDICATION

Where under this Chapter or the rules made thereunder any person is liable to a penalty, such penalty may be adjudged by the Central Excise Officer conferred with such power as the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, by notification in the Official Gazette, specify.

84. APPEALS TO COMMISSIONER OF CENTRAL EXCISE (APPEALS) UNDER DIRECTIONS OF COMMISSIONER

- (1) The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Chapter for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order.
- (2) Every order under sub-section (1) shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.
- (3) Where in pursuance of an order under sub-section (1), the adjudicating authority or any other officer authorized in this behalf makes an application to the Commissioner of Central Excise (Appeals) within a period of one month from the date of communication of the order

under sub-section (1) to the adjudicating authority, such application shall be heard by the Commissioner of Central Excise (Appeals), as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Chapter regarding appeals shall apply to such application.

Explanation. – For the removal of doubts, it is hereby declared that any order passed by an adjudicating officer subordinate to the Commissioner of Central Excise immediately before the commencement of clause (C) of section 112 of the Finance (No.2) Act, 2009, shall continue to be dealt with by the Commissioner of Central Excise as if this section had not been substituted.

85. APPEALS TO THE COMMISSIONER OF CENTRAL EXCISE (APPEALS)

- (1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).
- (2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.
- (3) An appeal shall be presented within three months from the date of receipt of the decision or order of such adjudicating authority, relating to service tax, interest or penalty under this Chapter:

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

- (4) The Commissioner of Central Excise (Appeals) shall hear and determine the appeal and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty:

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

- (5) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the Commissioner of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944 (1 of 1944).

86. APPEALS TO APPELLATE TRIBUNAL

- (1) Any assessee aggrieved by an order passed by a Commissioner of Central Excise under section 73 or section 83A or an order passed by a Commissioner of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal against such order.
- (1A) (i) The Board may, by notification in the Official Gazette, constitute such Committees as may be necessary for the purposes of this Chapter.
- (ii) Every Committee constituted under clause (i) shall consist of two Chief Commissioners of Central Excise or two Commissioners of Central Excise, as the case may be.

- (2) The Committee of Chief Commissioners of Central Excise may, if it objects to any order passed by the Commissioner of Central Excise under section 73 or 83A, direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order:

Provided that where the Committee of Chief Commissioners of Central Excise differs in its opinion against the order of the Commissioner of Central Excise, it shall state the point or points on which it differs and make a reference to the Board which shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central excise is not legal or proper, direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.

- (2A) The Committee of Commissioners may, if it objects to any order passed by the Commissioner of Central Excise (Appeals) under section 85, direct any Central Excise Officer to appeal on its behalf to the Appellate Tribunal against the order:

Provided that where the Committee of Commissioners differs in its opinion against the order of the Commissioner of Central Excise (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against the order.

Explanation – For the purposes of this sub-section, “jurisdictional Chief Commissioner” means the Chief Commissioner having jurisdiction over the concerned adjudicating authority in the matter.

- (3) Every appeal under sub-section (1) or sub-section (2) or sub-section (2A) shall be filed within three months of the date on which the order sought to be appealed against is received by the assessee, the Committee of Chief Commissioners or the Committee of Commissioners, as the case may be.
- (4) The Commissioner of Central Excise or any Central Excise Officer subordinate to him or the assessee, as the case may be, on receipt of a notice that an appeal against the order of the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals) has been preferred under sub-section (1) or sub-section (2) or sub-section (2A) by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within forty-five days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).
- (5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4) if it is satisfied that there was sufficient cause for not presenting it within that period.
- (6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, irrespective of the date of demand of service tax and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of, -

- (a) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
- (b) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;
- (c) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

Provided that no fee shall be payable in the case of an appeal referred to in sub-section (2) or sub-section (2A) or a memorandum of cross-objections referred to in sub-section (4).

(6A) Every application made before the Appellate Tribunal, -

- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
 - (b) for restoration of an appeal or an application,
- shall be accompanied by a fee of five hundred rupees;

Provided that no such fee shall be payable in the case of an application filed by the Commissioner of Central Excise or Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be under this sub-section.

(7) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944 (1 of 1944).

87. RECOVERY OF ANY AMOUNT DUE TO CENTRAL GOVERNMENT

Where any amount payable by a person to the credit of the Central Government under any of the provisions of this Chapter or of the rules made thereunder is not paid, the Central Excise Officer shall proceed to recover the amount by one or more of the modes mentioned below: -

- (a) the Central Excise Officer may deduct or may require any other Central Excise Officer or any officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the said Central Excise Officer or any officer of customs;
- (b) (i) the Central Excise Officer may, by notice in writing, require any other person from whom money is due or may become due to such person, or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government either forthwith upon the money becoming due or being held or at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;
- (ii) every person to whom a notice is issued under this section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt,

policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

- (iii) in a case where the person to whom a notice under this section is sent, fails to make the payment in pursuance thereof to the Central Government, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and all the consequences of this Chapter shall follow;
- (c) the Central Excise Officer may, on an authorisation by the Commissioner of Central Excise, in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;
- (d) the Central Excise Officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

88. LIABILITY UNDER ACT TO BE FIRST CHARGE

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest or any other sum payable by an assessee or any other person under this Chapter, shall, save as otherwise provided in section 529A of the Companies Act, 1956 and the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, be the first charge on the property of the assessee or the person as the case may be.

89. OFFENCES AND PENALTIES

- (1) Whoever commits any of the following offences, namely, -
 - (a) provides any taxable service chargeable to service tax under sub-section (1) of section 68 or receives any taxable service chargeable to tax under sub-section (2) of said section, without an invoice issued in accordance with the provisions of this Chapter or the rules made thereunder; or
 - (b) avails and utilizes credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter: or
 - (c) maintains false books of account or fails to supply any information which he is required to supply under this Chapter or the rules made thereunder or (unless with a reasonable

belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

- (d) collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due,

shall be punishable, -

- (i) in the case of an offence where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to three years:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months;

- (ii) in any other case, with imprisonment for a term, which may extend to one year.

- (2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to three years:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term less than six months.

- (3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely: -

- (i) the fact that the accused has been convicted for the first time for an offence under this Chapter;
- (ii) the fact that in any proceeding under this Act, other than prosecution, the accused has been ordered to pay a penalty or any other action has been taken against him for the same act which constitutes the offence;
- (iii) the fact that the accused was not the principal offender and was acting merely as a secondary party in the commission of offence:
- (iv) the age of the accused.

- (4) A person shall not be prosecuted for any offence under this section except with previous sanction of the Chief Commissioner of Central Excise.

90 to 92. ABOLISHED WITH EFFECT FROM 16TH OCTOBER, 1998

93. POWER TO GRANT EXEMPTION FROM SERVICE TAX

- (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally or subject to such conditions as may be specified in the notification, taxable service of any specified description from the whole or any part of the service tax leviable thereon.

- (2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt any taxable service of any specified description from the payment of whole or any part of the service tax leviable thereon, under circumstances of exceptional nature to be stated in such order.

93A. POWER TO GRANT REBATE

Where any goods or services are exported, the Central Government may grant rebate of service tax paid on taxable services which are used as input services for the manufacturing or processing of such goods or for providing any taxable services and such rebate shall be subject to such extent and manner as may be prescribed:

Provided that where any rebate has been allowed on any goods or services under this section and the sale proceeds in respect of such goods or consideration in respect of such services are not received by or on behalf of the exporter in India within the time allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), such rebate shall, except under such circumstances or such conditions as may be prescribed, be deemed never to have been allowed and the Central Government may recover or adjust the amount of such rebate in such manner as may be prescribed.

94. POWER TO MAKE RULES

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -
 - (a) collection and recovery of service tax under sections 66 and 68;
 - (aa) the determination of amount and value of taxable service under section 67;
 - (b) the time and manner and the form in which application for registration shall be made under sub-sections (1) and (2) of section 69;
 - (c) the form, manner and frequency of the returns to be furnished under sub-sections (1) and (2) and the late fee for delayed furnishing of return under sub-section (1) of section 70;
 - (cc) the manner of provisional attachment of property under sub-section (1) of section 73C;
 - (ccc) publication of name of any person and particulars relating to any proceeding under sub-section (1) of section 73D;
 - (d) the form in which appeal under section 85 or under sub-section (6) of section 86 may be filed and the manner in which they may be verified;
 - (e) the manner in which the memorandum of cross objections under sub-section (4) of section 86 may be verified;
 - (ee) the credit of service tax paid on the services consumed for providing a taxable service in case where the services consumed and the service provided fall in the same category of taxable service;

- (eee) the credit of service tax paid on the services consumed or duties paid or deemed to have been paid on goods used for providing a taxable service;
 - (eeee) the manner of recovery of any amount due to the Central Government under section 87;
 - (f) provisions for determining export of taxable services;
 - (g) grant of exemption to, or rebate of service tax paid on, taxable services which are exported out of India;
 - (h) rebate of service tax paid or payable on the taxable services consumed or duties paid or deemed to have been paid on goods used for providing taxable services which are exported out of India;
 - (hh) 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 under section 93A;
 - (hhh) the date for determination of rate of service tax and the place of provision of taxable service;
 - (i) any other matter which by this Chapter is to be or may be prescribed
- (3) The power to make rules conferred by this section shall on the first occasion of the exercise thereof include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Chapter come into force.
- (4) Every rule made under this Chapter, Scheme framed under section 71 and every notification issued under section 93 shall be laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule should not be made or the notification should not be issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

95. POWER TO REMOVE DIFFICULTIES

- (1) If any difficulty arises in respect of implementing, or assessing the value of, any taxable service incorporated in this Chapter by the Finance Act, 2002, the Central Government may, by order published in the Official Gazette, which is not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of the Finance Act, 2002 incorporating such taxable services in this Chapter come into force.

- (1A) If any difficulty arises in respect of implementing or assessing the value of, any taxable service incorporated in this Chapter by the Finance Act, 2003, the Central Government may, by order

published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of the Finance Act, 2003 incorporating such taxable services in this Chapter come into force.

- (1B) If any difficulty arises in respect of implementing, or assessing the value of, any taxable service incorporated in this Chapter by the Finance (No.2) Act, 2004, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the Finance (No.2) Act, 2004 receives the assent of the President.

- (1C) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2006, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2006 receives the assent of the President.

- (1D) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2007, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2007 receives the assent of the President.

- (1E) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2008, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2008 receives the assent of the President.

- (1F) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance (No.2) Act, 2009, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance (No.2) Bill, 2009 receives the assent of the President.

- (1G) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2010, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2010 receives the assent of the President.

(1H) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2011, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2011 receives the assent of the President.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of the Parliament.

96. CONSEQUENTIAL AMENDMENT

In the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974), in the Schedule, after entry 7 relating to the Central Excise Act, 1944 (1 of 1944), the following entry shall be inserted, namely:-

“7A. Chapter V of the Finance Act, 1994.”

Chapter VA-Advance Rulings

96A. DEFINITIONS

In this Chapter, unless the context otherwise requires,-

- (a) “advance ruling” means the determination, by the Authority, of a question of law or fact specified in the application regarding the liability to pay service tax in relation to a service proposed to be provided, by the applicant;
- (b) “applicant” means, -
 - (i) (a) a non-resident setting up a joint venture in India in collaboration with a non- resident or a resident; or
 - (b) a resident setting up a joint venture in India in collaboration with a non-resident; or
 - (c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company, who or which, as the case may be, proposes to undertake any business activity in India;
- (ii) a joint venture in India; or
- (iii) a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf, and which or who, as the case may be, makes application for advance ruling under sub-section (1) of section 96C.

Explanation.- For the purposes of this clause, “joint venture in India” means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is a non-resident having substantial interest in such arrangement.

- (c) “application” means an application made to the Authority under sub-section (1) of section 96C;
- (d) “Authority” means the Authority for Advance Rulings, constituted under sub-section (1), or authorized by the Central Government under sub-section (2A), of section 28F of the Customs Act, 1962 ;
- (e) “non-resident”, “Indian company” and “foreign company” have the meanings respectively assigned to them in clauses (30), (26) and (23A) of section 2 of the Income-tax Act, 1961 (43 of 1961);
- (f) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, of 1944 (1 of 1944) or the rules made thereunder shall apply, so far as may be, in relation to service tax as they apply in relation to duty of excise.

96B. VACANCIES, ETC., NOT TO INVALIDATE PROCEEDINGS

No proceeding before, or pronouncement of advance ruling by, the Authority under this Chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

96C. APPLICATION FOR ADVANCE RULING

- (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.
- (2) The question on which the advance ruling is sought shall be in respect of,-
 - (a) classification of any service as a taxable service under Chapter V;
 - (b) the valuation of taxable services for charging service tax;
 - (c) the principles to be adopted for the purposes of determination of value of the taxable service under the provisions of Chapter V;
 - (d) applicability of notifications issued under Chapter V;
 - (e) admissibility of credit of service tax;
 - (f) determination of the liability to pay service tax on a taxable service under the provisions of Chapter V.
- (3) The application shall be made in quadruplicate and be accompanied by a fee of two thousand five hundred rupees.
- (4) An applicant may withdraw an application within thirty days from the date of the application.

96D. PROCEDURE ON RECEIPT OF APPLICATION

- (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner of Central Excise and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner of Central Excise.
- (2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application:

Provided that the Authority shall not allow the application where the question raised in the application is, -

 - (a) already pending in the applicant's case before any Central Excise Officer, the Appellate Tribunal or any Court;
 - (b) the same as in a matter already decided by the Appellate Tribunal or any Court:

Provided further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

Provided also that where the application is rejected, reasons for such rejection shall be given in the order.
- (3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the Commissioner of Central Excise.

- (4) Where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.
- (5) On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

Explanation - For the purposes of this sub-section, “authorised representative” has the meaning assigned to it in sub-section (2) of section 35Q of the Central Excise Act, 1944 (1 of 1944).

- (6) The Authority shall pronounce its advance ruling in writing within ninety days of the receipt of application.
- (7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner of Central Excise, as soon as may be, after such pronouncement.

96E. APPLICABILITY OF ADVANCE RULING

- (1) The advance ruling pronounced by the Authority under section 96D shall be binding only -
 - (a) on the applicant who had sought it;
 - (b) in respect of any matter referred to in sub-section (2) of section 96C;
 - (c) on the Commissioner of Central Excise, and the Central Excise authorities subordinate to him, in respect of the applicant.
- (2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

96F. ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES

- (1) Where the Authority finds, on a representation made to it by the Commissioner of Central Excise or otherwise, that an advance ruling pronounced by it under sub-section (4) of section 96D has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of this Chapter shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.
- (2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner of Central Excise.

96G. POWERS OF AUTHORITY

- (1) The Authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908).

- (2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1860).

96H. PROCEDURE OF AUTHORITY

The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.

96I. POWER OF CENTRAL GOVERNMENT TO MAKE RULES

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
 - (a) the form and manner for making application under sub-section (1) of section 96C;
 - (b) the manner of certifying a copy of advanced ruling pronounced by the Authority under sub-section (7) of section 96D;
 - (c) any other matter which, by this Chapter, is to be or may be prescribed.
- (3) Every rule made under this Chapter shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

96J. SPECIAL EXEMPTION FROM SERVICE TAX IN CERTAIN CASES

- (1) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of membership fee collected by a club or association formed for representing industry or commerce, during the period on and from the 16th day of June, 2005 to the 31st day of March, 2008 (both days inclusive).
- (2) Refund shall be made of all such service tax which has been collected but which would not have been so collected if sub-section (1) had been in force at all material times.
- (3) Notwithstanding anything contained in this Chapter an application for the claim of refund of service tax shall be made within six months from the date on which the Financial Bill, 2011 receives the assent of the President.

VALIDATION PROVISIONS :-

Any action taken or anything done or omitted to be done or purported to have been taken or done or omitted to be done under sub-clause (zzzz) of clause (105) of section 65 of the Finance Act, 1994, at any time during the period commencing on and from the 1st day of June, 2007 and ending with the day, the Finance Bill, 2010 receives the assent of the President, shall be deemed to be and deemed always to have been, for all purposes, as validly and effectively taken or done or omitted to be done as if the amendment made in sub-clause (zzzz) of clause (105) of section 65, by sub-item (i) of item (h) of sub-clause (5) of clause (A) of section 75 of the Finance Act, 2010 had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,—

- (a) any action taken or anything done or omitted to be taken or done in relation to the levy and collection of service tax during the said period on the taxable service of renting of immovable property, shall be deemed to be and deemed always to have been, as validly taken or done or omitted to be done as if the said amendment had been in force at all material times;
- (b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for the levy and collection of such service tax and no enforcement shall be made by any court of any decree or order relating to such action taken or anything done or omitted to be done as if the said amendment had been in force at all material times;
- (c) recovery shall be made of all such amounts of service tax, interest or penalty or fine or other charges which may not have been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, would not have been refunded, as if the said amendment had been in force at all material times.

Explanation.— For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable had this amendment not come into force.

Definitions

Sr.No.	Definitions	Page No.
1.	Advertising agency's services	47
2.	Airport services	47
3.	Air travel agent's services	48
4.	Architect's services	48
5.	Asset management service	48
6.	Auctioneer's service	48
7.	Authorised service station's services	49
8.	Automated Teller Machines (ATM) operations, maintenance or management services	50
9.	Banking and other financial services Foreign exchange broking service	50
10.	Beauty treatment service	53
11.	Broadcasting services	54
12.	Business auxiliary services	55
13.	Business exhibition services	56
14.	Business support services	56
15.	Cable services	57
16.	Cargo handling service	57
17.	Chartered accountant's services	58
18.	Cleaning activity service	58
19.	Clearing and forwarding agents' services	58
20.	Club or association service	59
21.	Commercial or industrial construction services	59
22.	Commercial training or coaching service	60
23.	Commodity exchange service	60
24.	Company secretary's services	61
25.	Computer network services (On-line information and database access or retrieval services)	61
26.	Construction of complex service	62
27.	Consulting engineer's services	63
28.	Convention services	64

Sr.No.	Definitions	Page No.
29.	Copyright service	64
30.	Cosmetic and plastic surgery service	64
31.	Cost accountant's services	64
32.	Courier service	65
33.	Credit card, debit card, charge card or other payment card service	65
34.	Credit rating agency's services	66
35.	Custom house agent's services	66
36.	Design services	67
37.	Development and supply of content service	67
38.	Dredging service	67
39.	Dry cleaning services	67
40.	Electricity exchange service	68
41.	Erection, commissioning or installation service	68
42.	Event management service	69
43.	Fashion designing service	69
44.	Forward contract service	69
45.	Franchise service	70
46.	General insurance service	70
47.	Health club and fitness services	71
48.	Health services	71
49.	Information technology software service	72
50.	Insurance auxiliary services (General insurance) Insurance auxiliary service (Life insurance)	72
51.	Intellectual property services	74
52.	Interior decorator's services	74
53.	Internet cafe service	74
54.	Internet telecommunication services	75
55.	Legal consultancy service	75
56.	Life insurance service	75
57.	Mailing list compilation and mailing service	76
58.	Maintenance of medical records service	77
59.	Management or Business consultant's services	77

Sr.No.	Definitions	Page No.
60.	Management, maintenance or repair service	77
61.	Management of investment under ULIP service	78
62.	Mandap keeper's services	78
63.	Manpower recruitment or supply agency's services	79
64.	Market research agency's services	79
65.	Mining of mineral, oil or gas service	79
66.	Opinion poll services	79
67.	Other port services	80
68.	Outdoor caterer's service	80
69.	Packaging activity services	80
70.	Pandal or shamiana contractor's service	81
71.	Permitting commercial use or exploitation of any event service	81
72.	Photography services	81
73.	Port services	82
74.	Processing and clearing house service	82
75.	Programme producer's services	83
76.	Promoting, Marketing or organizing of games of chance, including lottery services	83
77.	Promoting a brand of goods, services, events, business entity etc. services	83
78.	Public relation management service	84
79.	Rail travel agent's services	84
80.	Real estate agent's services	84
81.	Renting of immovable property service	84
82.	Recovery agent's service	85
83.	Registrar to an issue's service	86
84.	Rent-a-cab scheme operator's service	86
85.	Sale of space or time for advertisement services	87
86.	Scientific or technical consultancy services	88
87.	Security agency's services	88
88.	Services by air-conditioned restaurants having licence to serve liquor	88
89.	Services by hotels / inns / clubs for short-term accommodation	88
90.	Share transfer agent's service	88

Sr.No.	Definitions	Page No.
91.	Ship management services	89
92.	Site formation and clearance, excavation and earth moving and demolition services	89
93.	Special services provided by builders	90
94.	Sponsorship services	90
95.	Sound recording studio or agency services	90
96.	Steamer agent's services	91
97.	Stock-broker's services	92
98.	Stock Exchange service	92
99.	Storage and warehousing service	93
100.	Supply of tangible goods service	93
101.	Survey and exploration of mineral, oil and gas service	93
102.	Survey and map-making service	94
103.	Technical inspection and certification service	94
104.	Technical testing and analysis service	94
105.	Telecommunication service	95
106.	Transport of coastal goods; and goods transported through inland water service	96
107.	Tour operator's service	96
108.	Transport of goods by air service	97
109.	Transport of goods by rail service	98
110.	Transport of goods by road service	98
111.	Transport of goods, other than water, through pipeline or other conduit service	99
112.	Transport of passengers embarking in India for domestic or international journey by air service	99
113.	Transport of persons embarking from port in India by cruise ship service	100
114.	Travel agent's service	100
115.	Underwriter's service	100
116.	Video production agency's services	101
117.	Works contract service	101
118.	Miscellaneous definitions	102

ADVERTISING AGENCY'S SERVICES

Section 65(105)(e)

“taxable service” means any service provided, or to be provided to any person, by an advertising agency in relation to advertisements, in any manner and the term “service provider” shall be construed accordingly.

Section 65(2)

“advertisement” includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas.

Section 65(3)

“advertising agency” means any person engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant.

AIRPORT SERVICES

Section 65(105)(zzm)

“taxable service” means any service provided or to be provided to any person, by airports authority or by any other person, in any 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;

Section 65(3c)

“airport” has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994 (55 of 1994).

Section 65(3d)

“airports authority” means the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994) and also includes any person having the charge of management of an airport or a civil enclave.

Section 65(24a)

“civil enclave” has the meaning assigned to it in clause (i) of section 2 of the Airports Authority of India Act, 1994 (55 of 1994).

Airport Authority of India Act, 1994

Section 2(b)

“airport” means a landing and taking off area for aircraft, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934.

Section 2(i)

“civil enclave” means the area, if any, allotted at an airport belonging to any armed force of the Union, for use by persons availing of any air transport services from such airport or for the handling of baggage or cargo by such service, and includes land comprising of any building and structure on such area.

AIR TRAVEL AGENT'S SERVICES

Section 65(105)(l)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

Section 65(4)

“**air travel agent**” means any person engaged in providing any service connected with the booking of passage for travel by air.

ARCHITECT'S SERVICES

Section 65(105)(p)

“**taxable service**” means any service provided or to be provided to any person, by an architect in his professional capacity, in any manner and the term “service provider” shall be construed accordingly.

Section 65(6)

“**architect**” means any person whose name is, for the time being, entered in the register of architects maintained under section 23 of the Architects Act, 1972 (20 of 1972) and also includes any commercial concern engaged in any manner, whether directly or indirectly, in rendering services in the field of architecture.

ASSET MANAGEMENT INCLUDING PORTFOLIO MANAGEMENT AND ALL FORMS OF FUND MANAGEMENT SERVICE

Section 65(105)(zzzc)

“**taxable service**” means any service provided or to be provided to any person, by any other person, except 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), in relation to asset management including portfolio management and all forms of fund management and the term “service provider” shall be construed accordingly.

The Securities and Exchange Board of India (Portfolio Managers) Rules, 1993

Rule 2 (e)

“**Portfolio Manager**” means any person who pursuant to a contract or arrangement with a client advises or directs or undertakes on behalf of the client (whether as a discretionary Portfolio Manager or otherwise) the management or administration as a Portfolio securities or the funds of the client as the case may be.

AUCTIONEER'S SERVICE

Section 65(105)(zzzr)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

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;

Section 65(7a)

“**auction of property**” includes calling the auction or providing a facility, advertising or illustrating services, pre-auction price estimates, short-term storage services, repair or restoration services in relation to auction of property.

AUTHORISED SERVICE STATION’S SERVICES

Section 65(105)(zo)

“**taxable service**” means any service provided or to be provided to any person, by any other person, in relation to any service for repair, reconditioning, restoration or decoration or any other similar services, of any motor vehicle other than three wheeler scooter auto-rickshaw and motor vehicle meant for goods carriage;

Section 65(9)

Omitted.

Section 65(62)

“**light motor vehicle**” means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver.

Section 65(72)

“**motor car**” has the meaning assigned to it in clause (26) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

Section 65(73)

“**motor vehicle**” has the meaning assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

The Motor Vehicles Act, 1988

Section 2(26)

“**motor car**” means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage.

Section 2(28)

“**motor vehicle**” or “**vehicle**” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres.

AUTOMATED TELLER MACHINE (ATM) OPERATIONS, MAINTENANCE OR MANAGEMENT SERVICES

Section 65(105)(zzk)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

Section 65(9a)

“**automated teller machine**” means an interactive automatic machine designed to dispense cash, accept deposit of cash, transfer money between bank accounts and facilitate other financial transactions.

Section 65(9b)

“**automated teller machine operations, maintenance or management service**” means any service provided in relation to automated teller machines and includes site selection, contracting of location, acquisition, financing, installation, certification, connection, maintenance, transaction processing, cash forecasting, replenishment, reconciliation and value-added services.

BANKING AND OTHER FINANCIAL SERVICES FOREIGN EXCHANGE BROKING SERVICE

Section 65(105)(zm)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

Section 65(105)(zzk)

“**taxable service**” means 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) and the term “service provider” shall be construed accordingly.

Section 65(8)

“**authorised dealer of foreign exchange**” has the meaning assigned to “authorised person” in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).

Section 65(9c)

“**banker to an issue**” means a bank included in the Second schedule to the Reserve Bank of India Act, 1934 (2 of 1934), carrying on the activities relating to an issue including acceptance of application, application money, allotment money and call money, refund of application money, payment of dividend and interest warrants.

Section 65(10)

“**banking**” has the meaning assigned to it in clause (b) of section 5 of the Banking Regulation Act, 1949 (10 of 1949).

Section 65(11)

“**banking company**” has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of

India Act, 1934 (2 of 1934).

Section 65(12)

“banking and other financial services” means -

- (a) the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern namely:-
- (i) financial leasing services including equipment leasing and hire-purchase;
Explanation — For the purposes of this item, “financial leasing” means a lease transaction where -
 - (i) contract for lease is entered into between two parties for leasing of a specified asset;
 - (ii) such contract is for use and occupation of the asset by the lessee;
 - (iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and
 - (iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment;
 - (ii) omitted;
 - (iii) merchant banking services;
 - (iv) securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;
 - (v) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services;
 - (vi) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;
 - (vii) provision and transfer of information and data processing; and
 - (viii) Banker to an issue services; and
 - (ix) other financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit and bill of exchange; transfer of money including telegraphic transfer, mail transfer and electronic transfer; providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults; operation of bank accounts.
- (b) foreign exchange broking and purchase or sale of foreign currency, including money changing provided by a foreign exchange broker or an authorised dealer in foreign exchange or an authorised money changer, other than those covered under sub-clause (a).

Explanation – For the purposes of this clause, it is hereby declared that “purchase or sale of foreign currency, including money changing” includes purchase or sale of foreign currency, whether or not the consideration for such purchase or sale, as the case may be, is specified separately.

Section 65(14)

“body corporate” has the meaning assigned to it in clause (7) of section 2 of the Companies Act, 1956 (1 of 1956).

Section 65(45)

“financial institution” has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934).

Section 65(46)

“foreign exchange broker” includes any authorised dealer of foreign exchange.

Section 65(74)

“non-banking financial company” has the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934).

The Banking Regulation Act, 1949

Section 5(b)

“banking” means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise.

The Reserve Bank of India Act, 1934

Section 45A(a)

“banking company” means a banking company as defined in section 5 of the Banking Regulation Act, 1949 (10 of 1949), and includes the State Bank of India, any Subsidiary Bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), any corresponding new bank constituted by section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), and any other financial institution notified by the Central Government in this behalf.”

Section 45-I(c)

“financial institution” means any non-banking institution which carries on as its business or part of its business any of the following activities, namely:-

- (i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own;
- (ii) the acquisition of shares, stock, bonds, debentures or securities issued by a government or local authority or other marketable securities of a like nature;
- (iii) letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in clause (c) of section 2 of the Hire-Purchase Act, 1972 (26 of 1972);
- (iv) the carrying on of any class of insurance business;
- (v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;
- (vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person,

but does not include any institution, which carries on as its principal business,-

- (a) agricultural operations; or
- (aa) industrial activity; or
- (b) the purchase, or sale of any goods (other than securities) or the providing of any services; or
- (c) the purchase, construction or sale of immovable property, so, however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons;

Explanation. - For the purposes of this clause, “industrial activity” means any activity specified in sub-clauses (i) to (xviii) of clause (c) of section 2 of the Industrial Development Bank of India Act, 1964 (18 of 1964).

Section 45-I(f)

“non-banking financial company” (NBFC) means -

- (i) a financial institution which is a company;
- (ii) a non banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;
- (iii) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

The Companies Act, 1956

Section 2(7)

“body corporate” or “corporation” includes a company incorporated outside India, but does not include —

- (a) a corporate sole;
- (b) a co-operative society registered under any law relating to co-operative societies; and
- (c) any other body corporate (not being a company as defined in the Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Foreign Exchange Management Act, 1999

Section 2(c)

“authorised person” means an authorised dealer, money changer, offshore banking unit or any other person for the time being authorised under sub-section (1) of section 10 to deal in foreign exchange or foreign securities.

BEAUTY TREATMENT SERVICE

Section 65(105)(zq)

“taxable service” means any service provided or to be provided to any person, by a beauty parlour in relation to beauty treatment and the term “service provider” shall be construed accordingly.

Section 65(17)

“beauty treatment” includes hair cutting, hair dyeing, hair dressing, face and beauty treatment, cosmetic

treatment, manicure, pedicure or counselling services on beauty, face care or make-up or such other similar services.

Section 65(18)

“beauty parlour” means any establishment providing beauty treatment services.

BROADCASTING SERVICES

Section 65(105)(zk)

“taxable service” means 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 electromagnetic waves through space or through cables, direct to home signals or by any other means to cable operator, including multi-system operator or any other person on behalf of the said agency or organisation and the term “service provider” shall be construed accordingly.

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 the signals or beaming thereof through the satellite might have taken place outside India.

Section 65(15)

“broadcasting” has the meaning assigned to it in clause (c) of section 2 of the Prasar Bharti (Broadcasting Corporation of India) Act, 1990 (25 of 1990) and also includes programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is intended for public listening or viewing, as the case may be; and in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes the activity of selling of time slots or obtaining sponsorships for broadcasting of any 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 electromagnetic waves through space or through cables, direct to home signals or by any other means to cable operator including multi-system operator or any other person on behalf of the said agency or organisation, 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.

Section 65(16)

‘broadcasting agency or organisation’ means any agency or organisation engaged in providing service 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 its branch office or subsidiary or representative in India or any agent appointed in India or 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 electromagnetic waves

through space or through cables, direct to home signals or by any other means to cable operator, including multi-system operator or any other person on behalf of the said agency or organisation.

The Prasar Bharati (Broadcasting Corporation of India) Act, 1990

Section 2(c)

“broadcasting” means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variation and cognate expressions shall be construed accordingly.

BUSINESS AUXILIARY SERVICES

Section 65(105)(zzb)

“taxable service” means any service provided or to be provided to a client, by any person in relation to business auxiliary service and the term “service provider” shall be construed accordingly.

Section 65(19)

“business auxiliary service” means any service in relation to -

- (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
- (ii) promotion or marketing of service provided by the client;
- (iii) any customer care service provided on behalf of the client; or
- (iv) procurement of goods or services, which are inputs for the client; or

Explanation. - For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, “inputs” means all goods or services intended for use by the client;

- (v) production or processing of goods for, or on behalf of, the client; or
- (vi) provision of service on behalf of the client; or
- (vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,

and includes services as a commission agent, but does not include any activity that amounts to manufacture of excisable goods.

Explanation. - For the removal of doubts, it is hereby declared that for the purposes of this clause, -

- (a) **“commission agent”** means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person -
 - (i) deals with goods or services or documents of title to such goods or services; or
 - (ii) collects payment of sale price of such goods or services; or
 - (iii) guarantees for collection or payment for such goods or services; or
 - (iv) undertakes any activities relating to such sale or purchase of such goods or services;

- (b) “excisable goods” has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944;
- (c) “manufacture” has the meaning assigned to it in clause (f) of section 2 of the Central Excise Act, 1944.

The Central Excise Act, 1944

Section 2(d)

"excisable goods" means goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to a duty of excise and includes salt.

Section 2(f)

“manufacture” includes any process -

- (i) incidental or ancillary to the completion of a manufactured product; and
- (ii) which is specified in relation to any goods in the section or Chapter notes of the first schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or
- (iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer,

and the word “manufacturer” shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.

BUSINESS EXHIBITION SERVICES

Section 65(105)(zzo)

“taxable service” means any service provided or to be provided to an exhibitor, by the organiser of a business exhibition, in relation to business exhibition and the term “service provider” shall be construed accordingly.

Section 65(19a)

“business exhibition” means an exhibition, -

- (a) to market; or
- (b) to promote; or
- (c) to advertise; or
- (d) to showcase,

any product or service, intended for the growth in business of the producer or provider of such product or service, as the case may be.

BUSINESS SUPPORT SERVICES

Section 65(105)(zzzq)

“taxable service” means 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 and the term “service provider” shall be construed accordingly.

Section 65(104c)

“support services of business or commerce” means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational or administrative assistance in any manner, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation - For the purposes of this clause, the expression “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.

CABLE SERVICES

Section 65(105)(zs)

“taxable service” means any service provided or to be provided to any person, by a cable operator, including multi-system operator in relation to cable services and the term “service provider” shall be construed accordingly.

Section 65(21)

“cable operator” has the meaning assigned to it in clause (aa) of section 2 of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995).

Section 65(22)

“cable service” has the meaning assigned to it in clause (b) of section 2 of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995).

The Cable Television Networks (Regulation) Act, 1995

Section 2(aa)

“cable operator” means any person who provides cable services through a television network or otherwise controls or is responsible for the management and operation of a cable television network.

Section 2(b)

“cable service” means the transmission by cables of programme including retransmission by cable of any broadcast television signals.

CARGO HANDLING SERVICE

Section 65(105)(zr)

“taxable service” means any service provided or to be provided to any person, by a cargo handling agency in relation to cargo handling services and the term “service provider” shall be construed accordingly.

Section 65(23)

“cargo handling service” means loading, unloading, packing or unpacking of cargo and includes,-

- (a) cargo handling services provided for freight in special containers or for non-containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and
- (b) service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking,

but does not include, handling of export cargo or passenger baggage or mere transportation of goods.

CHARTERED ACCOUNTANT’S SERVICES**Section 65(105)(s)**

“taxable service” means any service provided or to be provided to any person , by a practising chartered accountant in his professional capacity, in any manner and the term “service provider” shall be construed accordingly.

Section 65(83)

“practising chartered accountant” means a person who is a member of the Institute of Chartered Accountants of India and is holding a certificate of practice granted under the provisions of the Chartered Accountants Act, 1949 (38 of 1949) and includes any concern engaged in rendering services in the field of chartered accountancy.

CLEANING ACTIVITY SERVICE**Section 65(105)(zzzd)**

“taxable service” means any service provided or to be provided to any person, by any other person, in relation to cleaning activity.

Section 65(24b)

“cleaning activity” means cleaning, including specialised cleaning services such as disinfecting, exterminating or sterilising of objects or premises, of -

- (i) commercial or industrial buildings and premises thereof; or
- (ii) factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof,

but does not include such services in relation to agriculture, horticulture, animal husbandry or dairying.

CLEARING AND FORWARDING AGENT’S SERVICES**Section 65(105)(j)**

“taxable service” means 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 and the term “service provider” shall be construed accordingly.

Section 65(25)

“clearing and forwarding agent” means any person who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent.

CLUB OR ASSOCIATION SERVICE**Section 65(105)(zzze)**

“taxable service” means any service provided or to be provided to its members, or any other person by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount and the term “service provider” shall be construed accordingly.

Section 65(25aa)

“club or association” means any person or body of persons providing services, facilities or advantages, primarily to its members, for a subscription or any other amount, but does not include -

- (i) any body established or constituted by or under any law for the time being in force; or
- (ii) any person or body of persons engaged in the activities of trade unions, promotion of agriculture, horticulture or animal husbandry; or
- (iii) any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature; or
- (iv) any person or body of persons associated with press or media

COMMERCIAL OR INDUSTRIAL CONSTRUCTION SERVICES**Section 65(105)(zzq)**

“taxable service” means any service provided or to be provided to any person, by any other person, in relation to commercial or industrial construction and the term “service provider” shall be construed accordingly.

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;

Section 65(25b)

“commercial or industrial construction” means -

- (a) construction of a new building or a civil structure or a part thereof; or
- (b) construction of pipeline or conduit; or
- (c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or

- (d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is -
- (i) used, or to be used, primarily for; or
 - (ii) occupied, or to be occupied, primarily with; or
 - (iii) engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

COMMERCIAL TRAINING OR COACHING SERVICE

Section 65(105)(zgc)

“taxable service” means any service provided or to be provided to any person, by a commercial training or coaching centre in relation to commercial training or coaching and the term “service provider” shall be construed accordingly.

Explanation.—For the removal of doubts, it is hereby declared that the expression “commercial training or coaching centre” occurring in this sub-clause and in clauses (26), (27) and (90a) shall include any centre or institute, by whatever name called, where training or coaching is imparted for consideration, whether or not such centre or institute is registered as a trust or a society or similar other organisation under any law for the time being in force and carrying on its activity with or without profit motive and the expression “commercial training or coaching” shall be construed accordingly;*

* amendment to be effective from July 1, 2003, after enactment of the Finance Bill, 2010

Section 65(26)

“commercial training or coaching” means any training or coaching provided by a commercial training or coaching centre.

Section 65(27)

“commercial training or coaching centre” means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes.

COMMODITY EXCHANGE SERVICE

Section 65(105)(zzzh)

“taxable service” means 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 and the term “service provider” shall be construed accordingly.

Section 65(89a) and (89b)

(89a) ‘recognised association’ has the meaning assigned to it in clause (j) of section 2 of the Forward Contracts (Regulation) Act, 1952

(89b) ‘registered association’ has the meaning assigned to it in clause (jj) of section 2 of the Forward Contracts (Regulation) Act,1952

The Forward Contracts (Regulation) Act,1952

Section 2 (j)

“recognised association” means an association to which recognition for the time being has been granted by the Central Government under section 6 in respect of goods or classes of goods specified in such recognition;

Section 2 (jj)

“registered association” means an association to which for the time being a certificate of registration has been granted by the Commission under section 14B.

COMPANY SECRETARY’S SERVICES

Section 65(105)(u)

“taxable service” means any service provided or to be provided to any person, by a practising company secretary in his professional capacity, in any manner and the term “service provider” shall be construed accordingly.

Section 65(85)

“practising company secretary” means a person who is a member of the Institute of Company Secretaries of India and is holding a certificate of practice granted under the provisions of the Company Secretaries Act, 1980 and includes any concern engaged in rendering services in the field of company secretaryship.

COMPUTER NETWORK SERVICES (On-line information and database access or retrieval services)

Section 65(105)(zh)

“taxable service” means 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 and the term “service provider” shall be construed accordingly.

Section 65(30)

“computer network” has the meaning assigned to it in clause (j) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

Section 65(36)

“data” has the meaning assigned to it in clause (o) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

Section 65(39)

“electronic form” has the meaning assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

Section 65(53)

“**information**” has the meaning assigned to it in clause (v) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

Section 65(75)

“**online information and database access or retrieval**” means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network.

Information Technology Act, 2000

Section 2(1)(j)

“**computer network**” means the interconnection of one or more computers through -

- (i) the use of satellite, terrestrial line or other communication media; and
- (ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained.

Section 2(1)(o)

“**data**” means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts, magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.

Section 2(1)(r)

“**electronic form**” with reference to information means any information generated, sent, received or stored in a media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device.

Section 2(1)(v)

“**information**” includes data, text, images, sounds, codes, computer programmes, software and data-bases or micro film or computer generated micro fiche.

CONSTRUCTION OF COMPLEX SERVICE**Section 65(105)(zzzh)**

“**taxable service**” means 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;

Section 65(30a)

“Construction of complex” means -

- (a) construction of a new residential complex or a part thereof; or
- (b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or
- (c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex.

Section 65(91a)

“residential complex” means any complex comprising of -

- (i) a building or buildings, having more than twelve residential units;
- (ii) a common area; and
- (iii) 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.

Explanation - For the removal of doubts, it is hereby declared that for the purposes of this clause, -

- (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;

CONSULTING ENGINEER'S SERVICES**Section 65(105)(g)**

“taxable service” means 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.

Section 65(31)

“consulting engineer” means any professionally qualified engineer or any body corporate or any other firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to any person in one or more disciplines of engineering.

CONVENTION SERVICES

Section 65(105)(zc)

“**taxable service**” means any service provided or to be provided to any person, by any person in relation to holding of a convention, in any manner and the term “service provider” shall be construed accordingly.

Section 65(32)

“**convention**” means a formal meeting or assembly which is not open to the general public, but does not include a meeting or assembly, the principal purpose of which is to provide any type of amusement, entertainment or recreation.

COPYRIGHT SERVICES

Section 65(105)(zzzt)

“**taxable service**” means 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 sub-clause (a) of clause (1) of section 13 of the said Act;”.

Section 13(1)(a) of the Copyright Act, 1957

13. Works in which copyright subsists.- (1) subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,-

- (a) original literary, dramatic, musical and artistic works;
- (b) cinematograph films; and
- (c) sound recordings

COSMETIC AND PLASTIC SURGERY SERVICE

Section 65(105)(zzzk)

“**taxable service**” means 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 SERVICES

Section 65(105)(t)

“**taxable service**” means any service provided or to be provided to any person, by practising cost accountant in his professional capacity, in any manner and the term “service provider” shall be construed accordingly.

Section 65(84)

“practising cost accountant” means a person who is member of the Institute of Cost and Works Accountants of India and is holding a certificate of practice granted under the provisions of the Cost and Works Accountants Act, 1959 (23 of 1959) and includes any concern engaged in rendering services in the field of cost accountancy.

COURIER SERVICE**Section 65(105)(f)**

“taxable service” means 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 and the term “service provider” shall be construed accordingly.

Section 65(33)

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

CREDIT CARD, DEBIT CARD, CHARGE CARD OR OTHER PAYMENT CARD SERVICE**Section 65(105)(zzzw)**

“taxable service” means 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 and the term “service provider” shall be construed accordingly.

Section 65(33a)

“credit card, debit card, charge card or other payment card service” includes any service provided, -

- (i) by a banking company, financial institution including non-banking financial company or any other person (hereinafter referred to as the issuing bank), issuing such card to a card holder;
- (ii) by any person to an issuing bank in relation to such card business, including receipt and processing of application, transfer of embossing data to issuing bank’s personalisation agency, automated teller machine personal identification number generation, renewal or replacement of card, change of address, enhancement of credit limit, payment updation and statement generation;
- (iii) by any person, including an issuing bank and an acquiring bank, to any other person in relation to settlement of any amount transacted through such card.

Explanation - For the purposes of this sub-clause, “acquiring bank” means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card;

- (iv) in relation to joint promotional cards or affinity cards or co-branded cards;
- (v) in relation to promotion and marketing of goods and services through such card;
- (vi) by a person, to an issuing bank or the holder of such card, for making use of automated teller machines of such person; and

- (vii) by the owner of trade marks or brand name to the issuing bank under an agreement, for use of the trade mark or brand name and other services in relation to such card, whether or not such owner is a club or association and the issuing bank is a member of such club or association.

Explanation - For the purposes of this sub-clause, an issuing bank and the owner of trade marks or brand name shall be treated as separate persons.

CREDIT RATING AGENCY'S SERVICES

Section 65(105)(x)

“taxable service” means 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 and the term “service provider” shall be construed accordingly.

Section 65(34)

“credit rating agency” means any person engaged in the business of credit rating of any debt obligation or of any project or programme requiring finance, whether in the form of debt or otherwise, and includes credit rating of any financial obligation, instrument or security, which has the purpose of providing a potential investor or any other person any information pertaining to the relative safety of timely payment of interest or principal.

CUSTOM HOUSE AGENT'S SERVICES

Section 65(105)(h)

“taxable service” means 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 and the term “service provider” shall be construed accordingly.

Section 65(35)

“custom house agent” means a person licensed, temporarily or otherwise, under the regulations made under sub-section (2) of section 146 of the Customs Act, 1962 (52 of 1962).

Section 65(35a)

“customs airport” means an airport appointed as such under clause (a) of sub-section (1) of section 7 of the Customs Act, 1962 (52 of 1962).

Section 65(50)

“goods” has the meaning assigned to it in clause (7) of section 2 of the Sale of Goods Act, 1930 (3 of 1930).

The Sale of Goods Act, 1930

Section 2(7)

“goods” means every kind of moveable property other than actionable claims and money; and includes 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.

DESIGN SERVICES

Section 65(105)(zzzd)

“**taxable services**” means 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.

Section 65(36b)

“**design services**” includes services provided in relation to designing of furniture, consumer products, industrial products, packages, logos, graphics, websites and corporate identity designing and production of three dimensional models.

DEVELOPMENT AND SUPPLY OF CONTENT SERVICES

Section 65(105)(zzzb)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

Section 65(36c)

“**development and supply of content**” includes development and supply of mobile value added services, music, movie clips, ring tones, wall paper, mobile games, data, whether or not aggregated, information, news and animation films.

DREDGING SERVICE

Section 65(105)(zzzb)

“**taxable service**” means any service provided or to be provided to any person, by any other person, in relation to dredging and the term “service provider” shall be construed accordingly.

Section 65(36a)

“**dredging**” includes removal of material including, silt, sediments, rocks, sand, refuse, debris, plant or animal matter in any excavating, cleaning, deepening, widening or lengthening, either permanently or temporarily, of any river, port, harbour, backwater or estuary.

DRY CLEANING SERVICES

Section 65(105)(zt)

“**taxable service**” means any service provided or to be provided to any person, by a dry cleaner in relation to dry cleaning and the term “service provider” shall be construed accordingly.

Section 65(37)

“dry cleaning” includes dry cleaning of apparels, garments or other textile, fur or leather articles.

Section 65(38)

“dry cleaner” means any person providing service in relation to dry cleaning.

ELECTRICITY EXCHANGE SERVICE**Section 65(105)(zzzs)**

“taxable service” means any service provided or to be provided to any person, by an electricity exchange, by whatever name called, approved by the Central Electricity Regulatory Commission constituted under section 76 of the Electricity Act, 2003(36 of 2003), in relation to trading, processing, clearing or settlement of spot contracts, term ahead contracts, seasonal contracts, derivatives or any other electricity related contract.

ERECTION, COMMISSIONING OR INSTALLATION SERVICE**Section 65(105)(zzd)**

“taxable service” means any service provided or to be provided to any person, commissioning and installation agency in relation to erection, commissioning or installation and the term “service provider” shall be construed accordingly.

Section 65(29)

“commissioning and installation agency” means any agency providing service in relation to erection, commissioning or installation.

Section 65(39a)

“erection, commissioning or installation” means any service provided by a commissioning and installation agency, in relation to, —

- (i) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise; or
- (ii) installation of -
 - (a) electrical and electronic devices, including wirings or fittings therefore; or
 - (b) plumbing, drain laying or other installations for transport of fluids; or
 - (c) heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work; or
 - (d) thermal insulation, sound insulation, fire proofing or water proofing; or
 - (e) lift and escalator, fire escape staircases or travelators; or
 - (f) such other similar services.

EVENT MANAGEMENT SERVICE

Section 65(105)(zu)

“**taxable service**” means any service provided or to be provided to any person, by an event manager in relation to event management and the term “service provider” shall be construed accordingly.

Section 65(40)

“**event management**” means any service provided in relation to planning, promotion, organising or presentation of any arts, entertainment, business, sports, marriage or any other event and includes any consultation provided in this regard.

Section 65(41)

“**event manager**” means any person who is engaged in providing any service in relation to event management in any manner.

FASHION DESIGNING SERVICE

Section 65(105)(zv)

“**taxable service**” means any service provided or to be provided to any person, by a fashion designer in relation to fashion designing and the term “service provider” shall be construed accordingly.

Section 65(43)

“**fashion designing**” includes any activity relating to conceptualising, outlining, creating the designs and preparing patterns for costumes, apparels, garments, clothing accessories, jewellery or any other articles intended to be worn by human beings and any other service incidental thereto.

Section 65(44)

“**fashion designer**” means any person engaged in providing service in relation to fashion designing.

FORWARD CONTRACT SERVICE

Section 65(105)(zzy)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

Section 65(46a)

“**forward contract**” has the meaning assigned to it in clause (c) of section 2 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952).

Section 65(89a)

“**recognised association**” has the meaning assigned to it in clause (j) of section 2 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952).

Section 65(89b)

“**registered association**” has the meaning assigned to it in clause (jj) of section 2 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952).

Forward Contracts (Regulation) Act, 1952

Section 2(c)

“forward contract” means a contract for the delivery of goods and which is not a ready delivery contract.

Section 2(j)

“recognised association” means an association to which recognition for the time being has been granted by the Central Government under section 6 in respect of goods or classes of goods specified in such recognition.

Section 2(jj)

“registered association” means an association to which for the time being a certificate of registration has been granted by the Commission under section 14B.

FRANCHISE SERVICE

Section 65(105)(ze)

“taxable service” means any service provided or to be provided to a franchisee, by the franchiser in relation to franchise and the term “service provider” shall be construed accordingly.

Section 65(47)

“franchise” means an agreement by which the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved.

Section 65(48)

“franchisor” means any person who enters into franchise with a franchisee and includes any associate of franchisor or a person designated by franchisor to enter into franchise on his behalf and the term “franchisee” shall be construed accordingly.

GENERAL INSURANCE SERVICE

Section 65(105)(d)

“taxable service” means 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 and the term “service provider” shall be construed accordingly.

Section 65(49)

“general insurance business” has the meaning assigned to it in clause (g) of section 3 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972).

Section 65(58)

“insurer” means any person carrying on the general insurance business or life insurance business and includes a re-insurer.

Section 65(80)

“policy holder” has the meaning assigned to it in clause (2) of section 2 of the Insurance Act, 1938 (4 of 1938).

The General Insurance Business (Nationalisation) Act, 1972

Section 3(g)

“general insurance business” means fire, marine and miscellaneous insurance business, whether carried on singly or in combination with one or more of them.

The Insurance Act, 1938

Section 2(2)

“policy-holder” includes a person to whom the whole of the interest of the policy-holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition.

HEALTH CLUB AND FITNESS SERVICES

Section 65(105)(zw)

“taxable service” means any service provided or to be provided to any person, by a health club and fitness centre in relation to health and fitness services and the term “service provider” shall be construed accordingly.

Section 65(51)

“health and fitness service” means service for physical well-being such as, sauna and steam bath, turkish bath, solarium, spas, reducing or slimming salons, gymnasium, yoga, meditation, massage (excluding therapeutic massage) or any other like service.

Section 65(52)

“health club and fitness centre” means any establishment, including a hotel or a resort, providing health and fitness service.

HEALTH SERVICES*

Section 65(105)(zzzz)

“taxable service” means any service provided or to be provided to any person,—

- (i) by a clinical establishment; or
- (ii) by a doctor, not being an employee of a clinical establishment, who provides services from such premises for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine;

Section 65(25a)

“clinical establishment” means –

- (i) a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution, by whatever name called, owned, established, administered or managed by any person or body of persons, whether incorporated or not, having in its establishment the facility of central air-conditioning either in whole or in part of its premises and having more than twenty-five beds for in-patient treatment at any time during the financial year, offering services for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine; or

*Exempted by notification no. 30/2011 dated 25-April-2011

- (ii) an entity owned, established, administered or managed by any person or body of persons, whether incorporated or not, either as an independent entity or as a part of any clinical establishment referred to in sub-clause (i), which carries out diagnosis of diseases through pathological, bacteriological, genetic, radiological, chemical, biological investigations or other diagnostic or investigative services with the aid of laboratory or other medical equipment,
but does not include an establishment, owned or controlled by –
- (a) the Government; or
 - (b) a local authority;

INFORMATION TECHNOLOGY SOFTWARE SERVICE

Section 65(105)(zzze)

“**taxable services**” means 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) 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,
- (vi) providing the right to use information technology software supplied electronically and the term “service provider” shall be construed accordingly.

Section 65(53a)

“**information technology software**” means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment.

INSURANCE AUXILIARY SERVICES (GENERAL INSURANCE) INSURANCE AUXILIARY SERVICE (LIFE INSURANCE)

Section 65(105)(zl)

“**taxable service**” means 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 agent, in relation

to insurance auxiliary services concerning general insurance business and the term “service provider” shall be construed accordingly.

Section 65(105)(zy)

“**taxable service**” means 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 agent, in relation to insurance auxiliary services concerning life insurance business and the term “service provider” shall be construed accordingly.

Section 65(1)

“**actuary**” has the meaning assigned to it in clause (1) of section 2 of the Insurance Act, 1938 (4 of 1938).

Section 65(54)

“**insurance agent**” has the meaning assigned to it in clause (10) of section 2 of the Insurance Act, 1938 (4 of 1938).

Section 65(55)

“**insurance auxiliary service**” means any service provided by an actuary, an intermediary or insurance intermediary or an insurance agent in relation to general insurance business or life insurance business and includes risk assessment, claim settlement, survey and loss assessment.

Section 65(56)

“**intermediary or insurance intermediary**” has the meaning assigned to it in clause (f) of sub-section (1) of section 2 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999).

Section 65(58)

“**insurer**” means any person carrying on the general insurance business or life insurance business and includes a re-insurer.

Section 65(80)

“**policy holder**” has the meaning assigned to it in clause (2) of section 2 of the Insurance Act, 1938 (4 of 1938).

The Insurance Act, 1938

Section 2(1)

“**actuary**” means an actuary possessing such qualifications as may be prescribed.

Section 2(10)

“**Insurance agent**” means an insurance agent licensed under section 42 who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance.

Section 2(2)

“**policy-holder**” includes a person to whom the whole of the interest of the policy-holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition.

Section 2(1)(f)

“intermediary or insurance intermediary” includes insurance brokers, re-insurance brokers, insurance consultants, surveyors and loss assessors.

INTELLECTUAL PROPERTY SERVICES

Section 65(105)(zr)

“taxable service” means any service provided or to be provided to any person, by the holder of intellectual property right, in relation to intellectual property service and the term “service provider” shall be construed accordingly.

Section 65(55a)

“intellectual property right” means any right to intangible property, namely, trade marks, designs, patents or any other similar intangible property, under any law for the time being in force, but does not include copyright.

Section 65(55b)

“intellectual property service” means, -

- (a) transferring temporarily; or
- (b) permitting the use or enjoyment of,
any intellectual property right.

INTERIOR DECORATOR’S SERVICES

Section 65(105)(q)

“taxable service” means 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 and the term “service provider” shall be construed accordingly.

Section 65(59)

“interior decorator” means any person engaged, whether directly or indirectly, in the business of providing by way of advice, consultancy, technical assistance or in any other manner, services related to planning, design or beautification of spaces, whether man-made or otherwise and includes a landscape designer.

INTERNET CAFE SERVICE

Section 65(105)(zzf)

“taxable service” means any service provided or to be provided to any person, by an internet cafe in relation to access of internet and the term “service provider” shall be construed accordingly.

Section 65(57)

“internet cafe” means a commercial establishment providing facility for accessing internet.

INTERNET TELECOMMUNICATION SERVICES

Section 65(105)(zzzu)

“**taxable service**” means any service provided or to be provided to any person, by any other person, in relation to internet telecommunication service and the term “service provider” shall be construed accordingly.

Section 65(57a)

“**internet telecommunication service**” includes,-

- (i) internet backbone services, including carrier services of internet traffic by one Internet Service Provider to another Internet Service Provider,
- (ii) internet access services, including provision of a direct connection to the internet and space for the customer’s web page,
- (iii) provision of telecommunication services, including fax, telephony, audio conferencing and video conferencing, over the internet.

Section 65(56b)

“**internet**” means a global information system which is logically linked together by a globally unique address, based on Internet Protocol or its subsequent enhancement or upgradations and is able to support communications using the Transmission Control Protocol or Internet Protocol suite or its subsequent enhancements or upgradations and all other Internet Protocol compatible protocols.

LEGAL CONSULTANCY SERVICE

Section 65(105)(zzzzm)

“**taxable service**” means any service provided or to be provided - :

- (i) to any person, by a business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner;
- (ii) to any business entity, by any person, in relation to representational services before any court, Tribunal or authority;
- (iii) to any business entity, by an arbitral Tribunal, in respect of arbitration.

Explanation – For the purposes of this item, the expressions “arbitration” and “arbitral tribunal” shall have the meanings respectively assigned to them in the Arbitration and Conciliation Act, 1996.

Arbitration and Conciliation Act, 1996

Section 2(a)

“**arbitration**” means any arbitration whether or not administered by permanent arbitral institution.

Section 2(d)

“**arbitral tribunal**” means a sole arbitrator or a panel of arbitrators.

LIFE INSURANCE SERVICE

Section 65(105)(zx)

“**taxable service**” means any service provided or to be provided to a policy holder or any person, by an

insurer, including re-insurer carrying on life insurance business.

Section 65(61)

“life insurance business” has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938).

Section 65(58)

“insurer” means any person carrying on the general insurance business or life insurance business and includes a re-insurer.

Section 65(80)

“policy holder” has the meaning assigned to it in clause (2) of section 2 of the Insurance Act, 1938 (4 of 1938).

The Insurance Act, 1938

Section 2(11)

“life insurance business” means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include -

- (a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance
- (b) the granting of annuities upon human life and
- (c) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such person.

Section 2(2)

“policy-holder” includes a person to whom the whole of the interest of the policy-holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition.

MAILING LIST COMPILATION AND MAILING SERVICE

Section 65(105)(zzzg)

“taxable service” means any service provided or to be provided to any person, by any other person, in relation to mailing list compilation and mailing and the term “service provider” shall be construed accordingly.

Section 65(63a)

“mailing list compilation and mailing” means any service in relation to -

- (i) compiling and providing list of name, address and any other information from any source; or
- (ii) sending document, information, goods or any other material in a packet, by whatever name called, by addressing, stuffing, sealing, metering or mailing, for, or on behalf of, the client.

MAINTENANCE OF MEDICAL RECORDS SERVICE

Section 65(105)(zzzzp)

“**taxable service**” means 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 OR BUSINESS CONSULTANT’S SERVICES

Section 65(105)(r)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

Section 65(65)

“**management or business consultant**” means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organization or business in any manner and includes any person who renders any advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management.

MANAGEMENT, MAINTENANCE OR REPAIR SERVICE

Section 65(105)(zzg)

“**taxable service**” means any service provided or to be provided, to any person , by any person in relation to management, maintenance or repair and the term “service provider” shall be construed accordingly.

Section 65(64)

“**management, maintenance or repair**” means any service provided by -

- (i) any person under a contract or an agreement; or
- (ii) a manufacturer or any person authorised by him,

in relation to, -

- (a) management of properties, whether immovable or not;
- (b) maintenance or repair of properties, whether immovable or not; or
- (c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle.

Explanation — For the removal of doubts, it is hereby declared that for the purposes of this clause,

- (a) “goods” includes computer software;
- (b) “properties” includes information technology software.

MANAGEMENT OF INVESTMENT UNDER ULIP SERVICE

Section 65(105)(zzzzf)

“**taxable services**” means 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 and the term “service provider” shall be construed accordingly.

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; and
- (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;

Section 65(80)

“**policy holder**” shall have the meaning assigned to it in clause (2) of section 2 of the Insurance Act, 1938.

MANDAP KEEPER'S SERVICES

Section 65(105)(m)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

Section 65(66)

“**mandap**” means any immovable property as defined in section 3 of the Transfer of Property Act, 1882 (4 of 1882) and includes any furniture, fixtures, light fittings and floor coverings therein let out for a consideration for organising any official, social or business function.

Explanation — For the purposes of this clause, social function includes marriage.

Section 65(67)

“**mandap keeper**” means a person who allows temporary occupation of a mandap for a consideration for organising any official, social or business function.

Explanation — For the purposes of this clause, “social function” includes marriage.

The Transfer of Property Act, 1882

Section 3

“**immovable property**” does not include standing timber, growing crops or grass.

MANPOWER RECRUITMENT OR SUPPLY AGENCY'S SERVICES

Section 65(105)(k)

“taxable service” means 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 and the term “service provider” shall be construed accordingly.

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.

Section 65(68)

“manpower recruitment or supply agency” means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person.

MARKET RESEARCH AGENCY'S SERVICES

Section 65(105)(y)

“taxable service” means 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 and the term “service provider” shall be construed accordingly.

Section 65(69)

“market research agency” means any person engaged in conducting market research in any manner, in relation to any product, service or utility, including all types of customised and syndicated research services.

MINING OF MINERAL, OIL OR GAS SERVICE

Section 65(105)(zzzy)

“taxable service” means any service provided or to be provided, to any person, by any other person in relation to mining of mineral, oil or gas and the term “service provider” shall be construed accordingly.

OPINION POLL SERVICES

Section 65(105)(zzs)

“taxable service” means any service provided or to be provided to any person, by an opinion poll agency, in relation to opinion poll and the term “service provider” shall be construed accordingly.

Section 65(75a)

“opinion poll” means any service designed to secure information on public opinion regarding social, economic, political or other issues.

Section 65(75b)

“opinion poll agency” means any person engaged in providing any service in relation to opinion poll.

OTHER PORT SERVICES

Section 65(105)(zzl)

“**taxable service**” means any service provided or to be provided to any person, by any other person, in relation to port services in other port, in any manner:

Provided that the provisions of section 65A shall not apply to any service when the same is rendered wholly within other port;

Section 65(76)

“**other port**” has the meaning assigned to ‘port’ in clause (4) of section 3 of the Indian Ports Act, 1908 (15 of 1908), but does not include the port defined in clause (80).

Section 65(82)

“**port service**” means any service rendered within a port or other port, in any manner

Section 65(118)

“**vessel**” has the meaning assigned to it in clause (z) of section 2 of the Major Port Trusts Act, 1963 (38 of 1963).

The Indian Ports Act, 1908

Section 3(4)

“**port**” includes also any part of a river or channel in which this act is for the time being in force.

The Major Port Trusts Act, 1963

Section 2(z)

“**vessel**” includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson.

OUTDOOR CATERER’S SERVICE

Section 65(105)(zzt)

“**taxable service**” means any service provided or to be provided to any person, by an outdoor caterer and the term “service provider” shall be construed accordingly.

Section 65(76a)

“**outdoor caterer**” means a caterer engaged in providing services in connection with catering at a place other than his own but including a place provided by way of tenancy or otherwise by the person receiving such services.

PACKAGING ACTIVITY SERVICES

Section 65(105)(zzzf)

“**taxable service**” means any service provided or to be provided to any person, by any other person, in relation to packaging activity and the term “service provider” shall be construed accordingly.

Section 65(76b)

“packaging activity” means packaging of goods including pouch filling, bottling, labelling or imprinting of the package, but does not include any packaging activity that amounts to ‘manufacture’ within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944).

PANDAL OR SHAMIANA CONTRACTOR’S SERVICE**Section 65(105)(zzw)**

“taxable service” means 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, rendered as a caterer and the term “service provider” shall be construed accordingly.

Section 65(77a)

“pandal or shamiana” means a place specially prepared or arranged for organising an official, social or business function.

Explanation — For the purposes of this clause, “social function” includes marriage.

Section 65(77b)

“pandal or shamiana contractor” means a person engaged in providing any service, either directly or indirectly, in connection with the preparation, arrangement, erection or decoration of a pandal or shamiana and includes the supply of furniture, fixtures, lights and light fittings, floor coverings and other articles for use therein.

PERMITTING COMMERCIAL USE OR EXPLOITATION OF ANY EVENT SERVICE**Section 65(105)(zzzr)**

“taxable service” means 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.

PHOTOGRAPHY SERVICES**Section 65(105)(zb)**

“taxable service” means any service provided or to be provided to any person, by a photographer studio or agency in relation to photography, in any manner and the term “service provider” shall be construed accordingly.

Section 65(78)

“photography” includes still photography, motion picture photography, laser photography, aerial photography or fluorescent photography.

Section 65(79)

“photography studio or agency” means any professional photographer or any person engaged in the business of rendering service relating to photography.

PORT SERVICES

Section 65(105)(zn)

“**taxable service**” means any service provided or to be provided to any person, by any other person, in relation to port services in a port, 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;

Section 65(81)

“**port**” has the meaning assigned to it in clause (q) of section 2 of the Major Port Trusts Act, 1963 (38 of 1963).

Section 65(118)

“**vessel**” has the meaning assigned to it in clause (z) of section 2 of the Major Port Trusts Act, 1963 (38 of 1963).

Section 65(82)

“**port service**” means any service rendered within a port or other port, in any manner;

Section 65(50)

“**goods**” has the meaning assigned to it in clause (7) of section 2 of the Sale of Goods Act, 1930 (3 of 1930).

The Major Port Trusts Act, 1963

Section 2(q)

“**port**” means any major port to which this Act applies within such limits as may, from time to time, be defined by the Central Government for the purposes of this Act by notification in the Official Gazette, and, until a notification is so issued, within such limits as may have been defined by the Central Government under the provisions of the Indian Ports Act.

Section 2(z)

“**vessel**” includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson.

The Sale of goods Act, 1930

Section 2(7)

“**goods**” means every kind of moveable property other than actionable claims and money and includes 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.

PROCESSING AND CLEARING HOUSE SERVICE

Section 65(105)(zzzzi)

“**taxable services**” means 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 and the term “service provider” shall be construed accordingly.

Section 65(86d)

“Processing and clearing house” means any person including the clearing corporation authorised or assigned by a recognised stock exchange, recognised association or a registered association to perform the duties and functions of a clearing house in relation to,-

- (i) the periodical settlement of contracts for, or relating to, the sale or purchase of securities, goods or forward contracts and differences thereunder;
- (ii) the delivery of, and payment for, securities, goods or forward contracts;
- (iii) any other matter incidental to, or connected with, securities, goods and forward contracts.

PROGRAMME PRODUCER’S SERVICES

Section 65(105)(zzu)

“taxable service” means any service provided or to be provided to any person, by a programme producer, in relation to a programme and the term “service provider” shall be construed accordingly.

Section 65(86a)

“programme” means any audio or visual matter, live or recorded, which is intended to be disseminated by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations.

Section 65(86b)

“programme producer” means any person who produces a programme on behalf of another person.

PROMOTING, MARKETING OR ORGANIZING OF GAMES OF CHANCE, INCLUDING LOTTERY SERVICES

Section 65(105)(zzzn)

“taxable service” means any service provided or to be provided to any person, by any other person, for promotion, marketing, organising or in any other manner assisting in organising games of chance, including lottery, Bingo or Lotto in whatever form or by whatever name called, whether or not conducted through internet or other electronic networks

PROMOTING A BRAND OF GOODS, SERVICES, EVENTS, BUSINESS ENTITY ETC. SERVICES

Section 65(105)(zzzq)

“taxable service” means 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.

PUBLIC RELATION MANAGEMENT SERVICE

Section 65(105)(zzzs)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

Section 65(86c)

“**public relations**” includes strategic counselling based on industry, media and perception research, corporate image management, media relations, media training, press release, press conference, financial public relations, brand support, brand launch, retail support and promotions, events and communications and crisis communications.

RAIL TRAVEL AGENT’S SERVICES

Section 65(105)(zz)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

Section 65(87)

“**rail travel agent**” means any person engaged in providing any service connected with booking of passage for travel by rail.

REAL ESTATE AGENT’S SERVICES

Section 65(105)(v)

“**taxable service**” means any service provided or to be provided to any person, by a real estate agent in relation to real estate and the term “service provider” shall be construed accordingly.

Section 65(88)

“**real estate agent**” means a person who is engaged in rendering any service in relation to sale, purchase, leasing or renting, of real estate and includes a real estate consultant.

Section 65(89)

“**real estate consultant**” means a person who renders in any manner, either directly or indirectly, advice, consultancy or technical assistance, in relation to evaluation, conception, design, development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate.

RENTING OF IMMOVABLE PROPERTY SERVICE

Section 65(105)(zzzz)

“**taxable service**” means 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 such renting, for use in the course of or, for furtherance of, business or commerce.* and the term “service provider” shall be construed accordingly.

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 commerce;

but does not include-

- (a) vacant land solely used for agriculture, 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.

Section 65(90a)

“renting of immovable property” includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include —

- (i) renting of immovable property by a religious body or to a religious body; or
- (ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre;

Explanation 1 — For the purposes of this clause, “for use in the course or furtherance of business or commerce” includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings.

Explanation 2 — For the removal of doubts, it is hereby declared that for the purposes of this clause “renting of immovable property” includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property.

RECOVERY AGENT’S SERVICE

Section 65(105)(zzzl)

“taxable service” means 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 and the term “service provider” shall be construed accordingly.

REGISTRAR TO AN ISSUE'S SERVICE

Section 65(105)(zzzi)

“**taxable service**” means any service provided or to be provided to any person, by a registrar to an issue, in relation to sale or purchase of securities and the term “service provider” shall be construed accordingly.

Section 65(89c)

“**registrar to an issue**” means any person carrying on the activities in relation to an issue including collecting application forms from investors, keeping a record of applications and money received from investors or paid to the seller of securities, assisting in determining the basis of allotment of securities, finalising the list of persons entitled to allotment of securities and processing and despatching allotment letters, refund orders or certificates and other related documents.

Section 65(59a)

“**issue**” means an offer of sale or purchase of securities to, or from, the public or the holder of securities.

RENT-A-CAB SCHEME OPERATOR'S SERVICE

Section 65(105)(o)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

Section 65(20)

“**cab**” means –

- (i) a motorcab, or
- (ii) a maxicab or
- (iii) any motor vehicle constructed or adapted to carry more than twelve passengers, excluding the driver, for hire or reward:

Provided that the maxicab referred to in sub-clause (ii) or motor vehicle referred to in sub-clause (iii) which is rented for use by an educational body imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre, shall not be included within the meaning of cab.

Section 65(70)

“**maxicab**” has the meaning assigned to it in clause (22) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

Section 65(71)

“**motorcab**” has the meaning assigned to it in clause (25) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

Section 65(91)

“rent-a-cab scheme operator” means any person engaged in the business of renting of cabs.

The Motor Vehicles Act, 1988

Section 2(22)

“maxicab” means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward.

Section 2(25)

“motorcab” means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward.

SALE OF SPACE OR TIME FOR ADVERTISEMENT SERVICES**Section 65(105)(zzm)**

“taxable service” means 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 organisation and the term “service provider” shall be construed accordingly.

Explanation 1 - For the purposes of this sub-clause, “sale of space or time for advertisement” includes,-

- (i) providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, or on billboards, public places, buildings, conveyances, cell phones, automated teller machines, internet;
- (ii) selling of time slots on radio or television by a person, other than a broadcasting agency or organisation; and
- (iii) aerial advertising.

Explanation 2—For the purposes of this sub-clause, “print media” means,—

- (i) **“newspaper”** as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867);
- (ii) **“book”** as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867, (25 of 1867) but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes.

The Press and Registration of Books Act, 1867.

Section 1(1)

In this Act, unless there shall be something repugnant in the subject or context, -

“book” includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed.

“newspaper” means any printed periodical work containing public news or comments on public news.

SCIENTIFIC OR TECHNICAL CONSULTANCY SERVICES

Section 65(105)(za)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

Section 65(92)

“**scientific or technical consultancy**” means any advice, consultancy, or scientific or technical assistance, rendered in any manner, either directly or indirectly, by a scientist or a technocrat, or any science or technology institution or organisation, to any person, in one or more disciplines of science or technology.

SECURITY AGENCY’S SERVICES

Section 65(105)(w)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

Section 65(94)

“**security agency**” means any person engaged in the business of rendering services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel.

SERVICES BY AIR-CONDITIONED RESTAURANTS HAVING LICENCE TO SERVE LIQUOR

Section 65(105)(zzzzv)

“**taxable service**” means any service provided or to be provided to any person, by a restaurant, by whatever name called, having the facility of air-conditioning in any part of the establishment, at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises;

SERVICES BY HOTELS / INNS / CLUBS FOR SHORT-TERM ACCOMMODATION

Section 65(105)(zzzzw)

“**taxable service**” means any service provided or to be provided to any person by a hotel, inn, guest house, club or campsite, by whatever name called, for providing of accommodation for a continuous period of less than three months.

SHARE TRANSFER AGENT’S SERVICE

Section 65(105)(zzzj)

“**taxable service**” means any service provided or to be provided to any person, by a share transfer agent,

in relation to securities and the term “service provider” shall be construed accordingly.

Section 65(95a)

“**share transfer agent**” means any person who maintains the record of holders of securities and deals with all matters connected with the transfer or redemption of securities or activities incidental thereto.

SHIP MANAGEMENT SERVICES

Section 65(105)(zzzt)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

Section 65(96a)

“**ship management service**” includes,—

- (i) the supervision of the maintenance, survey and repair of ship;
- (ii) engagement or providing of crews;
- (iii) receiving the hire or freight charges on behalf of the owner;
- (iv) arrangements for loading and unloading;
- (v) providing for victualling or storing of ship;
- (vi) negotiating contracts for bunker fuel and lubricating oil;
- (vii) payment, on behalf of the owner, of expenses incurred in providing services or in relation to the management of ship;
- (viii) the entry of ship in a protection or indemnity association;
- (ix) dealing with insurance, salvage and other claims; and
- (x) arranging of insurance in relation to ship.

SITE FORMATION AND CLEARANCE, EXCAVATION AND EARTH MOVING AND DEMOLITION SERVICES

Section 65(105)(zzza)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

Section 65(97a)

“**site formation and clearance, excavation and earthmoving and demolition**” includes, -

- (i) drilling, boring and core extraction services for construction, geophysical, geological or similar purposes; or
- (ii) soil stabilization; or
- (iii) horizontal drilling for the passage of cables or drain pipes; or

- (iv) land reclamation work; or
- (v) contaminated top soil stripping work; or
- (vi) demolition and wrecking of building, structure or road, but does not include such services provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies.

SPECIAL SERVICES PROVIDED BY BUILDER

Section 65(105)(zzzzu)

“taxable service” means 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;

SPONSORSHIP SERVICES

Section 65(105)(zzzn)

“taxable service” means any service provided or to be provided to any person, by any other person receiving sponsorship, in relation to such sponsorship, in any manner.

Section 65(99a)

“sponsorship” includes naming an event after the sponsor, displaying the sponsor’s company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition; but does not include any financial or other support in the form of donations or gifts, given by the donors subject to the condition that the service provider is under no obligation to provide anything in return to such donors.

SOUND RECORDING STUDIO OR AGENCY SERVICES

Section 65(105)(zj)

“taxable service” means 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 and the term “service provider” shall be construed accordingly.

Section 65(63)

“magnetic storage device” includes wax blanks, discs or blanks, strips or films for the purpose of original sound recording.

Section 65(98)

“sound recording” means recording of sound on any media or device including magnetic storage device, and includes services relating to recording of sound in any manner such as sound cataloguing, storing of

sound and sound mixing or re-mixing or any audio post-production activity.

Section 65(99)

“sound recording studio or agency” means any person engaged in the business of rendering any service relating to sound recording.

STEAMER AGENT’S SERVICES

Section 65(105)(i)

“taxable service” means 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 and the term “service provider” shall be construed accordingly.

Section 65(96)

“ship” means a sea-going vessel and includes a sailing vessel.

Section 65(96a)

“ship management service” includes, -

- (i) the supervision of the maintenance, survey and repair of ship;
- (ii) engagement or providing of crews;
- (iii) receiving the hire or freight charges on behalf of the owner;
- (iv) arrangements for loading and unloading;
- (v) providing for victualling or storing of ship;
- (vi) negotiating contracts for bunker fuel and lubricating oil;
- (vii) payment, on behalf of the owner, of expenses incurred in providing services or in relation to the management of ship;
- (viii) the entry of ship in a protection or indemnity association;
- (ix) dealing with insurance, salvage and other claims; and
- (x) arranging of insurance in relation to ship.

Section 65(97)

“shipping line” means any person who owns or charter a ship and includes an enterprise which operates or manages the business of shipping.

Section 65(100)

“steamer agent” means any person who undertakes, either directly or indirectly, -

- (i) to perform any service in connection with the ship’s husbandry or dispatch including the rendering of administrative work related thereto; or
- (ii) to book, advertise or canvass for cargo for or on behalf of a shipping line; or
- (iii) to provide container feeder service for or on behalf of a shipping line.

STOCK BROKER'S SERVICES

Section 65(105)(a)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

Section 65(90)

“**recognised stock exchange**” has the meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

Section 65(93)

“**securities**” has the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

Section 65(101)

“**stock broker**” means a person, who has either made an application for registration or is registered as a stock-broker, in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992).

Securities Contracts (Regulation) Act, 1956

Section 2(f)

“**recognised stock exchange**” means a stock exchange which is for the time being recognised by the Central Government under section 4.

Section 2(h)

“**Securities**” includes

- (i) shares, scrips, stocks, bonds, debentures, debenture stock, or other marketable securities of a like nature in or of any incorporated company or body corporate;
 - (ia) derivative;
 - (ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;
 - (ic) security received as defined in clause (zg) of section 2 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002;
 - (id) units or any other instrument issued to the investors under any mutual fund scheme;
- (ii) Government securities;
 - (iia) such other instruments as may be declared by the Central Government to be securities; and
- (iii) rights or interests in securities.

STOCK EXCHANGE SERVICE

Section 65(105)(zzzzg)

“**taxable services**” means any service provided or to be provided to any person, by a recognized 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 and the term “service provider” shall be construed accordingly.

Section 65 (90)

“**recognized stock exchange**” has the meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act,1956.

STORAGE AND WAREHOUSING SERVICE

Section 65(105)(zza)

“**taxable service**” means any services provided or to be provided to any person, by a storage or warehouse keeper in relation to storage and warehousing of goods and the term “service provider” shall be construed accordingly.

Section 65(102)

“**storage and warehousing**” includes storage and warehousing services for goods including liquids and gases but does not include any services provided for storage of agricultural produce or any service provided by a cold storage.

SUPPLY OF TANGIBLE GOODS SERVICE

Section 65(105)(zzzzj)

“**taxable services**” 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 and the term “service provider” shall be construed accordingly.

Section 65 (50)

“**goods**” has the meaning assigned to it in clause (7) of section 2 of the Sale of Goods Act,1930 and means every kind of movable property other than actionable claims and money; and includes 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.

SURVEY AND EXPLORATION OF MINERAL, OIL AND GAS SERVICE

Section 65(105)(zzv)

“**taxable service**” means any service provided or to be provided to any person, by any person, in relation to survey and exploration of mineral and the term “service provider” shall be construed accordingly.

Section 65(104a)

“**survey and exploration of mineral**” means geological, geophysical or other prospecting, surface or sub-surface surveying or map making service, in relation to location or exploration of deposits of mineral, oil or gas.

SURVEY AND MAP-MAKING SERVICE

Section 65(105)(zzzc)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

Section 65(104b)

“**survey and map-making**” means geological, geophysical or any other prospecting, surface, sub-surface or aerial surveying or map-making of any kind, but does not include survey and exploration of mineral.

TECHNICAL INSPECTION AND CERTIFICATION SERVICE

Section 65(105)(zzi)

“**taxable service**” means any service provided or to be provided to any person, by a technical inspection and certification agency, in relation to technical inspection and certification and the term “service provider” shall be construed accordingly.

Section 65(108)

“**technical inspection and certification**” means inspection or examination of goods or process or material or information technology software or any immovable property to certify that such goods or process or material or information technology software or immovable property qualifies or maintains the specified standards, including functionality or utility or quality or safety or any other characteristic or parameters, but does not include any service in relation to inspection and certification of pollution levels.

Section 65(109)

“**technical inspection and certification agency**” means any agency or person engaged in providing service in relation to technical inspection and certification.

TECHNICAL TESTING AND ANALYSIS SERVICE

Section 65(105)(zzh)

“**taxable service**” means any service provided or to be provided, to any person, by a technical testing and analysis agency, in relation to technical testing and analysis and the term “service provider” shall be construed accordingly.

Section 65(106)

“**technical testing and analysis**” means any service in relation to physical, chemical, biological or any other scientific testing or analysis of goods or material or information technology software or any immovable property, but does not include any testing or analysis service provided in relation to human beings or animals.

Explanation - For the removal of doubts, it is hereby declared that for the purposes of this clause, “technical testing and analysis” includes testing and analysis undertaken for the purpose of clinical testing of drugs and formulations; but does not include testing or analysis for the purpose of determination of the nature of diseased condition, identification of a disease, prevention of any disease or disorder in human beings or animals.

Section 65(107)

“technical testing and analysis agency” means any agency or person engaged in providing service in relation to technical testing and analysis.

TELECOMMUNICATION SERVICES**Section 65(105)(zzxx)**

“taxable service” means any service provided or to be provided to any person, by the telegraph authority in relation to telecommunication service and the term “service provider” shall be construed accordingly.

Section 65(109a)

“telecommunication service” means service of any description provided by means of any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence or information of any nature, by wire, radio, optical, visual or other electromagnetic means or systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception by a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of the Indian Telegraph Act, 1885 and includes —

- (i) voice mail, data services, audio tex services, video tex services, radio paging;
- (ii) fixed telephone services including provision of access to and use of the public switched telephone network for the transmission and switching of voice, data and video, inbound and outbound telephone service to and from national and international destinations;
- (iii) cellular mobile telephone services including provision of access to and use of switched or non-switched networks for the transmission of voice, data and video, inbound and outbound roaming service to and from national and international destinations;
- (iv) carrier services including provision of wired or wireless facilities to originate, terminate or transit calls, charging for interconnection, settlement or termination of domestic or international calls, charging for jointly used facilities including pole attachments, charging for the exclusive use of circuits, a leased circuit or a dedicated link including a speech circuit, data circuit or a telegraph circuit;
- (v) provision of call management services for a fee including call waiting, call forwarding, caller identification, three-way calling, call display, call return, call screen, call blocking, automatic call-back, call answer, voice mail, voice menu and video conferencing;
- (vi) private network services including provision of wired or wireless telecommunication link between specified points for the exclusive use of the client;
- (vii) data transmission services including provision of access to wired or wireless facilities and services specifically designed for efficient transmission of data; and
- (viii) communication through facsimile, pager, telegraph and telex,

but does not include service provided by-

- (a) any person in relation to on-line information and database access or retrieval or both referred to in sub-clause (zh) of clause (105);
- (b) a broadcasting agency or organisation in relation to broadcasting referred to in sub-clause (zk) of clause (105); and

- (c) any person in relation to internet telecommunication service referred to in sub-clause (zzzu) of clause (105).

TRANSPORT OF COASTAL GOODS; GOODS TRANSPORTED THROUGH INLAND WATER SERVICE

Section 65(105)(zzzzl)

“taxable service” means 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;
- (b) “national waterway” has the meaning assigned to it in clause (h) of section 2 of the Inland Waterways Authority of India Act, 1985;
- (c) “inland water” has the meaning assigned to it in clause (b) of section 2 of the Inland Vessels Act, 1917.

Customs Act, 1962

Section 2(7)

“coastal goods” means goods, other than imported goods, transported in a vessel from one port in India to another;

The Inland Waterways Authority Of India Act, 1985

Section 2 (h)

“national waterway” means the inland waterway declared by section 2 of the National Waterway (Allahabad-Haldia Stretch of the Ganga-Bhagirathi-Hooghly River) Act, 1982 (49 of 1982), to be a national waterway.

Explanation – If Parliament declares by law any other waterway to be a national waterway, then from the date on which such declaration takes effect, such other waterway.

The Inland Vessels Act, 1917

Section 2 (b)

“inland water” means any canal, river, lake or other navigable water.

TOUR OPERATOR’S SERVICE

Section 65(105)(n)

“taxable service” means any service provided or to be provided to any person, by a tour operator, in relation to a tour and the term “service provider” shall be construed accordingly.

Section 65(113)

“tour” means a journey from one place to another irrespective of the distance between such places.

Section 65(114)

“tourist vehicle” has the meaning assigned to it in clause (43) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

Section 65(115)

“tour operator” means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sight seeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made thereunder.

Explanation – For the purposes of this clause, the expression “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;

The Motor Vehicles Act, 1988

Section 2(43)

“tourist vehicle” means contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf.

Section 2(7)

“contract carriage” means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether express or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum-

- (a) on a time basis, whether or not with reference to any route or distance; or
- (b) from one point to another;

and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey,

and includes-

- (i) a maxi-cab; and
- (ii) a motor-cab notwithstanding that separate fares are charged for its passengers.

TRANSPORT OF GOODS BY AIR SERVICE

Section 65(105)(zzn)

“taxable service” means any service provided to any person, by an aircraft operator, in relation to transport of goods by aircraft and the term “service provider” shall be construed accordingly.

Section 65(3a)

“aircraft” has the meaning assigned to it in clause (1) of section 2 of the Aircraft Act, 1934 (22 of 1934).

Section 65(3b)

“aircraft operator” means any person who provides the service of transport of goods or passengers by aircraft.

Section 65(50)

“goods” has the meaning assigned to it in clause (7) of section 2 of the Sale of Goods Act, 1930 (3 of 1930).

The Aircraft Act, 1934

Section 2(1)

“aircraft” means any machine which can derive support in the atmosphere from reactions of the air, other than reactions of the air against the earth’s surface and includes balloons, whether fixed or free, airships, kites, gliders and flying machines.

The Sale of Goods Act, 1930

Section 2(7)

“goods” means every kind of moveable property other than actionable claims and money; and includes 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.

TRANSPORT OF GOODS BY RAIL SERVICE

Section 65(105)(zzzp)

“taxable service” means any service provided or to be provided to any person, by any other person, in relation to transport of goods by rail, in any manner.

TRANSPORT OF GOODS BY ROAD SERVICE

Section 65(105)(zzp)

“taxable service” means 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 and the term “service provider” shall be construed accordingly.

Section 65(50a)

“goods carriage” has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

Section 65(50b)

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

Section 65(50)

“goods” has the meaning assigned to it in clause (7) of section 2 of the Sale of Goods Act, 1930 (3 of 1930).

Sale of Goods Act, 1930

Section 2(7)

“**goods**” means every kind of moveable property other than actionable claims and money; and includes 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.

Motor Vehicles Act, 1988

Section 2(14)

“**goods carriage**” means any motor vehicle constructed or adapted for use solely for the carriage of goods or any motor vehicle not so constructed or adapted when used for carriage of goods.

TRANSPORT OF GOODS OTHER THAN WATER THROUGH PIPELINE OR OTHER CONDUIT SERVICE

Section 65(105)(zzz)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

TRANSPORT OF PASSENGERS EMBARKING IN INDIA FOR DOMESTIC OR INTERNATIONAL JOURNEY BY AIR SERVICE

Section 65(105)(zzzo)

“**taxable service**” means 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 domestic journey or international journey;

Section 65(56a)

“**international journey**”, in relation to a passenger, means his journey from any customs airport on board any aircraft to a place outside India.

Section 65(35a)

“**customs airport**” means an airport appointed as such under clause (a) of sub-section (1) of section 7 of the Customs Act, 1962 (52 of 1962).

Section 65(77c)

“**passenger**” means any person boarding an aircraft in India for performing domestic journey or international journey

Section 65(3a)

“**aircraft**” has the meaning assigned to it in clause (1) of Section 2 of the Aircraft Act, 1934 (22 of 1934).

Section 65(3b)

“**aircraft operator**” means any person who provides the service of transport of goods or passengers by aircraft.

The Customs Act, 1962

Section 7(1)

(a) the ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods.

The Aircraft Act, 1934

Section 2(1)

“**aircraft**” means any machine which can derive support in the atmosphere from reactions of the air, other than reactions of the air against the earth’s surface and includes balloons, whether fixed or free, airships, kites, gliders and flying machines.

TRANSPORT OF PERSONS EMBARKING FROM PORT IN INDIA BY CRUISE SHIP SERVICE

Section 65(105)(zzzv)

“**taxable service**” means 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 and the term “service provider” shall be construed accordingly.

TRAVEL AGENT’S SERVICE

Section 65(105)(zzx)

“**taxable service**” means any service provided or to be provided to any person, by a travel agent, in relation to the booking of passage for travel and the term “service provider” shall be construed accordingly.

Section 65(115a)

“**travel agent**” means any person engaged in providing any service connected with booking of passage for travel but does not include air travel agent and rail travel agent.

UNDERWRITER’S SERVICE

Section 65(105)(z)

“**taxable service**” means any service provided or to be provided to any person, by an underwriter in relation to underwriting in any manner and the term “service provider” shall be construed accordingly.

Section 65(116)

“**underwriter**” has the meaning assigned to it in clause (f) of rule 2 of Securities and Exchange Board of India (Underwriters) Rules, 1993.

Section 65(117)

“**underwriting**” has the meaning assigned to it in clause (g) of rule 2 of the Securities and Exchange

Board of India (Underwriters) Rules, 1993.

Securities and Exchange Board of India (Underwriters) Rules, 1993

Rule 2(f)

“underwriter” means a person, who engages in the business of underwriting of an issue of securities of a body corporate.

Rule 2(g)

“underwriting” means an agreement with or without condition to subscribe to the securities of a body corporate when the existing shareholders of body corporate or the public do not subscribe to the securities offered to them.

VIDEO PRODUCTION AGENCY’S SERVICES

Section 65(105)(zi)

“taxable service” means any service provided or to be provided to any person, by a video production agency in relation to video-tape production, in any manner and the term “service provider” shall be construed accordingly.

Section 65(119)

“video production agency” means any professional videographer or any commercial concern engaged in the business of rendering services relating to video-tape production.

Section 65(120)

“video-tape production” means the process of any recording of any programme, event or function on a magnetic tape or on any other media or device and includes services relating thereto such as editing, cutting, colouring, dubbing, title printing, imparting special effects, processing, adding, modifying or deleting sound, transferring from one media or device to another, or undertaking any video post-production activity, in any manner.

WORKS CONTRACT SERVICE

Section 65(105)(zzzza)

“taxable service” means 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 and the term “service provider” shall be construed accordingly.

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
- (c) construction of a new residential complex or a part thereof; 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.

MISCELLANEOUS DEFINITIONS

Section 65(5)

“Appellate Tribunal” means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962).

Section 65(7)

“assessee” means a person liable to pay the service tax and includes his agent.

Section 65(7a)

“auction of property” includes calling the auction or providing a facility, advertising or illustrating services, pre-auction price estimates, short-term storage services, repair or restoration services in relation to auction of property.

Section 65(7b)

“associated enterprise” has the meaning assigned to it in section 92A of the Income-tax Act, 1961.

Income Tax Act, 1961

Section 92A

- (1) For the purposes of this section and sections 92, 92B, 92C, 92D, 92E and 92F, associated enterprise, in relation to another enterprise, means an enterprise
 - (a) which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or
 - (b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.
- (2) [For the purposes of sub-section (1), two enterprises shall be deemed to be associated enterprises if, at any time during the previous year,]
 - (a) one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise; or

- (b) any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises; or
- (c) a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise; or
- (d) one enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise; or
- (e) more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise; or
- (f) more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons; or
- (g) the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or
- (h) ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or
- (i) the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise; or
- (j) where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or
- (k) where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative; or
- (l) where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals; or
- (m) there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

Section 65(13)

“board” means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963).

Section 65(14)

“**body corporate**” has the meaning assigned to it in clause (7) of section 2 of the Companies Act, 1956 (1 of 1956).

Section 65(19b)

“**business entity**” includes an association of persons, body of individuals, company or firm but does not include an individual.

Section 65(24)

“**caterer**” means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non- alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion.

Section 65(86)

“**prescribed**” means prescribed by rules made under this Chapter.

Section 65(95)

“**service tax**” means tax leviable under the provisions of this Chapter.

Section 65(95a)

“**share transfer agent**” means any person who maintains the record of holders of securities and deals with all matters connected with the transfer or redemption of securities or activities incidental thereto.

Section 65(121)

Words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.

Explanation. - For the purposes of this section, taxable service includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration.

Index to Definitions

Section	Page No.	Section	Page No.	Section	Page No.
65(1)	73	65(24b)	58	65(50a)	98
65(2)	47	65(25)	59	65(50b)	71
65(3)	47	65(25a)	71	65(51)	71
65(3a)	98, 99	65(25aa)	59	65(52)	71
65(3b)	98, 100	65(25b)	59	65(53)	72
65(3c)	47	65(26)	60	65(53a)	72
65(3d)	47	65(27)	60	65(54)	73
65(4)	48	65(29)	68	65(55)	73
65(5)	102	65(30)	61	65(55a)	74
65(6)	48	65(30a)	63	65(55b)	74
65(7)	102	65(31)	63	65(56)	73
65(7a)	49, 102	65(32)	64	65(56a)	99
65(7b)	102	65(33)	65	65(56b)	75
65(8)	50	65(33a)	65	65(57)	74
65(9)	49	65(34)	66	65(57a)	75
65(9a)	50	65(35)	66	65(58)	70, 73, 76
65(9b)	50	65(35a)	66, 99	65(59)	74
65(9c)	50	65(36)	61	65(59a)	86
65(10)	50	65(36a)	67	65(61)	76
65(11)	50	65(36b)	67	65(62)	49
65(12)	51	65(36c)	67	65(63)	90
65(13)	103	65(37)	68	65(63a)	76
65(14)	51, 104	65(38)	68	65(64)	77
65(15)	54	65(39)	61	65(65)	77
65(16)	54	65(39a)	68	65(66)	78
65(17)	53	65(40)	69	65(67)	78
65(18)	54	65(41)	69	65(68)	79
65(19)	55	65(43)	69	65(69)	79
65(19a)	56	65(44)	69	65(70)	86
65(19b)	104	65(45)	52	65(71)	86
65(20)	86	65(46)	52	65(72)	49
65(21)	57	65(46a)	69	65(73)	49
65(22)	57	65(47)	70	65(74)	52
65(23)	58	65(48)	70	65(75)	62
65(24)	104	65(49)	70	65(75a)	79
65(24a)	47	65(50)	6,82,93,98,99	65(75b)	79

Section	Page No.	Section	Page No.	Section	Page No.
65(76)	80	65(98)	90	65(105)(zj)	90
65(76a)	80	65(99)	91	65(105)(zk)	54
65(76b)	81	65(99a)	90	65(105)(zl)	72
65(77a)	81	65(100)	91	65(105)(zm)	50
65(77b)	81	65(101)	92	65(105)(zn)	82
65(77c)	99	65(102)	93	65(105)(zo)	49
65(78)	81	65(104a)	93	65(105)(zq)	53
65(79)	81	65(104b)	94	65(105)(zr)	57
65(80)	70, 73, 76, 78	65(104c)	57	65(105)(zs)	57
65(81)	82	65(105)(a)	92	65(105)(zt)	67
65(82)	80, 82	65(105)(d)	70	65(105)(zu)	69
65(83)	58	65(105)(e)	47	65(105)(zv)	69
65(84)	65	65(105)(f)	65	65(105)(zw)	71
65(85)	61	65(105)(g)	63	65(105)(zx)	75
65(86)	104	65(105)(h)	66	65(105)(zy)	73
65(86a)	83	65(105)(i)	91	65(105)(zz)	84
65(86b)	83	65(105)(j)	58	65(105)(zza)	93
65(86c)	84	65(105)(k)	79	65(105)(zzb)	55
65(86d)	83	65(105)(l)	48	65(105)(zzc)	60
65(87)	84	65(105)(m)	78	65(105)(zzd)	68
65(88)	84	65(105)(n)	96	65(105)(zze)	70
65(89)	84	65(105)(o)	86	65(105)(zzf)	74
65(89a)	60, 69	65(105)(p)	48	65(105)(zzg)	77
65(89b)	60, 69	65(105)(q)	74	65(105)(zzh)	94
65(89c)	86	65(105)(r)	77	65(105)(zzi)	94
65(90)	92, 93	65(105)(s)	58	65(105)(zzk)	50
65(90a)	85	65(105)(t)	64	65(105)(zzl)	80
65(91)	87	65(105)(u)	61	65(105)(zzm)	47
65(91a)	63	65(105)(v)	84	65(105)(zzn)	97
65(92)	88	65(105)(w)	88	65(105)(zzo)	56
65(93)	92	65(105)(x)	66	65(105)(zzp)	98
65(94)	88	65(105)(y)	79	65(105)(zzq)	59
65(95)	104	65(105)(z)	100	65(105)(zzr)	74
65(95a)	89, 104	65(105)(za)	88	65(105)(zrs)	79
65(96)	91	65(105)(zb)	81	65(105)(zst)	80
65(96a)	89, 91	65(105)(zc)	64	65(105)(zsu)	83
65(97)	91	65(105)(zh)	61	65(105)(zsv)	93
65(97a)	89	65(105)(zi)	101	65(105)(zsw)	81

Section	Page No.	Section	Page No.	Section	Page No.
65(105)(zzx)	100	65(105}(zzzv)	100	65(105)(zzzzt)	64
65(105)(zzy)	69	65(105)(zzzw)	65	65(105)(zzzzu)	90
65(105)(zzz)	99	65(105)(zzzx)	95	65(105)(zzzzv)	88
65(105)(zzza)	89	65(105)(zzzy)	79	65(105)(zzzzw)	88
65(105)(zzzb)	67	65(105)(zzzz)	84	65(106)	94
65(105)(zzzc)	94	65(105)(zzzza)	101	65(107)	95
65(105)(zzzd)	58	65(105)(zzzzb)	67	65(108)	94
65(105)(zzze)	59	65(105)(zzzzc)	48	65(109)	94
65(105)(zzzf)	80	65(105)(zzzzd)	67	69(109a)	95
65(105)(zzzg)	76	65(105)(zzzze)	72	65(113)	97
65(105)(zzzh)	62	65(105)(zzzzf)	78	65(114)	97
65(105)(zzzi)	86	65(105)(zzzzg)	93	65(115)	97
65(105)(zzzj)	88	65(105)(zzzzh)	60	65(115a)	100
65(105)(zzzk)	50	65(105)(zzzzi)	82	65(116)	100
65(105)(zzzl)	85	65(105)(zzzzj)	93	65(117)	101
65(105)(zzzm)	87	65(105)(zzzzk)	64	65(118)	80, 82
65(105)(zzzn)	90	65(105)(zzzll)	96	65(119)	101
65(105)(zzzo)	99	65(105)(zzzzm)	75	65(120)	101
65(105)(zzzp)	98	65(105)(zzzzn)	83	65(121)	104
65(105)(zzzq)	56	65(105)(zzzzo)	71		
65(105)(zzzr)	48	65(105)(zzzzp)	77		
65(105)(zzzs)	84	65(105)(zzzzq)	83		
65(105)(zzzt)	89	65(105)(zzzrr)	81		
65(105)(zzzu)	75	65(105)(zzzss)	68		

Service Tax Rules, 1994

Rule No.	Particulars	Page No.
1.	Short title and commencement	109
2.	Definitions	109
3.	Appointment of officers	110
4.	Registration	110
4A.	Taxable service to be provided or Credit to be distributed on Invoice, Bill or Challan	112
4B.	Issue of consignment note	113
5.	Records	113
5A.	Access to a registered premises	114
5B.	Date for determination of rate	114
6.	Payment of service tax	114
7.	Returns	119
7A.	Returns in case of taxable service provided by goods transport operators and clearing and forwarding agents	119
7B.	Revision of Return	119
7C.	Amount to be paid for delay in furnishing the prescribed return	120
8.	Form of Appeals to Commissioner of Central Excise (Appeals)	120
9.	Form of appeals to Appellate Tribunal	120
10.	Procedure and Facilities for Large Taxpayer	121

NOTIFICATION NO. 2/94 - ST, DATED JUNE 28, 1994, AS AMENDED

In exercise of the powers conferred by sub-section (1), read with sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules for the purpose of the assessment and collection of service tax, namely: -

1. SHORT TITLE AND COMMENCEMENT

- (1) These rules may be called the Service Tax Rules, 1994.
- (2) They shall come into force on the 1st day of July, 1994.

2. DEFINITIONS

- (1) In these rules, unless the context otherwise requires, -
 - (a) **“Act”** means the Finance Act, 1994 (32 of 1994);
 - (b) **“assessment”** includes self-assessment of service tax by the assessee, reassessment, provisional assessment, best judgment assessment and any order of assessment in which the tax assessed is nil; determination of the interest on the tax assessed or reassessed;
 - (c) **“Form”** means a Form appended to these rules;
 - (cc) **“Half-year”** means the period between 1st April to 30th September or 1st October to 31st March of a financial year;
 - (ccc) **“input service distributor”** has the meaning assigned to it in clause (m) of Rule 2 of the CENVAT Credit Rules, 2004;
 - (cccc) **“large taxpayer”** has the meaning assigned to it in the Central Excise Rules, 2002.
 - (d) **“Person liable for paying the service tax”** means, -
 - (i) in relation to telecommunication service -
 - (a) the Director General of Posts and Telegraphs, referred to in clause (6) of section 3 of the Indian Telegraph Act, 1885 (13 of 1885); or
 - (b) the Chairman-cum-Managing Director, Mahanagar Telephone Nigam Ltd., Delhi, a company registered under the Companies Act, 1956(1 of 1956); or
 - (c) any other person who has been granted a licence by the Central Government under the first proviso to sub-section (1) of section 4 of the Indian Telegraph Act, 1885 (13 of 1885);
 - (ii) In relation to general insurance business, the insurer or re-insurer, as the case may be, providing such service;
 - (iii) in relation to insurance auxiliary service by an insurance agent, any person carrying on the general insurance business or the life insurance business, as the case may be, in India;
 - (iv) in relation to any taxable service provided or to be provided by any person from a country other than India and received by any person in India under section 66A of the Act, the recipient of such service;

- (v) in relation to taxable service provided by a goods transport agency, where the consignor or consignee of goods is, -
 - (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
 - (b) any company formed or registered under the Companies Act, 1956(1 of 1956);
 - (c) any corporation established by or under any law;
 - (d) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;
 - (e) any co-operative society established by or under any law;
 - (f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder; or
 - (g) any body corporate established, or a partnership firm registered, by or under any law,
 - any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage;
 - (vi) in relation to business auxiliary service of distribution of mutual fund by a mutual fund distributor or an agent, as the case may be, the mutual fund or asset management company, as the case may be, receiving such service;
 - (vii) in relation to sponsorship service provided to any body corporate or firm located in India, the body corporate or firm, as the case may be who receives such sponsorship service;
- (e) **“quarter”** means the period between 1st January to 31st March or 1st April to 30th June or 1st July to 30th September or 1st October to 31st December of a financial year.
- (2) All words and expressions used but not defined in these rules but defined in the Central Excise Act, 1944 (1 of 1944), and the Rules made there under shall have the meanings assigned to them in that Act and rules.

3. APPOINTMENT OF OFFICERS

The Central Board of Excise and Customs may appoint such Central Excise Officers as it thinks fit for exercising the powers under Chapter V of the Act within such local limits as it may assign to them as also specify the taxable service in relation to which any such Central Excise Officer shall exercise his powers.

4. REGISTRATION

- (1) Every person liable for paying the service tax shall make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within a period of thirty days from the date on which the service tax under section 66 of the Finance Act, 1994 (32 of 1994) is levied:

Provided that where a person commences the business of providing a taxable service after such service has been levied, he shall make an application for registration within a period of thirty days from the date of such commencement:

Provided further that a person liable for paying the service tax in the case of taxable services referred to in sub-section (4) or sub-section (5) of section 66 of the Finance Act, 1994 (32 of 1994) may make an application for registration on or before the 31st day of December, 1998:

Provided also that a person liable for paying the service tax in the case of taxable services referred to in sub-clause (zzp) of clause (105) of section 65 of the Act may make an application for registration on or before the 31st day of March, 2005.

- (2) Where a person, liable for paying service tax on a taxable service,
- (i) provides such service from more than one premises or offices; or
 - (ii) receives such service in more than one premises or offices; or
 - (iii) is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable for paying service tax, and has centralised billing system or centralised accounting system in respect of such service, and such centralised billing or centralised accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralised billing or centralised accounting systems are located.

- (3) The registration under sub-rule (2), shall be granted by the Commissioner of Central Excise in whose jurisdiction the premises or offices, from where centralised billing or accounting is done, are located:

Provided that nothing contained in this sub-rule shall have any effect on the registration granted to the premises or offices having such centralised billing or centralised accounting systems, prior to the 2nd day of November, 2006.

- (3A) Where an assessee is providing a taxable service from more than one premises or offices, and does not have any centralized billing systems or centralized accounting systems, as the case may be, he shall make separate applications for registration in respect of each of such premises or offices to the jurisdictional Superintendent of Central Excise.
- (4) Where an assessee is providing more than one taxable service, he may make a single application, mentioning therein all the taxable services provided by him, to the concerned Superintendent of Central Excise.
- (5) The Superintendent of Central Excise shall after due verification of the application form or an intimation under sub-rule (5A), as the case may be, grant a certificate of registration in Form ST-2 within seven days from the date of receipt of the application or the intimation. If the registration certificate is not granted within the said period, the registration applied for shall be deemed to have been granted.
- (5A) Where there is a change in any information or details furnished by an assessee in Form ST-1 at the time of obtaining registration or he intends to furnish any additional information or detail, such change or information or details shall be intimated, in writing, by the assessee, to

the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, within a period of thirty days of such change.

- (6) Where a registered assessee transfers his business to another person, the transferee shall obtain a fresh certificate of registration.
- (7) Every registered assessee, who ceases to provide the taxable service for which he is registered, shall surrender his registration certificate immediately to the Superintendent of Central Excise.
- (8) On receipt of the certificate under sub-rule (7), the Superintendent of Central Excise shall ensure that the assessee has paid all monies due to the Central Government under the provisions of the Act, and the rules and the notifications issued thereunder, and thereupon cancel the registration certificate.

4A. TAXABLE SERVICE TO BE PROVIDED OR CREDIT TO BE DISTRIBUTED ON INVOICE, BILL OR CHALLAN

- (1) Every person providing taxable service, not later than fourteen days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, shall issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorised by him in respect of such taxable service provided or to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely: -
 - (i) the name, address and the registration number of such person;
 - (ii) the name and address of the person receiving taxable service;
 - (iii) description, classification and value of taxable service provided or to be provided; and
 - (iv) the service tax payable thereon:

Provided that in case the provider of taxable service is a banking company or a financial institution including a non-banking financial company, or any other body corporate or any other person, providing service to any person, in relation to banking and other financial services, an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered, and whether or not containing address of the person receiving taxable service but containing other information in such documents as required under this sub-rule:

Provided further that in case the provider of taxable service is a goods transport agency, providing service to any person, in relation to transport of goods by road in a goods carriage, an invoice, a bill or, as the case may be, a challan shall include any document, by whatever name called, which shall contain the details of the consignment note number and date, gross weight of the consignment and also contain other information as required under this sub-rule:

Provided also that in case of continuous supply of service, every person providing such taxable service shall issue an invoice, bill or challan, as the case may be, within fourteen days of the date when each event specified in the contract, which requires the service receiver to make any payment to the service provider is completed:

Provided also that in case the provider of taxable service is aircraft operator providing the service of air transport of passenger, an invoice, a bill or as the case may be, challan shall include ticket in any form by whatever name called and whether or not containing registration number of the service

provider, classification of the service received and address of the service receiver but containing other information in such documents as required under this sub-rule.

(2) Every input service distributor distributing credit of taxable services shall, in respect of credit distributed, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorised by him, for each of the recipient of the credit distributed, and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely: -

- (i) the name, address and registration number of the person providing input services and the serial number and date of invoice, bill, or as the case may be, challan issued under sub-rule (1);
- (ii) the name and address of the said input service distributor;
- (iii) the name and address of the recipient of the credit distributed;
- (iv) the amount of the credit distributed:

Provided that in case the input service distributor is an office of a banking company or a financial institution including a non-banking financial company, or any other body corporate or any other person providing service to any person, in relation to banking and other financial services, an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered but containing other information in such documents as required under this sub-rule.

4B. ISSUE OF CONSIGNMENT NOTE

Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the recipient of service:

Provided that where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted under section 93 of the Act, the goods transport agency shall not be required to issue the consignment note.

Explanation. - For the purposes of this rule and the second proviso to rule 4A, “consignment note” means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.

5. RECORDS

- (1) The records including computerised data as maintained by an assessee in accordance with the various laws in force from time to time shall be acceptable.
- (2) Every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time or the 31st day of January, 2008, whichever is later, a list in duplicate, of-

- (i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,
 - (a) providing of any service, whether taxable or exempted;
 - (b) receipt or procurement of input services and payment for such input services;
 - (c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;
 - (d) other activities, such as manufacture and sale of goods, if any.
- (ii) all other financial records maintained by him in the normal course of business.
- (3) All such records shall be preserved at least for a period of five years immediately after the financial year to which such records pertain.

5A. ACCESS TO A REGISTERED PREMISES

- (1) An officer authorised by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
- (2) Every assessee shall, on demand, make available to the officer authorised under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, within a reasonable time not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by such officer or the audit party, as the case may be,-
 - (i) the records as mentioned in sub-rule (2) of rule 5;
 - (ii) trial balance or its equivalent; and
 - (iii) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961), for the scrutiny of the officer or audit party, as the case may be.

5B. DATE FOR DETERMINATION OF RATE

The rate of tax in case of services provided, or to be provided, shall be the rate prevailing at the time when the services are deemed to have been provided under the rules made in this regard.

6. PAYMENT OF SERVICE TAX

- (1) The service tax shall be paid to the credit of the Central Government,-
 - (i) by the 6th day of the month, if the duty is deposited electronically through internet banking; and
 - (ii) by the 5th day of the month, in any other case,
immediately following the calendar month in which the service is deemed to be provided as per the rules framed in this regard:

Provided that where the assessee is an individual or proprietary firm or partnership firm, the service tax shall be paid to the credit of the Central Government by the 6th day of the month if the duty is deposited electronically through internet banking, or, in any other case, the 5th day of the month, as the case may be, immediately following the quarter in which the service is deemed to be provided as per the rules framed in this regard:

Provided also that the service tax on the service deemed to be provided in the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year.

- (1A) Without prejudice to the provisions contained in sub-rule (1), every person liable to pay service tax, may, on his own volition, pay an amount as service tax in advance, to the credit of the Central Government and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period:

Provided that the assessee shall,-

- (i) intimate the details of the amount of service tax paid in advance, to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such payment; and
 - (ii) indicate the details of the advance payment made, and its adjustment, if any in the subsequent return to be filed under section 70 of the Act.
- (2) The assessee shall deposit the service tax liable to be paid by him with the bank designated by the Central Board of Excise and Customs for this purpose in Form G.A.R.-7 or in any other manner prescribed by the Central Board of Excise and Customs:

Provided that where an assessee has paid a total service tax of rupees ten lakh or more including the amount paid by utilisation of CENVAT credit, in the preceding financial year, he shall deposit the service tax liable to be paid by him electronically, through internet banking.

- (2A) For the purpose this rule, if the assessee deposits the service tax by cheque, the date of presentation of cheque to the bank designated by the Central Board of Excise and Customs for this purpose shall be deemed to be the date on which service tax has been paid subject to realization of that cheque.
- (3) Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in the contract, the assessee may take credit of such excess service tax paid by him, if the assessee,-
- (a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or
 - (b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued.;
- (4) Where an assessee is, for any reason, unable to correctly estimate, on the date of deposit, the actual amount payable for any particular month or quarter, as the case may be, he may make a request in writing to the Assistant Commissioner of Central Excise or the Deputy

Commissioner of Central Excise, as the case may be, giving reasons for payment of service tax on provisional basis and the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, on receipt of such request, may allow payment of service tax on provisional basis on such value of taxable service as may be specified by him and the provisions of the Central Excise (No. 2) Rules, 2001, relating to provisional assessment except so far as they relate to execution of bond, shall, so far as may be, apply to such assessment.

- (4A) Notwithstanding anything contained in sub-rule (4), where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be.
- (4B) The adjustment of excess amount paid, under sub-rule (4A), shall be subject to the following conditions, namely:-
- (i) excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification,
 - (ii) excess amount paid by an assessee registered under sub-rule (2) of rule 4, on account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit,
 - (iii) in cases other than specified in clause (ii) above, the excess amount paid may be adjusted with a monetary limit of two lakh rupees for a relevant month or quarter, as the case may be,
 - (iv) the details and reasons for such adjustment shall be intimated to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such adjustment.
- (4C) Notwithstanding anything contained in sub-rules (4), (4A) and (4B), where the person liable to pay service tax in respect of services provided or to be provided in relation to renting of immovable property, referred to in sub-clause (zzzz) of clause (105) of section 65 of the Act, has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, on account of non-availment of deduction of property tax paid in terms of Notification No.24/2007-Service Tax, dated the 22nd May, 2007, from the gross amount charged for renting of the immovable property for the said period at the time of payment of service tax, the assessee may adjust such excess amount paid by him against his service tax liability within one year from the date of payment of such property tax. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of fifteen days from the date of such adjustment.
- (5) Where an assessee under sub-rule (4) requests for a provisional assessment he shall file a statement giving details of the difference between the service tax deposited and the service tax liable to be paid for each month in a memorandum in Form ST-3A accompanying the quarterly or half - yearly return, as the case may be.

- (6) Where the assessee submits a memorandum in Form ST-3A under sub-rule (5), it shall be lawful for the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, to complete the assessment, wherever he deems it necessary, after calling such further documents or records as he may consider necessary and proper in the circumstances of the case.

Explanation. - For the purposes of this rule and rule 7, "Form G.A.R.-7" means a memorandum or challan referred to in rule 26 of the Central Government Account (Receipts and Payments) Rules, 1983.

- (6A) Where an amount of service tax payable has been self-assessed under sub-section (1) of section 70 of the Act, but not paid, either in full or part, the same, shall be recoverable alongwith interest in the manner prescribed under section 87 of the Act.

- (7) The person liable for paying the service tax in relation to the services provided by an air travel agent, shall have the option, to pay an amount calculated at the rate of 0.6% of the basic fare in the case of domestic bookings, and at the rate of 1.2% of the basic fare in the case of international bookings, of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Chapter V of the Act and the option, once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances.

Explanation. - For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

- (7A) An insurer carrying on life insurance business shall have the option to pay tax:

- (i) on the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service;
- (ii) 1.5 per cent of the gross amount of premium charged from a policy holder in all other cases;

towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Chapter V of the said Act:

Provided that such option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance.

- (7B) The person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorised money changer, referred to in sub-clauses (zm) and (zzk) of clause (105) of section 65 of the Act, shall have the option to pay an amount calculated at the following rate towards discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Chapter V of the Act, namely:

- (a) 0.1 percent. of the gross amount of currency exchanged for an amount upto rupees 100,000, subject to the minimum amount of rupees 25; and
- (b) rupees 100 and 0.05 percent. of the gross amount of currency exchanged for an amount of rupees exceeding 100,000 and upto rupees 10,00,000; and

(c) rupees 550 and 0.01 percent. of the gross amount of currency exchanged for an amount of rupees exceeding 10,00,000, subject to maximum amount of rupees 5000:

Provided that the person providing the service shall exercise such option for the financial year and such option shall not be withdrawn during the remaining part of that financial year.

(7C)The distributor or selling agent, liable to pay service tax for the taxable service of promotion, marketing, organising or in any other manner assisting in organising lottery, referred to in sub-clause (zzzzn) of clause (105) of section 65 of the said Act (hereinafter referred to as the said sub-clause), shall have the option to pay an amount at the rate specified in column (2) of the Table given below, subject to the conditions specified in the corresponding entry in column (3) of the said Table, instead of paying service tax at the rate specified in section 66 of Chapter V of the said Act:

Table

Sl.No.	Rate	Condition
(1)	(2)	(3)
1.	Rs 6000 on every Rs 10 lakh (or part of Rs 10 lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is more than 80%
2.	Rs 9000 on every Rs 10 lakh (or part of Rs 10 lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is less than 80%

Provided that in case of online lottery, the aggregate face value of lottery tickets for the purpose of this sub-rule shall be taken as the aggregate value of tickets sold, and service tax shall be calculated in the manner specified in the said Table.

Provided further that the distributor or selling agent shall exercise such option within a period of one month of the beginning of each financial year and such option shall not be withdrawn during the remaining part of the financial year.

Provided also that the distributor or selling agent shall exercise such option for financial year 2010-11, within a period of one month of the publication of this sub-rule in the Official Gazette or, in the case of new service provider, within one month of providing of service under the said sub-clause and such option shall not be withdrawn during the remaining part of that financial year.

Explanation.- For the purpose of this sub-rule-

- (i) “distributor or selling agent” shall have the meaning assigned to them in clause (c) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs published in the Gazette of India, Part-II, Section 3, Sub-section (i) vide number G.S.R. 278(E) dated 1st April, 2010 and shall include distributor or selling agent authorised by the lottery organising State.

- (ii) “draw” shall have the meaning assigned to it in clause (d) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs published in the Gazette of India, Part-II, Section 3, Sub-section (i) vide number G.S.R. 278(E) dated 1st April, 2010.
- (iii) “online lottery” shall have the meaning assigned to it in clause (e) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs published in the Gazette of India, Part-II, Section 3, Sub-section (i) vide number G.S.R. 278(E) dated 1st April, 2010.
- (iv) “organising state” shall have the meaning assigned to it in clause (f) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs published in the Gazette of India, Part-II, Section 3, Sub-section (i) vide number G.S.R. 278(E) dated 1st April, 2010.

7. RETURNS

- (1) Every assessee shall submit a half-yearly return in Form ‘ST-3’ or ‘ST-3A’, as the case may be, along with a copy of the Form G.A.R.-7, in triplicate for the months covered in the half-yearly return.
- (2) Every assessee shall submit the half - yearly return by the 25th of the month following the particular half-year.

Provided that where an assessee has paid a total service tax of rupees ten lakh or more including the amount paid by utilisation of CENVAT credit, in the preceding financial year, he shall file the return electronically.

7A. RETURNS IN CASE OF TAXABLE SERVICE PROVIDED BY GOODS TRANSPORT OPERATORS AND CLEARING AND FORWARDING AGENTS

Notwithstanding anything contained in rule 7, an assessee, in case of service provided by -

- (a) goods transport operator for the period commencing on and from the 16th day of November, 1997 to 2nd day of June, 1998; and
- (b) clearing and forwarding agents for the period commencing on and from the 16th day of July, 1997 to 16th day of October, 1998,

shall furnish a return within a period of six months from the 13th day of May, 2003, in Form ST-3B alongwith copy of Form G.A.R.-7 in triplicate, failing which the interest and penal consequences as provided in the Act shall follow.

7B. REVISION OF RETURN

An assessee may submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of ninety days from the date of submission of the return under rule 7.

Explanation - Where an assessee submits a revised return, the ‘relevant date’ for the purpose of recovery of service tax, if any, under section 73 of the Act shall be the date of submission of such revised return.

7C. AMOUNT TO BE PAID FOR DELAY IN FURNISHING THE PRESCRIBED RETURN

Where the return prescribed under rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Central Government, for the period of delay of-

- (i) fifteen days from the date prescribed for submission of such return, an amount of five hundred rupees;
- (ii) beyond fifteen days but not later than thirty days from the date prescribed for submission of such return, an amount of one thousand rupees; and
- (iii) beyond thirty days from the date prescribed for submission of such return an amount of one thousand rupees plus one hundred rupees for every day from the thirty first day till the date of furnishing the said return:

Provided that the total amount payable in terms of this rule, for delayed submission of return, shall not exceed the amount specified in section 70 of the Act:

Provided further that where the assessee has paid the amount as prescribed under this rule for delayed submission of return, the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded:

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

Explanation - It is hereby declared that any pending proceedings under section 77 for delayed submission or non-submission of return that has been initiated before the date on which the Finance Bill, 2007 receives the assent of the President, shall also be deemed to be concluded if the amount specified for delay in furnishing the return is paid by the assessee within sixty days from the date of assent to the said Finance Bill.

8. FORM OF APPEALS TO COMMISSIONER OF CENTRAL EXCISE (APPEALS)

- (1) An appeal under section 85 of the Act to the Commissioner of Central Excise (Appeals) shall be in Form ST-4.
- (2) The appeal shall be filed in duplicate and shall be accompanied by a copy of order appealed against.

9. FORM OF APPEALS TO APPELLATE TRIBUNAL

- (1) An appeal under sub-section (1) of section 86 of the Act to the Appellate Tribunal shall be made in Form ST-5 in quadruplicate and shall be accompanied by a copy of the Order appealed against (one of which shall be a certified copy).
- (2) An appeal under sub-section (2) of section 86 of the Act to the Appellate Tribunal shall be made in Form ST-7 in quadruplicate and shall be accompanied by a copy of the order of the Commissioner of Central Excise (one of which shall be a certified copy) and a copy of the order passed by the Central Board of Excise and Customs directing the Commissioner of Central Excise to apply to the Appellate Tribunal.

- (2A) An appeal under sub-section (2A) of section 86 of the Act to the Appellate Tribunal shall be made in form ST-7 in quadruplicate and shall be accompanied by a copy of the order of the Commissioner of Central Excise (Appeals) (one of which shall be a certified copy) and a copy of the order passed by the Commissioner of Central Excise directing the Assistant Commissioner of Central Excise or as the case may be, the Deputy Commissioner of Central Excise to apply to the Appellate Tribunal; and
- (3) A Memorandum of cross-objections under sub-section (4) of section 86 of the Act, shall be made in Form ST-6 in quadruplicate.

10. PROCEDURE AND FACILITIES FOR LARGE TAXPAYER

Notwithstanding anything contained in these rules, the following shall apply to a large taxpayer,-

- (1) A large taxpayer shall submit the returns, as prescribed under these rules, for each of the registered premises.
- Explanation: A large taxpayer who has obtained a centralized registration under sub-rule (2) of rule 4, shall submit a consolidated return for all such premises.
- (2) A large taxpayer, on demand, may be required to make available the financial, stores and CENVAT credit records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification, as may be necessary.
- (3) A large taxpayer may, with intimation of at least thirty days in advance, opt out to be a large taxpayer from the first day of the following financial year.
- (4) Any notice issued but not adjudged by any of the Central Excise officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise officers of the said unit.
- (5) Provisions of these rules, in so far as they are not inconsistent with the provisions of this rule shall *mutatis mutandis* apply in case of a large taxpayer.

CENVAT Credit Rules, 2004

Rule No.	Particulars	Page No.
1.	Short title, extent and commencement	123
2.	Definitions	123
3.	CENVAT credit	126
4.	Conditions for allowing CENVAT credit	133
5.	Refund of CENVAT credit	135
5A.	Refund of CENVAT credit to units in specified areas	136
6.	Obligation of a manufacturer or producer of final products and a provider of taxable service	136
7.	Manner of distribution of credit by input service distributor	142
7A.	Distribution of credit on inputs by the office or any other premises of output service provider	142
8.	Storage of input outside the factory of the manufacturer	142
9.	Documents and accounts	142
9A.	Information relating to Principal Inputs	145
10.	Transfer of CENVAT credit	146
11.	Transitional provision	146
12.	Special dispensation in respect of inputs manufactured in factories located in specified areas of North East region, Kutch district of Gujarat, State of Jammu and Kashmir and State of Sikkim	147
12A.	Procedure and facilities for large tax payer	148
12AA.	Power to impose restrictions in certain type of cases	150
13.	Power of Central Government to notify goods for deemed CENVAT credit	150
14.	Recovery of CENVAT credit wrongly taken or erroneously refunded	151
15.	Confiscation and penalty	151
15A.	General penalty	151
16.	Supplementary provision	152

NOTIFICATION NO. 23/2004 - C.E. (N.T.), DATED SEPTEMBER 10, 2004, AS AMENDED

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994) and in supersession of the CENVAT Credit Rules, 2002 and the Service Tax Credit Rules, 2002, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:-

1. SHORT TITLE, EXTENT AND COMMENCEMENT

(1) These rules may be called the CENVAT Credit Rules, 2004.

(2) They extend to the whole of India:

Provided that nothing contained in these rules relating to availment and utilization of credit of service tax shall apply to the State of Jammu and Kashmir.

(3) They shall come into force from the date of their publication in the official Gazette.

2. DEFINITIONS

In these rules, unless the context otherwise requires,-

(a) **“capital goods”** means: -

(A) the following goods, namely:-

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

(ii) pollution control equipment;

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

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank,

used

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

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

(2) for providing output service,

(B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zrp), (zst) and (zsw) of clause (105) of section 65 of the Finance Act;

(C) dumpers or tippers, falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), registered in the name of provider of output service for providing taxable services as specified in sub-clauses (zzza) and (zzzy) of clause (105) of section 65 of the said Finance Act;

- (D) components, spares and accessories of motor vehicles, dumpers or tippers, as the case may be, used to provide taxable services as specified in sub-clauses (B) and (C);
- (b) **“Customs Tariff Act”** means the Customs Tariff Act, 1975 (51 of 1975);
- (c) **“Excise Act”** means the Central Excise Act, 1944 (1 of 1944);
- (d) **“exempted goods”** means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to “Nil” rate of duty and goods in respect of which the benefit of an exemption under notification No. 1/2011-CE, dated the 1st March, 2011 is availed;
- (e) **“exempted services”** means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under section 66 of the Finance Act and taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken.

Explanation.- For the removal of doubts, it is hereby clarified that “exempted services” includes trading;

- (f) **“Excise Tariff Act”** means the Central Excise Tariff Act, 1985 (5 of 1986);
- (g) **“Finance Act”** means the Finance Act, 1994 (32 of 1994);
- (h) **“final products”** means excisable goods manufactured or produced from input, or using input service;
- (ij) **“first stage dealer”** means a dealer, who purchases the goods directly from, -
- (i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or
 - (ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice;
- (k) **“input”** means–
- (i) all goods used in the factory by the manufacturer of the final product; or
 - (ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or
 - (iii) all goods used for generation of electricity or steam for captive use; or
 - (iv) all goods used for providing any output service;
- but excludes -
- (A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;
 - (B) any goods used for -
 - (a) construction of a building or a civil structure or a part thereof; or

- (b) laying of foundation or making of structures for support of capital goods, except for the provision of any taxable service specified in sub-clauses (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act;
- (C) capital goods except when used as parts or components in the manufacture of a final product;
- (D) motor vehicles;
- (E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and
- (F) any goods which have no relationship whatsoever with the manufacture of a final product.

Explanation. – For the purpose of this clause, “free warranty” means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer;

- (I) **“input service”** means any service, -
 - (i) used by a provider of taxable service for providing an output service; or
 - (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services,-
 - (A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for-
 - (a) construction of a building or a civil structure or a part thereof; or
 - (b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or
 - (B) specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or
 - (C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

- (m) **“input service distributor”** means 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;
- (n) **“job work”** means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression “job worker” shall be construed accordingly;
- (na) **“large taxpayer”** shall have the meaning assigned to it in the Central Excise Rules, 2002;
- (naa) **“manufacturer”** or **“producer”**,-
 - (i) in relation to articles of jewellery or other articles of precious metals falling under heading 7113 or 7114 as the case may be of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1) of rule 12AA of the Central Excise Rules, 2002;
 - (ii) in relation to goods falling under Chapters 61, 62 or 63 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1A) of rule 4 of the Central Excise Rules, 2002;
- (o) **“notification”** means the notification published in the Official Gazette;
- (p) **“output service”** means any taxable service, excluding the taxable service referred to in sub-clause (zzp) of clause (105) of section 65 of the Finance Act, provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person, as the case may be, and the expressions “provider” and “provided” shall be construed accordingly;
- (q) **“person liable for paying service tax”** has the meaning as assigned to it in clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994;
- (r) **“provider of taxable service”** include a person liable for paying service tax;
- (s) **“second stage dealer”** means a dealer who purchases the goods from a first stage dealer;
- (t) words and expressions used in these rules and not defined but defined in the Excise Act or the Finance Act shall have the meanings respectively assigned to them in those Acts.

3. CENVAT CREDIT

- (1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of-
 - (i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;’

Provided that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods in respect of which the benefit of an exemption under notification No.1/2011-CE, dated the 1st March, 2011 is availed;
 - (ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;

- (iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);
- (iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);
- (v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);
- (vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004);
- (via) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section (138) of the Finance Act, 2007, (22 of 2007);
- (vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v),(vi) and (via);

Provided that CENVAT credit shall not be allowed in excess of eighty-five per cent. of the additional duty of customs paid under sub-section (1) of section 3 of the Customs Tariff Act, on ships, boats and other floating structures for breaking up falling under tariff item 8908 00 00 of the First Schedule to the Customs Tariff Act;

(viii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act;

Provided that the provider of Taxable Service shall not be eligible to take credit of such additional duty;

- (viii) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);
- (ix) the service tax leviable under section 66 of the Finance Act;
- (ixa) the service tax leviable under section 66A of the Finance Act;
- (x) the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004); and
- (xa) the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and
- (xi) the additional duty of excise leviable under Section 85 of the Finance Act, 2005 (18 of 2005),

paid on-

- (i) any input or capital goods received in the factory of manufacturer of final product or premises of the provider of output service on or after the 10th day of September, 2004; and
- (ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004,

including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.214/86-Central Excise, dated the 25th March, 1986, published

in the Gazette of India vide number G.S.R. 547 (E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004.

Provided that the CENVAT credit shall be allowed to be taken of the amount equal to central excise duty paid on the capital goods at the time of de-bonding of the unit in terms of the para 8 of notification No. 22/2003-Central Excise, published in the Gazette of India, part II, Section 3, sub-section (i), vide number G.S.R.265(E), dated, the 31st March, 2003.

Explanation. - For the removal of doubts it is clarified that the manufacturer of the final products and the provider of output service shall be allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act on goods falling under heading 98.01 of the First Schedule to the Customs Tariff Act.

- (2) Notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods manufactured by the said manufacturer or producer cease to be exempted goods or any goods become excisable.
- (3) Notwithstanding anything contained in sub-rule (1), in relation to a service which ceases to be an exempted service, the provider of the output service shall be allowed to take CENVAT credit of the duty paid on the inputs received on and after the 10th day of September, 2004 and lying in stock on the date on which any service ceases to be an exempted service and used for providing such service.
- (4) The CENVAT credit may be utilized for payment of-
 - (a) any duty of excise on any final product; or
 - (b) an amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or
 - (c) an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or
 - (d) an amount under sub-rule (2) of rule 16 of Central Excise Rules, 2002; or
 - (e) service tax on any output service:

Provided that while paying duty of excise or service tax, as the case may be, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be:

Provided further that CENVAT credit shall not be utilised for payment of any duty of excise on goods in respect of which the benefit of an exemption under notification No. 1/2011-CE, dated the 1st March, 2011 is availed:

Provided also that the CENVAT credit of the duty, or service tax, paid on the inputs, or input services, used in the manufacture of final products cleared after availing of the exemption under the following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

- (i) No.32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated 8th July, 1999];
- (ii) No.33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated 8th July, 1999];
- (iii) No.39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];
- (iv) No.56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];
- (v) No.57/2002-Central Excise, dated 14th November, 2002 [G.S.R. 765(E), dated the 14th November, 2002];
- (vi) No.56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003]; and
- (vii) No.71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003],

shall, respectively, be utilized only for payment of duty on final products, in respect of which exemption under the said respective notifications is availed of:

Provided also that no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, shall be utilised for payment of service tax on any output service:

Provided also that the CENVAT credit of any duty specified in sub-rule (1), except the National Calamity Contingent duty in item (v) thereof, shall not be utilized for payment of the said National Calamity Contingent duty on goods falling under tariff items 8517 12 10 and 8517 12 90 respectively of the First Schedule of the Central Excise Tariff:

Provided also that the CENVAT credit of any duty specified in sub-rule (1) shall not be utilized for payment of the Clean Energy Cess leviable under section 83 of the Finance Act, 2010 (14 of 2010):

Provided also that the CENVAT credit of any duty mentioned in sub-rule (1), other than credit of additional duty of excise leviable under section 85 of Finance Act, 2005 (18 of 2005), shall not be utilised for payment of said additional duty of excise on final products.

- (5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9:

Provided that such payment shall not be required to be made where any inputs or capital goods are removed outside the premises of the provider of output service for providing the output service:

Provided further that such payment shall not be required to be made where any inputs are removed outside the factory for providing free warranty for final products:

Provided also that if the capital goods, on which CENVAT Credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal

to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely:-

- (a) for computers and computer peripherals:
 - for each quarter in the first year @ 10%
 - for each quarter in the second year @ 8%
 - for each quarter in the third year @5%
 - for each quarter in the fourth and fifth year @1%
- (b) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter.

(5A) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.

(5B) If the value of any,

- (i) input, or
- (ii) capital goods before being put to use,

on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of account, then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods:

Provided that if the said input or capital goods is subsequently used in the manufacture of final products or the provision of taxable services, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.

(5C) Where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed.

(6) The amount paid under sub-rule (5) and sub-rule (5A) shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under sub-rule (5) and sub-rule (5A).

(7) Notwithstanding anything contained in sub-rule (1) and sub-rule (4),-

- (a) CENVAT credit in respect of inputs or capital goods produced or manufactured, by a hundred per cent export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or in a Software Technology Park other than a unit which pays excise duty levied under section 3 of the Excise Act read with serial numbers 3,5, 6 and 7 of notification No.23/2003- Central Excise, dated the 31st March, 2003, [G.S.R. 266(E), dated the 31st March, 2003] and used in the manufacture of the final products or in providing an output service, in any other place in India, in case the unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the notification No.23/2003-Central Excise, dated the 31st March, 2003, [G.S.R. 266(E), dated the 31st March,

2003], shall be admissible equivalent to the amount calculated in the following manner, namely: -

Fifty per cent of $[X \text{ multiplied by } \{(1 + \text{BCD}/100) \text{ multiplied by } (\text{CVD}/100)\}]$, where BCD and CVD denote ad valorem rates, in per cent, of basic customs duty and additional duty of customs leviable on the inputs or the capital goods respectively and X denotes the assessable value:

Provided that the CENVAT credit in respect of inputs and capital goods cleared on or after 1st March, 2006 from an export oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such unit pays excise duty under Section 3 of Excise Act read with serial no. 2 of Notification No.23/2003 - Central Excise, dated 31st March, 2003 [G.S.R. 226(E) dated the 31st March, 2003] shall be equal to X multiplied by $\{(1 + \text{BCD}/200) \text{ multiplied by } (\text{CVD}/100)\}$

Provided further that the CENVAT credit in respect of inputs and capital goods cleared on or after the 7th September, 2009 from an export-oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such undertaking or unit has paid –

- (A) excise duty leviable under section 3 of the Excise Act read with serial number 2 of the notification no. 23/2003-Central Excise, dated 31st March, 2003 [G.S.R. 266(E), dated the 31st March, 2003]; and
 - (B) the Education Cess leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 and the Secondary and Higher Education Cess leviable under section 136 read with section 138 of the Finance Act, 2007, on the excise duty referred to in (A), shall be the aggregate of –
 - I. that portion of excise duty referred to in (A), as is equivalent to –
 - i. the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, which is equal to the duty of excise under clause (a) of sub-section (1) of section 3 of the Excise Act;
 - ii. the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act; and
 - II. the Education Cess and the Secondary and Higher Education Cess referred to in (B)
- (b) CENVAT credit in respect of -
- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);
 - (ii) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);
 - (iii) the education cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004);

- (iii) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);
- (iv) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under items (i), (ii) and (iii) above;
- (v) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);
- (vi) the education cess on taxable services leviable under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004); and
- (vii) the Secondary and Higher Education Cess on taxable services under section (136) read with section 140 of the Finance Act, 2007 (22 of 2007); and
- (viii) the additional duty of excise leviable under Section 85 of the Finance Act, 2005 (18 of 2005)

shall be utilized towards payment of duty of excise or as the case may be, of service tax leviable under the said Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 or the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), or the education cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004), or the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section (138) of the Finance Act, 2007 (22 of 2007) or the additional duty of excise leviable under section 157 of the Finance Act, 2003, (32 of 2003), or the education cess on taxable services leviable under section 91 read with section 95 of the said Finance (No.2) Act, 2004, (23 of 2004), or the additional duty of excise leviable under Section 85 of the Finance Act, 2005 (18 of 2005), respectively, on any final products manufactured by the manufacturer or for payment of such duty on inputs themselves, if such inputs are removed as such or after being partially processed or on any output service:

Provided that the credit of the education cess on excisable goods and the education cess on the taxable services can be utilised, either for payment of the education cess on excisable goods or for the payment of education cess on taxable services:

Provided further that the credit of the Secondary and Higher Education Cess on excisable goods and the Secondary and Higher Education Cess on taxable services can be utilised, either for payment of the Secondary and Higher Education Cess on excisable goods or for the payment of the Secondary and Higher Education Cess on taxable services.

Explanation. - For the removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) paid on or after the 1st day of April, 2000, may be utilised towards payment of duty of excise leviable under the First Schedule or the Second Schedule to the Excise Tariff Act;

- (c) the CENVAT credit, in respect of additional duty leviable under section 3 of the Customs Tariff Act, paid on marble slabs or tiles falling under tariff items 2515 12 20 and 2515 12 90 respectively of the First Schedule to the Excise Tariff Act shall be allowed to the extent of thirty rupees per square meter.

Explanation. - Where the provisions of any other rule or notification provide for grant of whole or part exemption on condition of non-availability of credit of duty paid on any input or capital goods, or of service tax paid on input service, the provisions of such other rule or notification shall prevail over the provisions of these rules.

4. CONDITIONS FOR ALLOWING CENVAT CREDIT

- (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service:

Provided that in respect of final products, namely, articles of jewellery or other articles of precious metals falling under heading 7113 or 7114 as the case may be of the First Schedule to the Excise Tariff Act, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the person who get such final products manufactured on his behalf, on job work basis, subject to the condition that the inputs are used in the manufacture of such final product by the job worker.

- (2) (a) The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service or outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory, at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent, of the duty paid on such capital goods in the same financial year:

Provided that the CENVAT credit in respect of capital goods shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year if such capital goods are cleared as such in the same financial year:

Provided further that the CENVAT credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, in respect of capital goods shall be allowed immediately on receipt of the capital goods in the factory of a manufacturer.

Provided also that where an assessee is eligible to avail of the exemption under a notification based on the value of clearances in a financial year, the CENVAT credit in respect of capital goods received by such assessee shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year.

Explanation.- For the removal of doubts, it is hereby clarified that an assessee shall be “eligible” if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year computed in the manner specified in the said notification did not exceed rupees four hundred lakhs.

- (b) The balance of CENVAT credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer, or in the premises of the provider of output service, if the capital goods, other than components, spares and accessories, refractories and refractory materials, moulds and dies and goods falling under heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act, are in the possession of the manufacturer of final products, or provider of output service in such subsequent years.

Illustration-A manufacturer received machinery on the 16th day of April, 2002 in his factory. CENVAT of two lakh rupees is paid on this machinery. The manufacturer can take credit upto a maximum of one lakh rupees in the financial year 2002-2003, and the balance in subsequent years.

- (3) The CENVAT credit in respect of the capital goods shall be allowed to a manufacturer, provider of output service even if the capital goods are acquired by him on lease, hire purchase or loan agreement, from a financing company.
- (4) The CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer or provider of output service claims as depreciation under section 32 of the Income-tax Act, 1961 (43 of 1961).
- (5) (a) The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or provider of output service taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer or provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service.
 - (b) The CENVAT credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to,-
 - (i) another manufacturer for the production of goods; or
 - (ii) a job worker for the production of goods on his behalf, according to his specifications.
- (6) The Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of the manufacturer of the final products who has sent the input or partially processed inputs outside his factory to a job- worker may, by an order, which shall be valid for a financial year, in respect of removal of such input or partially processed input, and subject to such conditions as he may impose in the interest of revenue including the manner in which duty, if leviable, is to be paid, allow final products to be cleared from the premises of the job-worker.
- (7) The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received:

Provided that in case of an input service where the service tax is paid on reverse charge by the recipient of the service, the CENVAT credit in respect of such input service shall be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9:

Provided further that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9, is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules:

Provided also that if any payment or part thereof, made towards an input service is refunded or a credit note is received by the manufacturer or the service provider who has taken credit on such input service, he shall pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited:

Provided also that CENVAT credit in respect of an invoice, bill or, as the case may be, challan referred to in rule 9, issued before the 1st day of April, 2011 shall be allowed, on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9.

Explanation I.- The amount mentioned in this sub-rule, unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation II. - If the manufacturer of goods or the provider of output service fails to pay the amount payable under this sub-rule, it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation III.- In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, “following month” and “month of March” occurring in sub-rule (7) shall be read respectively as “following quarter” and “quarter ending with the month of March”.

5. REFUND OF CENVAT CREDIT

Where any input or input service is used in the manufacture of final product which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported, the CENVAT credit in respect of the input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service towards payment of,

- (i) duty of excise on any final product cleared for home consumption or for export on payment of duty; or
- (ii) service tax on output service, and where for any reason such adjustment is not possible, the manufacturer or the provider of output service shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification:

Provided that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Export of Services Rules, 2005 in respect of such tax:

Provided further that no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act shall be utilised for payment of service tax on any output service.

Explanation - For the purposes of this rule, the words 'output service which is exported' means the output service exported in accordance with the Export of Services Rules, 2005.

5A. REFUND OF CENVAT CREDIT TO UNITS IN SPECIFIED AREAS

Notwithstanding anything contrary contained in these rules, where a manufacturer has cleared final products in terms of notification of the Government of India in the Ministry of Finance (Department of Revenue) No.20/2007-Central Excise, dated the 25th April, 2007 and is unable to utilize the CENVAT credit of duty taken on inputs required for manufacture of final products specified in the said notification, other than final products which are exempt or subject to nil rate of duty, for payment of duties of excise on said final products, then the Central Government may allow the refund of such credit subject to such procedure, conditions and limitations, as may be specified by notification.

Explanation: For the purposes of this rule, "duty" means the duties specified in sub-rule (1) of rule 3 of these rules.

6. OBLIGATION OF A MANUFACTURER OR PRODUCER OF FINAL PRODUCTS AND A PROVIDER OF TAXABLE SERVICE

(1) The CENVAT credit shall not be allowed on such quantity of input used in or in relation to the manufacture of exempted goods or for provision of exempted services, or input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services, except in the circumstances mentioned in sub-rule (2):

Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for-

(a) the receipt, consumption and inventory of inputs used-

- (i) in or in relation to the manufacture of exempted goods;
- (ii) in or in relation to the manufacture of dutiable final products excluding exempted goods;
- (iii) for the provision of exempted services;

- (iv) for the provision of output services excluding exempted services; and
- (b) the receipt and use of input services-
 - (i) in or in relation to the manufacture of exempted goods and their clearance upto the place of removal;
 - (ii) in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;
 - (iii) for the provision of exempted services; and
 - (iv) for the provision of output services excluding exempted services,
 and shall take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) and (iv) of clause (b).
- (3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow any one of the following options, as applicable to him, namely:-
 - (i) pay an amount equal to five per cent. of value of the exempted goods and exempted services; or
 - (ii) pay an amount as determined under sub-rule (3A); or
 - (iii) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment:

Provided that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause (i):

Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be five per cent. of the value so exempted.

Explanation I - If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

Explanation II- For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services.

Explanation III - No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.

- (3A) For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely:-

- (a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely:-
- (i) name, address and registration No. of the manufacturer of goods or provider of output service;
 - (ii) date from which the option under this clause is exercised or proposed to be exercised;
 - (iii) description of dutiable goods or taxable services;
 - (iv) description of exempted goods or exempted services;
 - (v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;
- (b) the manufacturer of goods or the provider of output service shall, determine and pay, provisionally, for every month,-
- (i) the amount equivalent to CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, denoted as A;
 - (ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional) = (B/C) multiplied by D, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;
 - (iii) the amount attributable to input services used in or in relation to manufacture of exempted goods and their clearance up to the place of removal or provision of exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month;
- (c) the manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely:-
- (i) the amount of CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods, denoted as H;
 - (ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services = (J/K) multiplied by L, where J denotes the total value of exempted services provided during the financial year, K denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided

plus the total value of exempted services provided, during the financial year and L denotes total CENVAT credit taken on inputs during the financial year minus H;

- (iii) the amount attributable to input services used in or in relation to manufacture of exempted goods and their clearance up to the place of removal or provision of exempted services = (M/N) multiplied by P, where M denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, N denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and P denotes total CENVAT credit taken on input services during the financial year;
- (d) the manufacturer of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per condition (c) and the aggregate amount determined and paid as per condition (b), on or before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the amount paid;
- (e) the manufacturer of goods or the provider of output service, shall, in addition to the amount short-paid, be liable to pay interest at the rate of twenty-four per cent per annum from the due date, i.e., 30th June till the date of payment, where the amount short-paid is not paid within the said due date;
- (f) where the amount determined as per condition (c) is less than the amount determined and paid as per condition (b), the said manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount;
- (g) the manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per condition (d) and (f) respectively, the following particulars, namely:-
 - (i) details of CENVAT credit attributable to exempted goods and exempted services, monthwise, for the whole financial year, determined provisionally as per condition (b),
 - (ii) CENVAT credit attributable to exempted goods and exempted services for the whole financial year, determined as per condition (c),
 - (iii) amount short paid determined as per condition (d), alongwith the date of payment of the amount short-paid,
 - (iv) interest payable and paid, if any, on the amount short-paid, determined as per condition (e), and
 - (v) credit taken on account of excess payment, if any, determined as per condition (f);
- (h) where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as prescribed in condition (b), due to reasons that no dutiable goods were manufactured and no taxable service was provided in the preceding financial year, then the manufacturer of goods or the provider of output service is not required to determine and pay such amount provisionally for each month, but shall determine the CENVAT credit attributable to exempted goods or exempted

services for the whole year as prescribed in condition (c) and pay the amount so calculated on or before 30th June of the succeeding financial year.

- (i) where the amount determined under condition (h) is not paid within the said due date, i.e., the 30th June, the manufacturer of goods or the provider of output service shall, in addition to the said amount, be liable to pay interest at the rate of twenty four per cent per annum from the due date till the date of payment.
- (3B) Notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial institution including a non-banking financial company, providing taxable service specified in sub-clause (zm) of clause (105) of section 65 of the Finance Act, shall pay for every month an amount equal to fifty per cent. of the CENVAT credit availed on inputs and input services in that month.
- (3C) Notwithstanding anything contained in sub-rules (1), (2), (3) and (3B), a provider of output service providing taxable services as specified in sub-clauses (zx) and (zzzzf) of clause (105) of section 65 of the Finance Act, shall pay for every month an amount equal to twenty per cent. of the CENVAT credit availed on inputs and input services in that month.
- (3D) Payment of an amount under sub-rule (3) shall be deemed to be CENVAT credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT credit of inputs and input services shall be taken.

Explanation I. - “Value” for the purpose of sub-rules (3) and (3A),-

- (a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made there under or, as the case may be, the value determined under section 3, 4 or 4A of the Excise Act, read with rules made thereunder.
- (b) in the case of a taxable service, when the option available under sub-rules (7), (7B) or (7C) of rule 6 of the Service Tax Rules, 1994, or the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 has been availed, shall be the value on which the rate of service tax under section 66 of the Finance Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed; or
- (c) in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten per cent. of the cost of goods sold, whichever is more.

Explanation II. - The amount mentioned in sub-rules (3), (3A), (3B) and (3C), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation III. - If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rule (3), (3A), (3B) and (3C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation IV.- In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, “following month” and “month of March” occurring in sub-rules (3) and (3A) shall be read respectively as “following quarter” and “quarter ending with the month of March”.

- (4) No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods or in providing exempted services, other than the final products which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made in a financial year.
- (5) Omitted.
- (6) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either-
- (i) cleared to a unit in a special economic zone or to a developer of a special economic zone for their authorized operations; or
 - (ii) cleared to a hundred per cent export-oriented undertaking; or
 - (iii) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or
 - (iv) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No.108/95-Central Excise, dated the 28th August, 1995, number G.S.R. 602 (E), dated the 28th August, 1995; or
 - (iva) supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions on notification No. 6/2006-Central Excise dated the 1st March, 2006, number G.S.R.96(E), dated 1st March, 2006; or
 - (v) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or
 - (vi) gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting; or
 - (vii) all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under sub section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied,
 - (a) against International Competitive Bidding; or
 - (b) to a power project from which power supply has been tied up through tariff based competitive bidding; or
 - (c) to a power project awarded to a developer through tariff based competitive bidding, in terms of notification No.6/2006- Central Excise, dated the 1st March, 2006.

(6A) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a Unit in a Special Economic Zone or to a Developer of a Special Economic Zone for their authorised operations.

7. MANNER OF DISTRIBUTION OF CREDIT BY INPUT SERVICE DISTRIBUTOR

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

- (a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon; or
- (b) credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed.

7A. DISTRIBUTION OF CREDIT ON INPUTS BY THE OFFICE OR ANY OTHER PREMISES OF OUTPUT SERVICE PROVIDER

- (1) A provider of output service shall be allowed to take credit on inputs and capital goods received, on the basis of an invoice or a bill or a challan issued by an office or premises of the said provider of output service, which receives invoices, issued in terms of the provisions of the Central Excise Rules, 2002, towards the purchase of inputs and capital goods.
- (2) The provisions of these rules or any other rules made under the Central Excise Act, 1944, as made applicable to a first stage dealer or a second stage dealer, shall mutatis mutandis apply to such office or premises of the provider of output service.

8. STORAGE OF INPUT OUTSIDE THE FACTORY OF THE MANUFACTURER

The Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of a manufacturer of the final products may, in exceptional circumstances having regard to the nature of the goods and shortage of storage space at the premises of such manufacturer, by an order, permit such manufacturer to store the input in respect of which CENVAT credit has been taken, outside such factory, subject to such limitations and conditions as he may specify:

Provided that where such input is not used in the manner specified in these rules for any reason whatsoever, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such input.

9. DOCUMENTS AND ACCOUNTS

- (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely:-
 - (a) an invoice issued by -

- (i) a manufacturer for clearance of -
 - (I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;
 - (II) inputs or capital goods as such;
- (ii) an importer;
- (iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;
- (iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or
- (b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made thereunder with intent to evade payment of duty.

Explanation.- For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

- (bb) a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax.
- (c) a bill of entry; or
- (d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or
- (e) a challan evidencing payment of service tax by the person liable to pay service tax under sub- clauses (iii), (iv), (v) and (vii) of clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994; or
- (f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004; or
- (g) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

Provided that the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible.

- (2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document:

Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service Tax registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit;

- (3) Omitted
- (4) The CENVAT credit in respect of input or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if such first stage dealer or second stage dealer, as the case may be, has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such input or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him.
- (5) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.
- (6) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.
- (7) The manufacturer of final products shall submit within ten days from the close of each month to the Superintendent of Central Excise, a monthly return in the form specified, by notification, by the Board:

Provided that where a manufacturer is availing exemption under a notification based on the value or quantity of clearances in a financial year, he shall file a quarterly return in the form specified, by notification, by the Board within ten days after the close of the quarter to which the return relates.

- (8) A first stage dealer or a second stage dealer, as the case may be, shall submit within fifteen days from the close of each quarter of a year to the Superintendent of Central Excise, a return in the form specified, by notification, by the Board.

Provided that the first stage dealer or second stage dealer, as the case may be, shall submit the said return electronically.

- (9) The provider of output service availing CENVAT credit, shall submit a half yearly return in form specified, by notification, by the Board to the Superintendent of Central Excise, by the end of the month following the particular quarter or half year.
- (10) The input service distributor, shall furnish a half yearly return in such form as may be specified, by notification, by the board, giving the details of credit received and distributed during the said half year to the Jurisdictional Superintendent of Central Excise, not later than last day of the month following the half year period.
- (11) The provider of output service, availing CENVAT credit referred to in sub-rule (9) or the input service distributor referred to in sub-rule (10), as the case may be, may submit a revised return to correct a mistake or omission within a period of sixty days from the date of submission of the return under sub-rule (9) or sub-rule (10), as the case may be.

9A. INFORMATION RELATING TO PRINCIPAL INPUTS

- (1) A manufacturer of final products shall furnish to the Superintendent of Central Excise, annually by 30th April of each Financial Year, a declaration in the Form specified, by a notification, by the Board, in respect of each of the excisable goods manufactured or to be manufactured by him, the principal inputs and the quantity of such principal inputs required for use in the manufacture of unit quantity of such final products:

Provided that for the year 2004-05, such information shall be furnished latest by 31st December, 2004.

Provided further that where a manufacturer of final products has paid total duty of rupees ten lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall file such declaration electronically.

- (2) If a manufacturer of final products intends to make any alteration in the information so furnished under sub-rule (1), he shall furnish information to the Superintendent of Central Excise together with the reasons for such alteration before the proposed change or within 15 days of such change in the Form specified by the Board under sub-rule (1).
- (3) A manufacturer of final products shall submit, within ten days from the close of each month, to the Superintendent of Central Excise, a monthly return in the Form specified, by a notification, by the Board, in respect of information regarding the receipt and consumption of each principal inputs with reference to the quantity of final products manufactured by him.

Provided that where a manufacturer of final products has paid total duty of rupees ten lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall file the said monthly return electronically.

- (4) The Central Government may, by notification and subject to such conditions or limitations, as may be specified in such notification, specify manufacturers or class of manufacturers who

may not be required to furnish declaration mentioned in sub-rule (1) or monthly return mentioned in sub-rule (3).

Explanation. - For the purposes of this rule, “principal inputs”, means any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of raw-materials for the manufacture of unit quantity of a given final products.

10. TRANSFER OF CENVAT CREDIT

- (1) If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory.
- (2) If 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 the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the 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.
- (3) The transfer of the CENVAT credit under sub-rules (1) and (2) shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise.

11. TRANSITIONAL PROVISION

- (1) Any amount of credit earned by a manufacturer under the CENVAT Credit Rules, 2002, as they existed prior to the 10th day of September, 2004 or by a provider of output service under the Service Tax Credit Rules, 2002, as they existed prior to the 10th day of September, 2004, and remaining unutilized on that day shall be allowed as CENVAT credit to such manufacturer or provider of output service under these rules, and be allowed to be utilized in accordance with these rules.
- (2) A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been taking CENVAT credit on inputs or input services before such option is exercised, shall be required to pay an amount equivalent to the CENVAT credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export.

- (3) A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, if,-
- (i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification issued under section 5A of the Act; or
 - (ii) the said final product has been exempted absolutely under section 5A of the Act, and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported.
- (4) A provider of output service shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for providing the said service and is lying in stock or is contained in the taxable service pending to be provided, when he opts for exemption from payment of whole of the service tax leviable on such taxable service under a notification issued under section 93 of the Finance Act, 1994(32 of 1994) and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export or for payment of service tax on any other output service, whether provided in India or exported.

12. SPECIAL DISPENSATION IN RESPECT OF INPUTS MANUFACTURED IN FACTORIES LOCATED IN SPECIFIED AREAS OF NORTH EAST REGION, KUTCH DISTRICT OF GUJARAT, STATE OF JAMMU AND KASHMIR AND STATE OF SIKKIM

Notwithstanding anything contained in these rules, where a manufacturer has cleared any inputs or capital goods, in terms of notifications of the Government of India in the Ministry of Finance (Department of Revenue) No.32/99- Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999] or No.33/99- Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999] or No.39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001] or notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No.56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated 14th November, 2002] or No.57/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 765(E), dated the 14th November, 2002] or notification of the Government of India in the Ministry of Finance (Department of Revenue) No.56/2003- Central Excise, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003] or 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003] or No.20/2007-Central Excise, dated the 25th April, 2007 [G.S.R. 307 (E), dated the 25th April, 2007], the CENVAT credit on such inputs or capital goods shall be admissible as if no portion of the duty paid on such inputs or capital goods was exempted under any of the said notifications.

12A. PROCEDURE AND FACILITIES FOR LARGE TAXPAYER

Notwithstanding anything contained in these rules, the following procedure shall apply to a large taxpayer,-

- (1) A large taxpayer may remove inputs, except motor spirit, commonly known as petrol, high speed diesel and light diesel oil or capital goods, as such, on which CENVAT credit has been taken, without payment of an amount specified in sub-rule (5) of rule 3 of these rules, under the cover of a transfer challan or invoice, from any of his registered premises (hereinafter referred to as the sender premises) to his other registered premises, other than a premises of a first or second stage dealer (hereinafter referred to as the recipient premises), for further use in the manufacture or production of final products in recipient premises subject to condition that —
 - (a) the final products are manufactured or produced using the said inputs and cleared on payment of appropriate duties of excise leviable thereon within a period of six months, from the date of receipt of the inputs in the recipient premises; or
 - (b) the final products are manufactured or produced using the said inputs and exported out of India, under bond or letter of undertaking within a period of six months, from the date of receipt of the input goods in the recipient premises,

and that any other conditions prescribed by the Commissioner of Central Excise, Large Taxpayer Unit in this regard are satisfied.

Explanation 1 - The transfer challan or invoice shall be serially numbered and shall contain the registration number, name, address of the large taxpayer, description, classification, time and date of removal, mode of transport and vehicle registration number, quantity of the goods and registration number and name of the consignee:

Provided that if the final products manufactured or produced using the said inputs are not cleared on payment of appropriate duties of excise leviable thereon or are not exported out of India within the said period of six months from the date of receipt of the input goods in the recipient premises, or such inputs are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such inputs by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under rule 14 of these rules:

Provided further that if such capital goods are used exclusively in the manufacture of exempted goods, or such capital goods are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such capital goods by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under rule 14 of these rules.

Explanation 2 - If a large taxpayer fails to pay any amount due in terms of the first and second proviso, it shall be recovered along with interest in the manner as provided under rule 14 of these rules:

Provided also that nothing contained in this sub-rule shall be applicable if the recipient premises is availing following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

- (i) No.32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated 8th July, 1999];

- (ii) No.33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated 8th July, 1999];
- (iii) No.39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565 (E), dated the 31st July, 2001];
- (iv) No.56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];
- (v) No.57/2002-Central Excise, dated 14th November, 2002 [G.S.R. 765(E), dated the 14th November, 2002];
- (vi) No.56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513 (E), dated the 25th June, 2003]; and
- (vii) No.71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717 (E), dated the 9th September, 2003];
- (viii) No.20/2007-Central Excise, dated the 25th April, 2007 [G.S.R. 307 (E), dated the 25th April, 2007]:

Provided also that nothing contained in this sub-rule shall be applicable to a export oriented unit or a unit located in a Electronic Hardware Technology Park or Software Technology Park.

- (2) The first recipient premises may take CENVAT credit of the amount paid under first proviso to sub-rule(1) as if it was a duty paid by the sender premises who removed such goods on the basis of a document showing payment of such duties.
- (3) CENVAT credit of the specified duties taken by a sender premises shall not be denied or varied in respect of any inputs or capital goods,
 - (a) removed as such under sub-rule (1) on the ground that the said inputs or the capital goods have been removed without payment of an amount specified in sub-rule (5) of rule 3 of these rules; or
 - (b) on the ground that the said inputs or capital goods have been used in the manufacture of any intermediate goods removed without payment of duty under sub-rule (1) of rule 12BB of Central Excise Rules, 2002.

Explanation - For the purpose of this sub-rule “intermediate goods” shall have the same meaning assigned to it in sub-rule (1) of rule 12BB of the Central Excise Rules, 2002.

- (4) A large taxpayer may transfer, CENVAT credit available with one of his registered manufacturing premises or premises providing taxable service to his other such registered premises by
 - (i) making an entry for such transfer in the record maintained under rule 9;
 - (ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit as well as receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i),

and such recipient premises can take CENVAT credit on the basis of such transfer challan as mentioned in clause (ii):

Provided that such transfer or utilisation of CENVAT credit shall be subject to the limitations prescribed under clause (b) of sub-rule (7) of rule 3:

Provided further that nothing contained in this sub-rule shall be applicable if the registered manufacturing premises is availing following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

- (i) No.32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated 8th July, 1999];
 - (ii) No.33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated 8th July, 1999];
 - (iii) No.39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565 (E), dated the 31st July, 2001];
 - (iv) No.56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];
 - (v) No.57/2002-Central Excise, dated the 14th November, 2002 [G.S.R.. 765(E), dated the 14th November, 2002];
 - (vi) No.56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513 (E), dated the 25th June, 2003];
 - (vii) No.71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717 (E), dated the 9th September, 2003]. and
 - (viii) No.20/2007-Central Excise, dated the 25th April, 2007 [G.S.R. 307 (E), dated the 25th April, 2007]
- (5) A large taxpayer shall submit a monthly return, as prescribed under these rules, for each of the registered premises.
 - (6) Any notice issued but not adjudged by any of the Central Excise Officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise Officers of the said Unit.
 - (7) Provisions of these rules, in so far as they are not inconsistent with the provisions of this rule shall *mutatis mutandis* apply in case of a large taxpayer.

12AA. POWER TO IMPOSE RESTRICTIONS IN CERTAIN TYPES OF CASES.

Notwithstanding anything contained in these rules, where the Central Government, having regard to the extent of misuse of CENVAT credit, nature and type of such misuse and such other factors as may be relevant, is of the opinion that in order to prevent the misuse of the provisions of CENVAT credit as specified in these rules, it is necessary in the public interest to provide for certain measures including restrictions on a manufacturer, first stage and second stage dealer or an exporter, may by a notification in the Official Gazette, specify nature of restrictions including restrictions on utilization of CENVAT credit and suspension of registration in case of a dealer and type of facilities to be withdrawn and procedure for issue of such order by an officer authorised by the Board.

13. POWER OF CENTRAL GOVERNMENT TO NOTIFY GOODS FOR DEEMED CENVAT CREDIT.

Notwithstanding anything contained in rule 3, the Central Government may, by notification, declare

the input or input service on which the duties of excise, or additional duty of customs or service tax paid, shall be deemed to have been paid at such rate or equivalent to such amount as may be specified in that notification and allow CENVAT credit of such duty or tax deemed to have been paid in such manner and subject to such conditions as may be specified in that notification even if, in the case of input, the declared input, or in the case of input service, the declared input service, as the case may be, is not used directly by the manufacturer of final products, or as the case may be, by the provider of taxable service, declared in that notification, but contained in the said final products, or as the case may be, used in providing the taxable service.

14. RECOVERY OF CENVAT CREDIT WRONGLY TAKEN OR ERRONEOUSLY REFUNDED

Where the CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and 11 AB of the Excise Act or sections 73 and 75 of the Finance Act, shall apply *mutatis mutandis* for effecting such recoveries.

15. CONFISCATION AND PENALTY

- (1) If any person, takes or utilises CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty or service tax on such goods or services, as the case may be, or two thousand rupees, whichever is greater.
- (2) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made there under with intent to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of section 11AC of the Excise Act.
- (3) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made there under with intent to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in terms of the provisions of Section 78 of the Finance Act.
- (4) Any order under sub-rule (1), sub-rule (2) or sub-rule (3) shall be issued by the Central Excise Officer following the principles of natural justice.

15A. GENERAL PENALTY

Whoever contravenes the provisions of these rules for which no penalty has been provided in the rules, he shall be liable to a penalty which may extend to five thousand rupees.

16. SUPPLEMENTARY PROVISION

- (1) Any notification, circular, instruction, standing order, trade notice or other order issued under the CENVAT Credit Rules, 2002 or the Service Tax Credit Rules, 2002, by the Central Government, the Central Board of Excise and Customs, the Chief Commissioner of Central Excise or the Commissioner of Central Excise, and in force at the commencement of these rules, shall, to the extent it is relevant and consistent with these rules, be deemed to be valid and issued under the corresponding provisions of these rules.
- (2) References in any rule, notification, circular, instruction, standing order, trade notice or other order to the CENVAT Credit Rules, 2002 and any provisions thereof or, as the case may be, the Service Tax Credit rules, 2002 and any provision thereof shall, on the commencement of these rules, be construed as references to the CENVAT Credit Rules, 2004 and any corresponding provision thereof.

Export of Services Rules, 2005

Rule No.	Particulars	Page No.
1.	Short title and commencement	154
2.	Definitions	154
3.	Export of taxable service	154
4.	Export without payment of service tax	158
5.	Rebate of service tax	158

NOTIFICATION NO. 9/2005 - ST, DATED MARCH 3, 2005, AS AMENDED

In exercise of the powers conferred by sub-section (1) and sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely:-

1. SHORT TITLE, EXTENT AND COMMENCEMENT

- (1) These rules may be called the Export of Services Rules, 2005.
- (2) They shall come into force on the 15th day of March, 2005.

2. DEFINITIONS

In these rules, unless the context otherwise requires,

- (a) **“Act”** means the Finance Act, 1994 (32 of 1994);
- (b) **“input”** shall have the meaning assigned to it in clause (k) of rule 2 of the CENVAT Credit Rules, 2004;
- (c) **“input service”** shall have the meaning assigned to it in clause (l) of rule 2 of the CENVAT Credit Rules, 2004.

3. EXPORT OF TAXABLE SERVICE

- (1) Export of taxable services shall, in relation to taxable services, -
 - (i) specified in sub-clauses (d), (m), (p), (q), (v), (zzq), (zzza), (zzzb), (zzzc), (zzzh), (zzzr), (zzzy), (zzzz), (zzzza), (zzzzm), (zzzzu), (zzzzv) and (zzzzw) of clause (105) of section 65 of the Act, be provision of such services as are provided in relation to an immovable property situated outside India;

Sub-clause	Taxable Service
d	General insurance service
m	Mandap Keeper's Services
p	Architect's services
q	Interior decorator's services
v	Real estate agent's services
zzq	Commercial or industrial construction services
zzza	Site formation and clearance, excavation and earthmoving and demolition services
zzzb	Dredging service
zzzc	Survey and map making service
zzzh	Construction of complex service
zzzr	Auctioneer services
zzzy	Mining of mineral, oil or gas services
zzzz	Renting of immovable property service
zzzza	Works contract services
zzzzm	Legal Consultancy Services
zzzzu	Special services provided by a builder
zzzzv	Service by air-conditioned restaurants
zzzzw	Short-term accommodation in hotels, inn, guesthouse, clubs or campsite

- (ii) specified in sub-clauses (a), (f), (h), (i), (j), (l), (n), (o), (w), (z), (zb), (zc), (zi), (zj), (zn), (zo), (zq), (zr), (zt), (zu), (zv), (zw), (zz), (zza), (zcc), (zdd), (zzf), (zzg), (zzi), (zll), (zzm), (zzo), (zzt), (zzv), (zzw), (zzx), (zzy), (zzzd), (zzze), (zzzf), (zzzgg), (zzzzh), (zzzzi), (zzzzk), (zzzzl) and (zzzzo) of clause (105) of section 65 of the Act, be provision of such services as are performed outside India:

Sub clause	Taxable Service	Sub clause	Taxable Service
a	Stock broker's service	zza	Storage and warehousing service
f	Courier service	zcc	Commercial training or coaching service
h	Custom house agent's service	zdd	Erection, commissioning or installation service
i	Steamer agent's service	zzf	Internet café service
j	Clearing and forwarding agent's service	zzg	Management, maintenance or repair service
l	Air travel agent's service	zzi	Technical inspection and certification service
n	Tour operator's service	zll	Other port service
o	Rent-a-cab scheme operator's service	zzm	Airport service
w	Security agency's service	zzo	Business exhibition service
z	Underwriter's service	zzt	Outdoor caterer's service
zb	Photography service	zzv	Survey and exploration of mineral, oil and gas service
zc	Convention service	zzw	Pandal or shamiana contractor's service
zi	Video production agency's service	zzx	Travel agent's service
zj	Sound recording service	zzy	Forward contract service
zn	Port service	zzzd	Cleaning activity service
zo	Authorized service station service	zzze	Club or association service
zq	Beauty treatment service	zzzf	Packaging activity service
zr	Cargo handling service	zzzgg	Stock exchange service
zt	Dry cleaning service	zzzzh	Commodity exchange service
zu	Event management service	zzzzi	Processing and clearing house service
zv	Fashion designing service	zzzzk	Cosmetic and plastic surgery service
zw	Health and fitness service	zzzzl	Transport of coastal goods, and goods transported through inland water service
zz	Rail travel agent's service	zzzzo	Health services

Provided that where such taxable service is partly performed outside India, it shall be treated as performed outside India;

Provided further that where the taxable services referred to in sub-clauses (zzg) and (zzi) of clause (105) of section 65 of the Act, are provided in relation to any goods or material or any immovable property, as the case may be, situated outside India at the time of provision of service, through internet or an electronic network including a computer network or any other means, then such taxable service, whether or not performed outside India, shall be treated as the taxable service performed outside India.

- (iii) specified in clause (105) of section 65 of the Act, but excluding,-
 (a) sub-clauses (zzzo) and (zzzv);

Sub-clause	Taxable Service
zzzo	Air craft operator services
zzzv	Cruise ship services

- (b) those specified in clause (i) of this rule except when the provision of taxable services specified in sub-clauses (d),(zzzc),(zzzr) and (zzzzm) does not relate to immovable property; and

Sub-clause	Taxable Service
d	General insurance service.
zzzc	Survey and map-making service
zzzr	Auctioneer's services
zzzzm	Legal consultancy service

- (c) those specified in clause (ii) of this rule,

when provided in relation to business or commerce, be provision of such services to a recipient located outside India and when provided otherwise, be provision of such services to a recipient located outside India at the time of provision of such service:

Provided that where such recipient has 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 establishment or office located outside India.

Provided further that where the taxable service referred to in sub-clause (zzzzj) of clause (105) of section 65 of the Act is provided to a recipient located outside India, then such taxable service shall be treated as export of taxable service subject to the condition that the tangible goods supplied for use are located outside India during the period of use of such tangible goods by such recipient.

Sub-clause	Taxable Service
d	General insurance service
e	Advertising agency's service
g	Consulting engineer's service

k	Manpower recruitment or supply agency's service
r	Management consultant's service
s	Chartered Accountant's service
t	Cost Accountant's service
u	Company Secretary's service
x	Credit rating agency's service
y	Market research agency's service
za	Scientific and technical consultancy service
zh	Online information and database access or retrieval service
zk	Broadcasting service
zl,zy	Insurance auxiliary service (General Insurance) Insurance auxiliary service (Life Insurance)
zm,zzk	Banking and other financial service Foreign exchange broking service
zs	Cable service
zx	Life insurance service
zzb	Business auxiliary service
zze	Franchise service
zzh	Technical testing and analysis service
zzn	Transport of goods by air service
zzp	Transport of goods by road (GTA)
zzr	Intellectual property services
zzs	Opinion poll service
zzu	Programme producer's service
zzz	Transport of goods other than water through pipeline or other conduit service
zzzc	Survey and map-making service
zzzg	Mailing list compilation and mailing service
zzzi	Registrar to an issue's service
zzzj	Share transfer agent's service
zzzk	Automated teller machines operations, maintenance or management service
zzzl	Recovery agent's service
zzzm	Sale of space or time for advertisement service
zzzn	Sponsorship service
zzzp	Transport of goods by rail service
zzzq	Business support service
zzzr	Auctioneer's service
zzzs	Public relations management service
zzzt	Ship management service
zzzu	Internet telecommunication service
zzzw	Credit card, debit card, charge card or other payment card related service
zzzx	Telecommunication service
zzzzb	Development and supply of content service
zzzzc	Asset management service

zzzzd	Design service
zzzze	Information technology software service
zzzzf	Management of investment under ULIP scheme
zzzzj	Supply of tangible goods
zzzzm	Legal consultancy service
zzzzn	Promoting, marketing or organizing of games of chance, including lottery
zzzzp	Maintenance of medical records service
zzzzq	Promoting of a 'brand' of a goods, services, events, business entity, etc services
zzzzr	Permitting commercial use or exploitation of any event service
zzzzs	Electricity Exchanges service
zzzzt	Copyright service

(2) The provision of any taxable service specified in sub-rule (1) shall be treated as export of service when the following conditions are satisfied, namely: -

(a) Omitted.

(b) payment for such service is received by the service provider in convertible foreign exchange.

Explanation - For the purpose of the rule "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.

4. EXPORT WITHOUT PAYMENT OF SERVICE TAX

Any service, which is taxable under clause (105) of section 65 of the Act, may be exported without payment of service tax.

5. REBATE OF SERVICE TAX

Where any taxable service is exported, the Central Government may, by notification, grant rebate of service tax paid on such taxable service or service tax or duty paid on input services or inputs, as the case may be, used in providing such taxable service and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 -Import Rules

Rule No.	Particulars	Page No.
1.	Short title and commencement	160
2.	Definitions	160
3.	Taxable services provided from outside India and received in India	160
4.	Registration and payment of service tax	164
5.	Taxable services not to be treated as output service	165

NOTIFICATION NO. 11/2006 - ST, DATED MAY 19, 2006, AS AMENDED

In exercise of the powers conferred by sections 93 and 94, read with section 66A of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely:-

1. SHORT TITLE, EXTENT AND COMMENCEMENT

- (1) These rules may be called the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. DEFINITIONS

In these rules, unless the context otherwise requires,-

- (a) **“Act”** means the Finance Act, 1994 (32 of 1994);
- (b) **“input”** shall have the meaning assigned to it in clause (k) of rule 2 of the CENVAT Credit Rules, 2004;
- (c) **“input service”** shall have the meaning assigned to it in clause (l) of rule 2 of the CENVAT Credit Rules, 2004;
- (d) **“output service”** shall have the meaning assigned to it in clause (p) of rule 2 of the CENVAT Credit Rules, 2004;
- (e) **“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.
- (f) words and expressions used in these rules and not defined, but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. TAXABLE SERVICES PROVIDED FROM OUTSIDE INDIA AND RECEIVED IN INDIA

Subject to section 66A of the Act, the taxable services provided from outside India and received in India shall, in relation to taxable services -

- (i) specified in sub-clauses (d), (m), (p), (q), (v), (zzq), (zza), (zzzb), (zzzc), (zzzh), (zzzr) (zzzy), (zzzz) (zzzza), (zzzzm), (zzzzu), (zzzzv) and (zzzzw) of clause (105) of section 65 of the Act, be such services as are provided or to be provided in relation to an immovable property situated in India;

Sub-clause	Taxable Service
d	General insurance service
m	Mandap Keeper's service
p	Architect's services
q	Interior decorator's services
v	Real estate agent's services

zzq	Commercial or industrial construction services
zzza	Site formation and clearance, excavation and earthmoving and demolition services
zzzb	Dredging service
zzzc	Survey and map-making service
zzzh	Construction of complex service
zzzr	Auctioneer's services
zzzy	Mining of mineral, oil and gas services
zzzz	Renting of immovable property service
zzzza	Works contract service
zzzzm	Legal consultancy service
zzzzu	Special services provided by a builder
zzzzv	Service by air-conditioned restaurants
zzzzw	Short-term accommodation in hotels, inn, guesthouse, clubs or campsite

- (ii) specified in sub-clauses (a), (f), (h), (i), (j), (l), (n), (o), (w), (z), (zb), (zc), (zi), (zj), (zn), (zo), (zq), (zr), (zt), (zu), (zv), (zw), (zz), (zza), (zzc), (zzd), (zzf), (zzg), (zzi), (zjl), (zzm), (zzo), (zzt), (zzv), (zzw), (zzx), (zzy), (zzzd), (zzze), (zzzf), (zzzzg), (zzzzh), (zzzzi), (zzzzk), (zzzzl) and (zzzzo) of clause (105) of section 65 of the Act, be such services as are performed in India:

Provided that where such taxable service is partly performed in India, it shall be treated as performed in India and the value of such taxable service shall be determined under section 67 of the Act and the rules made thereunder;

Provided further that where the taxable services referred to in sub-clauses (zzg), (zzh) and (zzi) of clause (105) of section 65 of the Act, are provided in relation to any goods or material or any immovable property, as the case may be, situated in India at the time of provision of service, through internet or an electronic network including a computer network or any other means, then such taxable service, whether or not performed in India, shall be treated as the taxable service performed in India

Sub clause	Taxable Service	Sub clause	Taxable Service
a	Stock broker's service	zza	Storage and warehousing service
f	Courier service	zzc	Commercial training or coaching service
h	Custom house agent's service	zzd	Erection, commissioning or installation service
i	Steamer agent's service	zzf	Internet café service
j	Clearing and forwarding agent's service	zzg	Management, maintenance or repair service
l	Air travel agent's service	zzi	Technical inspection and certification service

n	Tour operator's service	zzl	Other port service
o	Rent-a-cab scheme operator's service	zzm	Airport service
w	Security agency's service	zzo	Business exhibition service
z	Underwriter's service	zzt	Outdoor caterer's service
zb	Photography service	zzv	Survey and exploration of mineral, oil and gas service
zc	Convention service	zzw	Pandal or shamiana contractor's service
zi	Video production agency's service	zzx	Travel agent's service
zj	Sound recording service	zzy	Forward contract service
zn	Port service	zzzd	Cleaning activity service
zo	Authorized service station service	zzze	Club or association service
zq	Beauty treatment service	zzzf	Packaging activity service
zr	Cargo handling service	zzzzg	Stock exchange service
zt	Dry cleaning service	zzzzh	Commodity exchange service
zu	Event management service	zzzzi	Processing and clearing house service
zv	Fashion designing service	zzzzk	Cosmetic and plastic surgery service
zw	Health and fitness service	zzzzl	Transport of coastal goods, and goods transported through inland water service
zz	Rail travel agent's service	zzzzo	Health services

(iii) specified in clause (105) of section 65 of the Act, but excluding, -

(a) sub-clauses (zzzo) and (zzzv);

Sub-clause	Taxable Service
zzzo	Aircraft operator services
zzzv	Cruise ship services

(b) those specified in clause (i) of this rule except when the provision of taxable services specified in clauses (d), (zzzc), (zzzr) and (zzzzm) does not relate to immovable property; and

Sub-clause	Taxable Service
d	General insurance service.
zzzc	Survey and map-making service
zzzr	Auctioneer's service
zzzzm	Legal Consultancy service

(c) those specified in clause (ii) of this rule,

be such services as are received by a recipient located in India for use in relation to business or commerce.

Provided that where the taxable service referred to in sub-clause (zzzzj) of clause (105) of section 65 of the Act is received by a recipient located in India, then such taxable service shall be treated as taxable service provided from outside India and received in India subject to the condition that the tangible goods supplied for use are located in India during the period of use of such tangible goods by such recipient.

Sub-clause	Taxable Service
d	General insurance service
e	Advertising agency's service
g	Consulting engineer's service
k	Manpower recruitment or supply agency's service
r	Management consultant's service
s	Chartered Accountant's service
t	Cost Accountant's service
u	Company Secretary's service
x	Credit rating agency's service
y	Market research agency's service
za	Scientific and technical consultancy service
zh	Online information and database access or retrieval service
zk	Broadcasting service
zl,zy	Insurance auxiliary service (General Insurance) Insurance auxiliary service (Life Insurance)
zm,zzk	Banking and other financial service Foreign exchange broking service
zs	Cable service
zx	Life insurance service
zzb	Business auxiliary service
zze	Franchise service
zzh	Technical testing and analysis service
zzn	Transport of goods by air service
zzp	Transport of goods by road (GTA)
zzr	Intellectual property services
zzs	Opinion poll service
zzu	Programme producer's service

Sub-clause	Taxable Service
zzz	Transport of goods other than water through pipeline or other conduit service
zzzc	Survey and map-making service
zzzg	Mailing list compilation and mailing service
zzzi	Registrar to an issue's service
zzzj	Share transfer agent's service
zzzk	Automated teller machines operations, maintenance or management service
zzzl	Recovery agent's service
zzzm	Sale of space or time for advertisement service
zzzn	Sponsorship service
zzzp	Transport of goods by rail service
zzzq	Business support service
zzzr	Auctioneer's service
zzzs	Public relations management service
zzzt	Ship management service
zzzu	Internet telecommunication service
zzzw	Credit card, debit card, charge card or other payment card related service
zzzx	Telecommunication service
zzzzb	Development and supply of content service
zzzyc	Asset management service
zzzyd	Design service
zzzye	Information technology software service
zzzyl	Management of investment under ULIP scheme
zzzyl	Supply of tangible goods
zzzylm	Legal consultancy service
zzzyln	Promoting, marketing or organizing of games of chance, including lottery
zzzylp	Maintenance of medical records service
zzzylq	Promoting of a 'brand' of a goods, services, events, business entity, etc services
zzzylr	Permitting commercial use or exploitation of any event service
zzzyls	Electricity Exchanges service
zzzylt	Copyright service

4. REGISTRATION AND PAYMENT OF SERVICE TAX

The recipient of taxable services provided from outside India and received in India shall make an application for registration and for this purpose, the provisions of section 69 of the Act and the rules made there under shall apply.

5. TAXABLE SERVICES NOT TO BE TREATED AS OUTPUT SERVICES

The taxable services provided from outside India and received in India shall not be treated as output services for the purpose of availing credit of duty of excise paid on any input or service tax paid on any input services under CENVAT Credit Rules, 2004.

Service Tax (Determination of Value) Rules, 2006 - Valuation Rules

Rule No.	Particulars	Page No.
1.	Short title and commencement	167
2.	Definitions	167
2A.	Determination of value of services involved in the execution of a works contract	167
2B.	Determination of value of service in relation to money changing	168
3.	Manner of determination of value	168
4.	Rejection of value	169
5.	Inclusion in or exclusion from value of certain expenditure or costs	169
6.	Cases in which the commission, costs, etc. will be included or excluded	171
7.	Actual consideration to be the value of taxable service provided from outside India.	172

NOTIFICATION NO. 12/2006 S.T. DATED 19/04/2006, AS AMMENDED

In exercise of the powers conferred by clause (aa) of sub-section (2) of section 94 the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely: -

1. SHORT TITLE AND COMMENCEMENT

- (1) These rules may be called the Service Tax (Determination of Value) Rules, 2006.
- (2) They shall come into force from April 19, 2006.

2. DEFINITIONS

In these rules, unless the context otherwise requires, -

- (a) **“Act”** means the Finance Act, 1994 (32 of 1994);
- (b) **“section”** means the section of the Act;
- (c) **“value”** shall have the meaning assigned to it in section 67;
- (d) words and expressions used in these rules and not defined but defined in the Act shall have the meaning respectively assigned to them in the Act.

2A. DETERMINATION OF VALUE OF SERVICES INVOLVED IN THE EXECUTION OF A WORKS CONTRACT

- (1) Subject to the provisions of section 67, the value of taxable service in relation to services involved in the execution of a works contract (hereinafter referred to as works contract service), referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act, shall be determined by the service provider in the following manner: -
 - (i) Value of works contract service determined shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.

Explanation- For the purposes of this rule,-

- (a) gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract;
- (b) value of works contract service shall include,-
 - (i) labour charges for execution of the works;
 - (ii) amount paid to a sub-contractor for labour and services;
 - (iii) charges for planning, designing and architect's fees;
 - (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
 - (v) cost of consumables such as water, electricity, fuel, used in the execution of the works contract;

- (vi) cost of establishment of the contractor relating to supply of labour and services;
 - (vii) other similar expenses relating to supply of labour and services; and
 - (viii) profit earned by the service provider relating to supply of labour and services;
- (ii) Where Value Added Tax or sales tax, as the case may be, has been paid on the actual value of transfer of property in goods involved in the execution of the works contract, then such value adopted for the purposes of payment of Value Added Tax or sales tax, as the case may be, shall be taken as the value of transfer of property in goods involved in the execution of the said works contract for determining the value of works contract service under clause (i).

2B. DETERMINATION OF VALUE OF SERVICES IN RELATION TO MONEY CHANGING

Subject to the provisions of section 67, the value of taxable service provided for the services referred to in sub-clause (zm) and (zzk) of clause (105) of section 65 of the Act, so far as it pertains to purchase or sale of foreign currency, including money changing, shall be determined by the service provider in the following manner:-

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency.

Example I: US\$1000 are sold by a customer at the rate of Rupees 45 per US\$.
RBI reference rate for US\$ is Rupees 45.50 for that day.
The taxable value shall be Rupees 500.

Example II: INR70000 is changed into Great Britain Pound (GBP) and the exchange rate offered is Rupees 70, thereby giving GBP 1000.
RBI reference rate for that day for GBP is Rupees 69.
The taxable value shall be Rupees 1000.

Provided that in case where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI;

3. MANNER OF DETERMINATION OF VALUE

Subject to the provisions of section 67, the value of taxable service, where the consideration received is not wholly or partly consisting of money, shall be determined by the service provider in the following manner: -

- (a) the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration;

- (b) where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service.

4. REJECTION OF VALUE

- (1) Nothing contained in rule 3 shall be construed as restricting or calling into question the power of the Central Excise Officer to satisfy himself as to the accuracy of any information furnished or document presented for valuation.
- (2) Where the Central Excise Officer is satisfied that the value so determined by the service provider is not in accordance with the provisions of the Act or these rules, he shall issue a notice to such service provider to show cause why the value of such taxable service for the purpose of charging service tax should not be fixed at the amount specified in the notice.
- (3) The Central Excise Officer shall, after providing reasonable opportunity of being heard, determine the value of such taxable service for the purpose of charging service tax in accordance with the provisions of the Act and these rules.

5. INCLUSION IN OR EXCLUSION FROM VALUE OF CERTAIN EXPENDITURE OR COSTS

- (1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

Explanation – for the removal of doubts, it is hereby clarified that for the services specified in sub-clause (zzzx) of clause (105) of section 65 of the Finance Act, 1994, the value of the taxable service shall be the gross amount paid by the person to whom telecom service is provided by the telegraph authority.

- (2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely: -
 - (i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;
 - (ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
 - (iii) the recipient of service is liable to make payment to the third party;
 - (iv) the recipient of service authorises the service provider to make payment on his behalf;
 - (v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;
 - (vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

- (vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- (viii) 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.

Explanation 1. - For the purposes of sub-rule (2), “pure agent” means a person who -

- (a) 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;
- (b) 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;
- (c) does not use such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services.

Explanation 2. - For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.

Illustration 1. - X contracts with Y, a real estate agent to sell his house and thereupon Y gives an advertisement in television. Y billed X including charges for Television advertisement and paid service tax on the total consideration billed. In such a case, consideration for the service provided is what X pays to Y. Y does not act as an agent on behalf of X when obtaining the television advertisement even if the cost of television advertisement is mentioned separately in the invoice issued by X. Advertising service is an input service for the estate agent in order to enable or facilitate him to perform his services as an estate agent.

Illustration 2. - In the course of providing a taxable service, a service provider incurs costs such as traveling expenses, postage, telephone, etc., and may indicate these items separately on the invoice issued to the recipient of service. In such a case, the service provider is not acting as an agent of the recipient of service but procures such inputs or input service on his own account for providing the taxable service. Such expenses do not become reimbursable expenditure merely because they are indicated separately in the invoice issued by the service provider to the recipient of service.

Illustration 3. - A contracts with B, an architect for building a house. During the course of providing the taxable service, B incurs expenses such as telephone charges, air travel tickets, hotel accommodation, etc., to enable him to effectively perform the provision of services to A. In such a case, in whatever form B recovers such expenditure from A, whether as a separately itemised expense or as part of an inclusive overall fee, service tax is payable on the total amount charged by B. Value of the taxable service for charging service tax is what A pays to B.

Illustration 4. - Company X provides a taxable service of rent-a-cab by providing chauffeur-driven cars for overseas visitors. The chauffeur is given a lump sum amount to cover his food and overnight accommodation and any other incidental expenses such as parking fees by the Company X during the tour. At the end of the tour, the chauffeur returns the balance of the amount with a statement of his expenses and the relevant bills. Company X charges these

amounts from the recipients of service. The cost incurred by the chauffeur and billed to the recipient of service constitutes part of gross amount charged for the provision of services by the company X.

6. CASES IN WHICH THE COMMISSION, COSTS, ETC., WILL BE INCLUDED OR EXCLUDED

- (1) Subject to the provisions of section 67, the value of the taxable services shall include, -
 - (i) the 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;
 - (ii) the 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;
 - (iii) the amount of premium charged by the insurer from the policy holder;
 - (iv) the commission received by the air travel agent from the airline;
 - (v) the commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;
 - (vi) the reimbursement received by the authorised service station, from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer;
 - (vii) the commission or any amount received by the rail travel agent from the Railways or the customer;
 - (viii) the 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; and
 - (ix) the commission, fee or any other sum, by whatever name called, paid to such agent by the insurer appointing such agent in relation to insurance auxiliary services provided by an insurance agent.
- (2) Subject to the provisions contained in sub-rule (1), the value of any taxable service, as the case may be, does not include -
 - i. initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;
 - ii. the airfare collected by air travel agent in respect of service provided by him;
 - iii. the rail fare collected by rail travel agent in respect of service provided by him; and
 - iv. interest on loans.

- v. the taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger.

7. ACTUAL CONSIDERATION TO BE THE VALUE OF TAXABLE SERVICE PROVIDED FROM OUTSIDE INDIA

- (1) The value of taxable service received under the provisions of section 66A, shall be such amount as is equal to the actual consideration charged for the services provided or to be provided.
- (2) Notwithstanding anything contained in sub-rule (1), the value of taxable services specified in clause (ii) of rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, as are partly performed in India, shall be the total consideration paid by the recipient for such services including the value of service partly performed outside India.

Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 - Works Contract Rules

Rule No.	Particulars	Page No.
1.	Short title and commencement	174
2.	Definitions	174
3.	Option to discharge service tax liability on works contract service	174

NOTIFICATION NO. 32/2007 - ST, DATED MAY 22, 2007, AS AMENDED

In exercise of the powers conferred by sections 93 and 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely:-

1. SHORT TITLE, EXTENT AND COMMENCEMENT

- (1) These rules may be called the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007.
- (2) They shall come into force with effect from the 1st day of June, 2007.

2. DEFINITIONS

In these rules, unless the context otherwise requires,-

- (a) **“Act”** means the Finance Act, 1994 (32 of 1994);
- (b) **“section”** means the section of the Act;
- (c) **“works contract service”** means services provided in relation to the execution of a works contract referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act;
- (d) words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. OPTION TO DISCHARGE SERVICE TAX LIABILITY ON WORKS CONTRACT SERVICE

- (1) Notwithstanding anything contained in section 67 of the Act and rule 2A of the Service Tax (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to four per cent of the gross amount charged for the works contract.

Explanation. - For the purposes of this rule, gross amount charged for the works contract shall be the sum,-

- (a) including –
 - (i) the value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise; and
 - (ii) the value of all the services that are required to be provided for the execution of the works contract;
- (b) excluding –
 - (i) the value added tax or sales tax as the case may be paid on transfer of property in goods involved; and
 - (ii) the cost of machinery and tools used in the execution of the said works contract except for the charges for obtaining them on hire:

Provided that nothing contained in this Explanation shall apply to a works contract, where the execution under the said contract has commenced or where any payment, except by way of credit or debit to any account, has been made in relation to the said contract on or before the 7th day of July, 2009.

- (2) The provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.
- (2A) The CENVAT credit of tax paid on taxable services as referred to under sub-clauses (zzd), (zzq) and (zzzh) of clause (105) of section 65 of the Finance Act, 1994, shall be available only to the extent of 40% of the service tax paid when such tax has been paid on the full value of the service after availing CENVAT credit on inputs.
- (3) The provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract.
- (4) The option under sub-rule (3) shall be permissible only where the declared value of the works contract is not less than the gross amount charged for such works contract.

Point of Taxation Rules, 2011

Rule No.	Particulars	Page No.
1.	Short title and commencement	177
2.	Definitions	177
3.	Determination of point of taxation	177
4.	Determination of point of taxation in case of change in effective rate of tax	178
5.	Payment of tax in cases of new services	178
6.	Determination of point of taxation in case of continuous supply of service	179
7.	Determination of point of taxation in case of specified services or persons	179
8.	Determination of point of taxation in case of copyrights, etc	180
9.	Transitional Provisions	180

NOTIFICATION NO. 18/2011 - ST, DATED MARCH 1, 2011, AS AMENDED

In exercise of the powers conferred under clause (a) and clause (hhh) of sub-section (2) of sections 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, for the purpose of collection of service tax and determination of rate of service tax, namely:-

1. SHORT TITLE, EXTENT AND COMMENCEMENT

- (1) These rules shall be called the Point of Taxation Rules, 2011.
- (2) They shall come into force on the 1st day of April, 2011.

2. DEFINITIONS

In these rules, unless the context otherwise requires,-

- (a) “**Act**” means the Finance Act, 1994 (32 of 1994);
- (b) “**associated enterprises**” shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961 (43 of 1961);
- (c) “**continuous supply of service**” means any service which is provided, or to be provided continuously, under a contract, for a period exceeding three months, or where the Central Government, by a notification¹ in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition;
- (d) “**invoice**” means the invoice referred to in rule 4A of the Service Tax Rules, 1994 and shall include any document as referred to in the said rule;
- (e) “**point of taxation**” means the point in time when a service shall be deemed to have been provided;
- (f) “**taxable service**” means a service which is subjected to service tax, whether or not the same is fully exempt by the Central Government under Section 93 of the Act;

3. DETERMINATION OF POINT OF TAXATION

For the purposes of these rules, unless otherwise provided, ‘point of taxation’ shall be,-

- (a) the time when the invoice for the service provided or to be provided is issued:

Provided that where the invoice is not issued within fourteen days of the completion of the provision of the service, the point of taxation shall be date of such completion.

¹ The following services have been notified as continuous supply of services:

- a) Commercial or industrial construction service [65(105)(zzq)];
- b) Construction of complex service [65(105)(zzzh)];
- c) Internet telecommunication service [65(105)(zzzu)];
- d) Telecommunication service [65(105)(zzzx)];
- e) Works contract service [65(105)(zzza)].

- (b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

Explanation .- For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.”.

4. DETERMINATION OF POINT OF TAXATION IN CASE OF CHANGE IN EFFECTIVE RATE OF TAX

Notwithstanding anything contained in rule 3, the point of taxation in cases where there is a change in effective rate of tax in respect of a service, shall be determined in the following manner, namely:-

- (a) in case a taxable service has been provided before the change in effective rate of tax,-
- (i) where the invoice for the same has been issued and the payment received after the change in effective rate of tax, the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or
 - (ii) where the invoice has also been issued prior to change in effective rate of tax but the payment is received after the change in effective rate of tax, the point of taxation shall be the date of issuing of invoice; or
 - (iii) where the payment is also received before the change in effective rate of tax, but the invoice for the same has been issued after the change in effective rate of tax, the point of taxation shall be the date of payment;
- (b) in case a taxable service has been provided after the change in effective rate of tax,-
- (i) where the payment for the invoice is also made after the change in effective rate of tax but the invoice has been issued prior to the change in effective rate of tax, the point of taxation shall be the date of payment; or
 - (ii) where the invoice has been issued and the payment for the invoice received before the change in effective rate of tax, the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier; or
 - (iii) where the invoice has also been raised after the change in effective rate of tax but the payment has been received before the change in effective rate of tax, the point of taxation shall be date of issuing of invoice.

Explanation - For the purposes of this rule, “change in effective rate of tax” shall include a change in the portion of value on which tax is payable in terms of a notification issued under the provisions of Finance Act, 1994 or rules made thereunder.”

5. PAYMENT OF TAX IN CASE OF NEW SERVICES

Where a service, not being a service covered by rule 6, is taxed for the first time, then, –

- (a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;

- (b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within the period referred to in rule 4A of the Service Tax Rules, 1994.

6. DETERMINATION OF POINT OF TAXATION IN CASE OF CONTINUOUS SUPPLY OF SERVICE

Notwithstanding anything contained in rules 3,4 or 8, in case of continuous supply of service, the 'point of taxation' shall be,-

- (a) the time when the invoice for the service provided or to be provided is issued:

Provided that where the invoice is not issued within fourteen days of the completion of the provision of the service, the point of taxation shall be date of such completion.

- (b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

Explanation 1 – For the purpose of this rule, where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the service receiver to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

Explanation 2 - For the purpose of this rule, wherever any advance, by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.”

7. DETERMINATION OF POINT OF TAXATION IN CASE OF SECIFIED SERVICES OR PERSONS

Notwithstanding anything contained in these rules, the point of taxation in respect of,-

- (a) the services covered by sub-rule (1) of rule 3 of Export of Services Rules, 2005;
- (b) the persons required to pay tax as recipients under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Finance Act, 1994;
- (c) individuals or proprietary firms or partnership firms providing taxable services referred to in sub-clauses (p), (q), (s), (t), (u), (za), (zzzzm) of clause (105) of section 65 of the Finance Act, 1994,

shall be the date on which payment is received or made, as the case may be:

Provided that in case of services referred to in clause (a), where payment is not received within the period specified by the Reserve Bank of India, the point of taxation shall be determined, as if this rule does not exist.

Provided further that in case of services referred to in clause (b) where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist.

Provided also that in case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be the date of credit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

8. DETERMINATION OF POINT OF TAXATION IN CASE OF COPYRIGHTS, ETC.

In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, the service shall be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect thereof, or an invoice is issued by the provider, whichever is earlier.

9. TRANSITIONAL PROVISIONS

Nothing contained in these rules shall be applicable,-

- (i) where the provision of service is completed; or
- (ii) where invoices are issued prior to the date on which these rules come into force.

Provided that services for which provision is completed on or before 30th day of June, 2011 or where the invoices are issued upto the 30th day of June, 2011, the point of taxation shall, at the option of the taxpayer, be the date on which the payment is received or made as the case may be.”

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