



# Service Tax in India

## A Handbook



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# Contents

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Service Tax Referencer	4
Finance Act, 1994	19
Service Tax Rules, 1994	52
Point of Taxation Rules, 2011	66
Place of Provision of Services Rules, 2012	70
Service Tax (Determination of Value) Rules, 2006	74
Service Tax (Settlement of Cases) Rules, 2012	80
Service Tax (Compounding of Offences) Rules, 2012	82
Service Tax Voluntary Compliance Encouragement Scheme	85
CENVAT Credit Rules, 2004	89
Relevant Provisions of Central Excise Act, 1944	119
Negative List of Services	145
Exempted List of Services	147
Abatement Notification	156
Reverse Charge Notification	159

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# Preface

## **Service Tax Handbook**

Service tax has assumed significance in recent years as one of the major contributors to the Government exchequer. The law has expanded its reach to cover most transactions of services and now pervades all sectors of the economy.

Various reforms have been carried out in the past few years in the prevailing Indirect tax regime, which will pave the path to the eventual transition to Goods and Services Tax. Reforms in the areas of service tax in the last couple of years are definitely an indicator in that direction. It may be said that service tax has just come of age in 2012 with the introduction of Negative list based service tax regime and new set of rules introduced for determining place of provisions of service, determination of point of taxation etc.

As the law has matured over the years, the enforcement has become stricter. Several provisions

relating to offences and penalties have recently been introduced in the law which warrants a higher degree of attention towards compliance.

The large number of changes in the law and introduction of new rules for taxation of services necessitate a guide that gives a bird's eye view of all relevant provisions of service tax law. This publication is an attempt to be facilitator and a reference guide to the current law. The provisions reproduced in this publication are current as on 30th November 2013.

We do hope that you find this publication useful. We welcome your inputs and feedback.

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# Service Tax Referencer

## Accounting Codes for payment of Service Tax

No.	Finance Act, 1994 erstwhile Section 65(105)	Descriptions of Taxable Services	Accounting Codes		
			Tax Collection	Other Receipts (interest)	Penalties
1	(a)	Stockbroker service	00440008	00440009	00441298
	(b)	Telegraph authority-telephone connection [(b) was omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440003	00440119	00441296
	(c)	Telegraph authority-pager[(c) was omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440015	00440020	00441301
2	(d)	General insurance service	00440005	00440006	00441297
3	(e)	Advertising agency services	00440013	00440016	00441299
4	(f)	Courier agency service	00440014	00440018	00441300
5	(g)	Consulting engineer services	00440057	00440058	00441310
6	(h)	Custom House Agent service	00440026	00440027	00441302
7	(i)	Steamer agent services	00440029	00440030	00441303
8	(j)	Clearing and forwarding agent services	00440045	00440046	00441306
9	(k)	Manpower recruitment/supply agency service	00440060	00440061	00441311
	(ka)	Goods Transport Operator [This description is not to be used since omitted and clubbed under (zpz) Transport of goods by road - goods transport agency service-(zpz)]	00440067	00440068	00441313
10	(l)	Air travel agent services	00440032	00440033	00441304
11	(m)	Mandap keeper service	00440035	00440036	00441305
12	(n)	Tour operator services	00440063	00440064	00441312
13	(o)	Rent-a-cab scheme operator services	00440048	00440049	00441307
14	(p)	Architect services	00440072	00440073	00441314
15	(q)	Interior decoration/ Designer services	00440076	00440077	00441315
16	(r)	Management or business consultant service	00440116	00440117	00441325
17	(s)	Chartered accountant services	00440092	00440093	00441319

No.	Finance Act, 1994 erstwhile Section 65(105)	Descriptions of Taxable Services	Accounting Codes		
			Tax Collection	Other Receipts (interest)	Penalties
18	(t)	Cost accountant service	00440096	00440097	00441320
19	(u)	Company secretary service	00440100	00440101	00441321
20	(v)	Real estate agent service	00440104	00440105	00441322
21	(w)	Security/ detective agency service	00440108	00440109	00441323
22	(x)	Credit rating agency service	00440088	00440089	00441318
23	(y)	Market research agency service	00440112	00440113	00441324
24	(z)	Underwriter service	00440084	00440085	00441317
	(za)	Mechanised slaughterhouse service [omitted vide Finance Act, 2001]	00440080	00440081	00441316
25	(za)	Scientific & technical consultancy services	00440125	00440126	00441326
26	(zb)	Photography service	00440129	00440130	00441327
27	(zc)	Convention service	00440133	00440134	00441328
	(zd)	Telegraph authority- leased circuit [omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440137	00440138	00441329
	(ze)	Telegraph authority- telegraph service [omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440141	00440142	00441330
	(zf)	Telegraph authority- telex service [omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440145	00440146	00441331
	(zg)	Telegraph authority- facsimile service [omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440149	00440150	00441332
28	(zh)	Online information and database access service and/ or retrieval service through computer network	00440153	00440154	00441333
29	(zi)	Video production agency/ video tape production service	00440157	00440158	00441334
30	(zj)	Sound recording studio or agency services	00440161	00440162	00441335
31	(zk)	Broadcasting service	00440165	00440166	00441336
32	(zl)	Insurance auxiliary service in relation to general insurance	00440169	00440170	00441338

No.	Finance Act, 1994 erstwhile Section 65(105)	Descriptions of Taxable Services	Accounting Codes		
			Tax Collection	Other Receipts (interest)	Penalties
33	(zm)	Banking and other Financial services	00440173	00440174	00441339
34	(zn)	Port service (major ports)	00440177	00440178	00441341
35	(zo)	Service for repair, reconditioning, restoration, or decoration or any other similar services, of any motor vehicle[[zzj] omitted w.e.f 16.6.05]	00440181	00440182	00441343
36	(zq)	Beauty parlours /beauty treatment	00440209	00440210	00441361
37	(zr)	Cargo handling service	00440189	00440190	00441348
38	(zs)	Cable operators	00440217	00440218	00441366
39	(zt)	Dry cleaning service	00440221	00440222	00441369
40	(zu)	Event management	00440197	00440198	00441353
41	(zv)	Fashion design	00440213	00440214	00441363
42	(zw)	Health club and fitness centre service	00440205	00440206	00441358
43	(zx)	Life insurance service	00440185	00440186	00441346
44	(zy)	Insurance auxiliary service concerning life insurance business	00440185	00440186	00441346
45	(zz)	Rail travel agent's service	00440201	00440202	00441356
46	(zza)	Storage and warehousing services	00440193	00440194	00441350
47	(zzb)	Business auxiliary service	00440225	00440226	00441371
48	(zzc)	Commercial training or coaching	00440229	00440230	00441374
49	(zzd)	Erection, commissioning and installation	00440233	00440234	00441376
50	(zze)	Franchise service	00440237	00440238	00441384
51	(zzf)	Internet cafe	00440241	00440242	00441386
52	(z zg)	Maintenance or repair service	00440245	00440246	00441388
53	(zzh)	Technical testing and analysis service	00440249	00440250	00441389
	(zzi)	Technical inspection and certification agency service	00440249	00440250	00441389
54	(zzj)	Authorised service station [omitted w.e.f 16.6.05 and clubbed under (zo)]	-----	-----	-----

No.	Finance Act, 1994 erstwhile Section 65(105)	Descriptions of Taxable Services	Accounting Codes		
			Tax Collection	Other Receipts (interest)	Penalties
55	(zzk)	Foreign exchange broker service	00440173	00440174	00441339
56	(zsl)	Other port (minor port) service	00440177	00440178	00441341
57	(zzm)	Airport services by airport authority	00440258	00440259	00441391
58	(zzn)	Transport of goods by air	00440266	00440267	00441393
59	(zso)	Business exhibition service	00440254	00440255	00441390
60	(zsp)	Transport of goods by road/goods transport agency service	00440262	00440263	00441392
61	(zzq)	Construction services other than residential complex, including commercial/industrial buildings or civil structures	00440290	00440291	00441399
62	(zsr)	Services by holder of intellectual property right providing intellectual property services other than copyright	00440278	00440279	00441396
63	(zss)	Opinion poll agency service	00440274	00440275	00441395
64	(zst)	Outdoor catering	00440051	00440052	00441308
65	(zsu)	Services by a programme producer	00440286	00440287	00441398
66	(zsv)	Survey and exploration of mineral	00440270	00440271	00441394
67	(zsw)	Pandal or shamiana service	00440054	00440055	00441309
68	(zsx)	Travel agent for booking of passage(other than air/rail travel agents)	00440294	00440295	00441400
69	(zsy)	Services provided by recognised/ registered associations in relation to forward contracts	00440282	00440283	00441397
70	(zsz)	Transport of goods through pipeline or other conduit	00440302	00440303	00441430
71	(zsza)	Site formation and clearance, excavation, earth moving and demolition services	00440306	00440307	00441431
72	(zszb)	Dredging of rivers, ports harbours, backwaters, estuaries, etc.	00440310	00440311	00441432
73	(zszc)	Survey and map making service	00440314	00440315	00441433
74	(zszd)	Cleaning services	00440318	00440319	00441434

No.	Finance Act, 1994 erstwhile Section 65(105)	Descriptions of Taxable Services	Accounting Codes		
			Tax Collection	Other Receipts (interest)	Penalties
75	(zzze)	Club or association service	00440322	00440323	00441435
76	(zzzf)	Packaging service	00440326	00440327	00441436
77	(zzzg)	Mailing list compilation and mailing service	00440330	00440331	00441437
78	(zzzh)	Construction of residential complex service	00440334	00440335	00441438
79	(zzzi)	Service provided by a registrar to an issue	00440338	00440339	00441439
80	(zzzj)	Service provided by a share transfer agent	00440342	00440343	00441440
81	(zzzk)	Automated Teller Machine operations, maintenance or management service	00440346	00440347	00441441
82	(zzzl)	Service provided by a recovery agent	00440350	00440351	00441442
83	(zzzm)	Selling of space or time slots for advertisements	00440354	00440355	00441443
84	(zzzn)	Sponsorship service provided to body-corporate or firm including sports sponsorships	00440358	00440359	00441444
85	(zzzo)	Transport of passengers embarking on domestic/international journey by air	00440362	00440363	00441445
86	(zzzp)	Transport of goods by rail including transport of goods in containers by rail (for the present, transport of passengers by rail in air-conditioned class/first class also may be paid under this description/accounting code)	00440390	00440391	00441446
87	(zzzq)	Business support service	00440366	00440367	00441447
88	(zzzr)	Auction service	00440370	00440371	00441448
89	(zzzs)	Public relation management service	00440374	00440375	00441449
90	(zzzt)	Ship management service	00440378	00440379	00441450



No.	Finance Act, 1994 erstwhile Section 65(105)	Descriptions of Taxable Services	Accounting Codes		
			Tax Collection	Other Receipts (interest)	Penalties
91	(zzzu)	Internet telecommunication services (includes internet telephony Service which became taxable from 01.05.2006)	00440382	00440383	00441451
92	(zzzv)	Transport of persons by cruise ship	00440386	00440387	00441452
93	(zzzw)	Credit card, debit card, charge card or other payment card related services	00440394	00440395	00441453
94	(zzzx)	Services of telegraph authority in relation to telecommunication service	00440398	00440399	00441454
95	(zzzy)	Mining of mineral, oil or gas service	00440402	00440403	00441455
96	(zzzz)	Renting of immovable property services	00440406	00440407	00441456
97	(zzzza)	Works contract service	00440410	00440411	00441457
98	(zzzzb)	Development and supply of content for use in telecom services, advertising agency, etc.	00440414	00440415	00441458
99	(zzzzc)	Asset management including portfolio management and fund management	00440418	00440419	00441459
100	(zzzzd)	Design service other than interior decoration and fashion designing	00440422	00440423	00441460
101	(zzzze)	Information technology software service	00440452	00440450	00441461
102	(zzzzf)	Services provided by an insurer of life insurance under Unit Linked Insurance Plan(ULIP)	00440430	00440431	00441462
103	(zzzzg)	Services provided by a recognized stock exchange in relation to transaction in securities	00440434	00440435	00441463
104	(zzzzh)	Services provided by recognised/ registered associations in relation to clearance or settlement of transactions in goods or forward contracts	00440438	00440439	00441464

No.	Finance Act, 1994 erstwhile Section 65(105)	Descriptions of Taxable Services	Accounting Codes		
			Tax Collection	Other Receipts (interest)	Penalties
106	(zzzzj)	Services provided by any person in relation to supply of tangible goods	00440445	00440447	00441466
107	(zzzzk)	Cosmetic and plastic surgery service	00440460	00440463	00441467
108	(zzzzl)	Transport of goods by coastal shipping (services by way of transportation of goods by inland waterways is placed in the negative list)	00440470	00440473	00441468
109	(zzzzm)	Legal consultancy service	00440480	00440483	00441469
110	(zzzzn)	Promotion, marketing, organizing or assisting in organizing games of chance including lottery, etc.	00440595	00440596	00441470
111	(zzzzo)	Health services by a clinical establishment, health check-up/ diagnosis, etc.	00440598	00440599	00441471
112	(zzzzp)	Maintenance of medical records	00440601	00440602	00441472
113	(zzzzq)	Service of promotion or marketing of brand of goods/services/events	00440604	00440605	00441473
114	(zzzzr)	Service of permitting commercial use or exploitation of events	00440607	00440608	00441474
115	(zzzzs)	Electricity exchange service	00440610	00440611	00441475
116	(zzzzt)	Copyright service- transfer temporarily/ permit use or enjoyment	00440613	00440614	00441476
117	(zzzzu)	Special services provided by builders	00440616	00440617	00441477
118	(zzzzv)	Restaurant service	00441067	00441068	00441478
119	(zzzzw)	Service of providing accommodation in hotels, inn, guest house, club or campsite whatever name called.	00441070	00441071	00441479
120		Other taxable services [ services other than the 119 listed above]	00441480	00441481	00441485

### Education Cess

Sl.no	Description	Tax collection	Other receipts (interest)	Penalties	Deduct refunds
1	Primary Education Cess	00440298	00440299	00441486	00440300
2	Secondary and Higher Education Cess	00440426	00440427	00441487	00440428

### All Taxable Services

Description	Tax collection	Other receipts (interest)	Penalties	Deduct refunds
All Taxable Services (registrations obtained under this description should be amended online by selecting appropriate description/s from the list of 120 descriptions given in this Annexure)	00441089	00441090	00441093	00441094

### All Taxable Services

Period	Rate of Tax
01-07-1994 to 13-05-2003	5%
14-05-2003 to 09-09-2004	8%
10-09-2004 to 17-04-2006	10.20% (ST + EC)
18-04-2006 to 10-05-2007	12.24% (ST + EC)
11-05-2007 to 23-02-2009	12.36% (ST + EC + SHEC)
24-02-2009 to 31-03-2012	10.30% (ST + EC + SHEC)
01-04-2012 onwards	12.36% (ST + EC + SHEC)

### Periodic Rates of Interest

Period	Rate of Tax
01-07-1994 to 15-07-2001	1.5% p.m. and part thereof
16-07-2001 to 15-08-2002	24% p.a.
16-08-2002 to 09-09-2004	15% p.a.
10-09-2004 to 31-03-2011	13% p.a.
01-04-2011 onwards:	
• For assessee's having turnover upto INR 60 lakhs	15% p.a.
• For other assessee's	18% p.a.

### Periodic Basic Exemption Limit

Period	Basic Exemption Limit (in INR)
01-07-1994 to 31-03-2005	No limit
01-04-2005 to 31-03-2007	4 Lakhs
01-04-2007 to 31-03-2008	8 Lakhs
01-04-2008 onwards	10 Lakhs

### Due Date for Return Filing

For the Half Year	To be Filed by
1st April to 30th September	25th October
1st October to 31st March	25th April

### Due Date for Return Filing for Input Service Distributor (ISD)

For the Half Year	To be Filed by
1st April to 30th September	31st October
1st October to 31st March	30th April

### Service Tax Payment Dates (other than body corporates)

Payable on amounts received during the quarter	Due Date	
	Manual	e-Payment
1st April to 30th June	5th July	6th July
1st July to 30th September	5th October	6th October
1st October to 31st December	5th January	6th January
1st January to 31st March	31st March	31st March

### Service Tax Payment Dates (body corporates)

Payable on amounts received during the month	Due Date	
	Manual	e-Payment
April	5th May	6th May
May	5th June	6th June
June	5th July	6th July
July	5th August	6th August
August	5th September	6th September
September	5th October	6th October
October	5th November	6th November
November	5th December	6th December
December	5th January	6th January
January	5th February	6th February
February	5th March	6th March
March	31st March	31st March

Note: e-payment of service tax is mandatory for the assessee's who has paid service tax in excess of INR 10 lakhs (INR 1 lakhs with effect from 01-01-2014) including the amount paid by utilization of CENVAT credit in the previous financial year.

### List of Abatements

Sr. no. of Notification 26/2012	Name of the Service	Abatement %	Taxable %	Conditions
1	Financial Leasing including hire purchase	90%	10%	None
2	Transport of goods by rail	70%	30%	None
3	Transport of passengers by rail	70%	30%	None
4	Bundled service by way of supply of food or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) together with renting of such premises.	30%	70%	CENVAT credit on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) used for providing the taxable service, has not been taken.

Sr. no. of Notification 26/2012	Name of the Service	Abatement %	Taxable %	Conditions
5	Transport of passengers by air	60%	40%	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken.
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	40%	60%	Same as above
7	Services of goods transport agency in relation to transportation of goods	75%	25%	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken.
8	Services provided in relation to chit	30%	70%	Same as above
9	Renting of any motor vehicle designed to carry passengers	60%	40%	Same as above
10	Transport of goods in a vessel	50%	50%	Same as above
11	Services by a tour operator in relation to:- i. Package tour	75%	25%	<ul style="list-style-type: none"> <li>• CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken.</li> <li>• The bill issued for this purpose indicates that it is inclusive of charges for such a tour.</li> </ul>

Sr. no. of Notification 26/2012	Name of the Service	Abatement %	Taxable %	Conditions
	ii. Only arranging, booking, accomodation	90%	10%	<ul style="list-style-type: none"> <li>• CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken.</li> <li>• The invoice, bill or challan issued indicates that it is towards the charges for such accommodation.</li> <li>• This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.</li> </ul>
	iii. Services other than services specified in (i) and (ii) above	60%	40%	<ul style="list-style-type: none"> <li>• CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken.</li> <li>• The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.</li> </ul>

Sr. no. of Notification 26/2012	Name of the Service	Abatement %	Taxable %	Conditions
12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority,-			<ul style="list-style-type: none"> <li>CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004.</li> <li>The value of land is included in the amount charged from the service receiver.</li> </ul>
	(a) For a residential unit satisfying both the following conditions, namely:- <ul style="list-style-type: none"> <li>the carpet area of the unit is less than 2000 square feet; and</li> <li>(ii) the amount charged for the unit is less than rupees one crore;</li> </ul>	75%	25%	
	(b) for other than the (a) above	70%	30%	

#### List of Service Tax Forms

Sr. no.	Liability	When and by whom	Time period	Form
1	Service Tax Registration	At the time of starting of business by the assessee	Within 30 days from the date of starting the business or reaching INR 9 lakhs taxable turnover or commencement of new levy	ST-1
	Amendment in the Service Tax registration certificate		Within 30 days of any change	
2	Service Tax Registration Certificate	To be issued by Service Tax Department	Within 7 days from the date of receipt of application	ST-2
3	Service Tax return	Half Yearly/ Assessee	Within 25 days after completion of half year	ST-3
			25th October 25th April	



Sr. no.	Liability	When and by whom	Time period	Form
4	Appeal to Commissioner of Central Excise (Appeals)	Assessee	Within 2 months from the date of receipt of order	ST-4
5	Appeal to CESTAT	Assessee	Within 3 months from the date of receipt of order	ST-5
6	Cross objections	Assessee/ Department	Within 45 days from the date of receipt of notice	ST-6
7	Appeal to CESTAT	Department	Within 4 months from the date of receipt of order	ST-7
8	Payment of Service Tax	Corporate Assessee	Within 5 days from the end of month	GAR-7 challan
			Within 6 days from end of month in case of e-payment	
			For March, Tax payment shall be made on or before 31st March.	
9	Payment of Service Tax	Non Corporate Assessee	Within 5 days from the end of quarter	GAR-7 challan
			Within 6 days from end of quarter in case of e-payment	
			For quarter ending March, Tax payment shall be made on or before 31st March.	

### Reverse Charge Mechanism (w.e.f. 01-07-2012)

Sr. no.	Description of Service	Notes	% of service tax payable by service provider	% of service tax payable by service receiver
1	Insurance agent service to any person carrying on insurance business	-	Nil	100%
2	Goods Transport Agency Service	1	Nil	100%
3	Sponsorship service to any body corporate or partnership firm located in taxable territory	-	Nil	100%
4	Arbitral Tribunal Service to any business entity	-	Nil	100%
5	Services of individual advocate or a firm of advocates to any business entity	-	Nil	100%
6	Services by government or local authority by way of support services to any business entity except: <ul style="list-style-type: none"> <li>renting of immovable property, and</li> <li>services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994, to any business entity located in the taxable territory</li> </ul>	-	Nil	100%
7	(a) Renting of a motor vehicle designed to carry passengers (where abatement is availed)	2 & 3	Nil	100%
	(b) Renting of a motor vehicle designed to carry passengers (where abatement is not availed)		60%	40%
8	Supply of manpower service	2	25%	75%
9	Works Contract Service	2	50%	50%
10	Services by any person who is located in a non-taxable territory and received by any person located in the taxable territory (W.e.f. 07-08-2012)	-	Nil	100%
11	Services by director to a company (other than employee-employer relationship)	-	Nil	100%
12	Security Services	2	25%	75%

#### Notes:

- The person who pays or is liable to pay freight for transportation of goods by road in goods carriage, shall be treated as the recipient of service.
- a) The service provider should be an individual or HUF or partnership firm (whether registered or not) including AOP; and  
b) The service recipient should be a body corporate.
- In case of services of renting of a motor vehicle, the service recipient should be any person who is not engaged in similar line of business.

# Finance Act, 1994



## 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

Omitted

### 65A Classification of taxable services

Omitted

### 65B Interpretations

In this Chapter, unless the context otherwise requires,—

- (1) "actionable claim" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882 (4 of 1882);
- (2) "advertisement" means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person;
- (3) "agriculture" means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products;
- (4) "agricultural extension" means application of scientific research and knowledge to agricultural practices through farmer education or training;
- (5) "agricultural produce" means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;
- (6) "Agricultural Produce Marketing Committee or Board" means any committee or board

constituted under a State law for the time being in force for the purpose of regulating the marketing of agricultural produce;

- (7) "aircraft" has the meaning assigned to it in clause (1) of section 2 of the Aircraft Act, 1934(22 of 1934);
- (8) "airport" has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994(55 of 1994);
- (9) "amusement facility" means a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided;
- (10) "Appellate Tribunal" means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962(52 of 1962);
- (11) "approved vocational education course" means,—
- (i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 (52 of 1961); or
  - (ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Union Ministry of Labour and Employment;
  - (iii) omitted;
- (12) "assessee" means a person liable to pay tax and includes his agent;
- (13) "associated enterprise" shall have the meaning assigned to it in section 92A of the Income-tax Act, 1961; (43 of 1961);
- (14) "authorised dealer of foreign exchange" shall have the meaning assigned to "authorized person" in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);
- (15) "betting or gambling" means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring;
- (16) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);
- (17) "business entity" means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession;
- (18) "Central Electricity Authority" means the authority constituted under section 3 of the Electricity (Supply) Act, 1948 (54 of 1948);
- (19) "Central Transmission Utility" shall have the meaning assigned to it in clause (10) of section 2 of the Electricity Act, 2003 (36 of 2003);
- (20) "courier agency" means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles;
- (21) "customs station" shall have the meaning assigned to it in clause (13) of section 2 of the Customs Act, 1962 (52 of 1962);
- (22) "declared service" means any activity carried out by a person for another person for consideration and declared as such under section 66E;
- (23) "electricity transmission or distribution utility" means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003 (36 of 2003);

- or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government;
- (24) "entertainment event" means an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic film, circus, concerts, sporting event, pageants, award functions, dance, musical or theatrical performances including drama, ballets or any such event or programme;
- (25) "goods" means every kind of movable property other than actionable claim and money; and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;
- (26) "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;
- (27) "India" means,—
- (a) the territory of the Union as referred to in clauses (2) and (3) of article 1 of the Constitution;
  - (b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976);
  - (c) the seabed and the subsoil underlying the territorial waters;
  - (d) the air space above its territory and territorial waters; and
  - (e) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;
- (28) "information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment;
- (29) "inland waterway" means national waterways as defined in clause (h) of section 2 of the Inland Waterways Authority of India Act, 1985 (82 of 1985) or other waterway on any inland water, as defined in clause (b) of section 2 of the Inland Vessels Act, 1917 (1 of 1917);
- (30) "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charges in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized;
- (31) "local authority" means-
- (a) a Panchayat as referred to in clause (d) of article 243 of the Constitution;
  - (b) a Municipality as referred to in clause (e) of article 243P of the Constitution;
  - (c) a Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;
  - (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006);
  - (e) a regional council or a district council constituted under the Sixth Schedule to the Constitution;
  - (f) a development board constituted under article 371 of the Constitution; or
  - (g) a regional council constituted under article 371A of the Constitution;
- (32) "metered cab" means any contract carriage on

which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 (59 of 1988) and the rules made thereunder;

- (33) "money" means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any similar instrument but shall not include any currency that is held for its numismatic value;
- (34) "negative list" means the services which are listed in section 66D;
- (35) "non-taxable territory" means the territory which is outside the taxable territory;
- (36) "notification" means notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly;
- (37) "person" includes,—
- (i) an individual,
  - (ii) a Hindu undivided family,
  - (iii) a company,
  - (iv) a society,
  - (v) a limited liability partnership,
  - (vi) a firm,
  - (vii) an association of persons or body of individuals, whether incorporated or not,
  - (viii) Government,
  - (ix) a local authority, or
  - (x) every artificial juridical person, not falling within any of the preceding sub-clauses;
- (38) "port" has the meaning assigned to it in clause (q) of section 2 of the Major Port Trusts Act, 1963 (38 of 1963) or in clause (4) of section 3 of the Indian Ports Act, 1908 (15 of 1908);
- (39) "prescribed" means prescribed by rules made under this Chapter;
- (40) "process amounting to manufacture or production of goods" means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944) or the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955) or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force;
- (41) "renting" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property;
- (42) "Reserve Bank of India" means the bank established under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (43) "securities" has the meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956 (42 of 1956);
- (44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—
- (a) an activity which constitutes merely,—
    - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
    - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution; or
    - (iii) a transaction in money or actionable claim;
  - (b) a provision of service by an employee to the employer in the course of or in relation to

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

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

- (A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or
- (B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- (C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

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

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

- (a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;
- (b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

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

- (45) "Special Economic Zone" has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);
- (46) "stage carriage" shall have the meaning assigned to it in clause (40) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);
- (47) "State Electricity Board" means the Board constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948);
- (48) "State Transmission Utility" shall have the meaning assigned to it in clause (67) of section 2 of the Electricity Act, 2003 (36 of 2003);
- (49) "support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis;
- (50) "tax" means service tax leviable under the provisions of this Chapter;
- (51) "taxable service" means any service on which service tax is leviable under section 66B;
- (52) "taxable territory" means the territory to which the provisions of this Chapter apply;
- (53) "vessel" has the meaning assigned to it in clause (z) of section 2 of the Major Port Trusts Act, 1963 (38 of 1963);
- (54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the

purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

- (55) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 (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.

#### **66 Charge of service tax**

Omitted

#### **66A Charge of service tax on services received from outside India**

Omitted

#### **66B Charge of service tax on and after the Finance Act, 2012**

There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

Explanation.- Omitted

#### **66BA Reference to section 66 to be construed as reference to section 66B**

- (1) For the purpose of levy and collection of service tax, any reference to section 66 in the Finance Act, 1994 (32 of 1994) or any other Act for the time being in force, shall be construed as reference to section 66B thereof.
- (2) The provisions of this section shall be deemed

to have come into force on the 1st day of July, 2012.

#### **66C Determination of place of provision of service**

- (1) The Central Government may, having regard to the nature and description of various services, by rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.
- (2) Any rule made under sub-section (1) shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory.

#### **66D Negative list of services**

The negative list shall comprise of the following services, namely:—

- (a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—
  - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
  - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
  - (iii) transport of goods or passengers; or
  - (iv) support services, other than the services covered under clauses (i) to (iii) above, provided to business entities;
- (b) services by the Reserve Bank of India;
- (c) services by a foreign diplomatic mission located in India;
- (d) services relating to agriculture or agricultural produce by way of—
  - (i) agricultural operations directly related to



- production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
- (ii) supply of farm labour;
- (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
- (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
- (v) loading, unloading, packing, storage or warehousing of agricultural produce;
- (vi) agricultural extension services;
- (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;
- (e) trading of goods;
- (f) any process amounting to manufacture or production of goods;
- (g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television;
- (h) service by way of access to a road or a bridge on payment of toll charges;
- (i) betting, gambling or lottery;
- (j) admission to entertainment events or access to amusement facilities;
- (k) transmission or distribution of electricity by an electricity transmission or distribution utility;
- (l) services by way of—
- (i) pre-school education and education up to higher secondary school or equivalent;
- (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
- (iii) education as a part of an approved vocational education course;
- (m) services by way of renting of residential dwelling for use as residence;
- (n) services by way of—
- (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
- (ii) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers;
- (o) service of transportation of passengers, with or without accompanied belongings, by—
- (i) a stage carriage;
- (ii) railways in a class other than—
- (A) first class; or
- (B) an air conditioned coach;
- (iii) metro, monorail or tramway;
- (iv) inland waterways;
- (v) public transport, other than predominantly for tourism purpose, in a vessel, between places located in India; and
- (vi) metered cabs, radio taxis or auto rickshaws;
- (p) services by way of transportation of goods—
- (i) by road except the services of—
- (A) a goods transportation agency; or
- (B) a courier agency;
- (ii) by an aircraft or a vessel from a place outside India upto the customs station of clearance in India; or
- (iii) by inland waterways;
- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

### 66E Declared services

The following shall constitute declared services, namely:—

- (a) renting of immovable property;
- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

Explanation. — For the purposes of this clause,—

- (I) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non requirement of such certificate from such authority, from any of the following, namely:—
  - (A) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
  - (B) chartered engineer registered with the Institution of Engineers (India); or
  - (C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (II) the expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure;
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
- (f) transfer of goods by way of hiring, leasing,

licensing or in any such manner without transfer of right to use such goods;

- (g) activities in relation to delivery of goods on hire purchase or any system of payment by installments;
- (h) service portion in the execution of a works contract;
- (i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.

### 66F Principles of interpretation of specified descriptions of services or bundled services

- (1) Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service.
- (2) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.
- (3) Subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in the following manner, namely:—
  - (a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;
  - (b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

Explanation. — For the purposes of sub-section (3), the expression "bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an

element or elements of provision of any other service or services.

### **67 Valuation of taxable services for charging service tax**

- (1) Subject to the provisions of this Chapter, service tax 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) omitted;
- (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.

### **67A Date of determination of rate of tax, value of taxable service and rate of exchange**

The rate of service tax, value of a taxable service and rate of exchange, if any, shall be the rate of service tax or value of a taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided.

Explanation. — For the purposes of this section, "rate of exchange" means the rate of exchange referred to in the Explanation to section 14 of the Customs Act, 1962 (52 of 1962).

### **68 Payment of service tax**

- (1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66B in such manner and within such period as may be prescribed.
- (2) Notwithstanding anything contained in sub-section (1), in respect of such taxable services as may be 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 66B 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.

Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.

### **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 the Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

### **71 Scheme for submissions 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 matter which is required to be, or may be, specified by the Scheme for the purposes of this section.



## 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.

## 72A Special audit

- (1) If the Commissioner of Central Excise, has reasons to believe that any person liable to

pay service tax (herein referred to as "such person"),—

- (i) has failed to declare or determine the value of a taxable service correctly; or
- (ii) has availed and utilized credit of duty or tax paid-
  - (a) which is not within the normal limits having regard to the nature of taxable service provided, the extent of capital goods used or the type of inputs or input services used, or any other relevant factors as he may deem appropriate; or
  - (b) by means of fraud, collusion, or any willful misstatement or suppression of facts; or
- (iii) has operations spread out in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts from the registered premises falling under the jurisdiction of the said Commissioner, he may direct such

person to get his accounts audited by a chartered accountant or cost accountant nominated by him, to the extent and for the period as may be specified by the Commissioner.

- (2) The chartered accountant or cost accountant referred to in sub-section (1) shall, within the period specified by the said Commissioner, submit a report duly signed and certified by him to the said Commissioner mentioning therein such other particulars as may be specified by him.
- (3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of such person have been audited under any other law for the time being in force.
- (4) The person liable to pay tax shall be given an opportunity of being heard in respect of any material gathered on the basis of the audit under sub-section (1) and proposed to be utilised in any proceeding under the provisions of this Chapter or rules made thereunder.

Explanation. — For the purposes of this section,—

- (i) "chartered accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949);
- (ii) "cost accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959).

### **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 eighteen months 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) 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 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 "eighteen months", 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 eighteen months or five years, as the case may be.

- (1A) Notwithstanding anything contained in sub-section (1) (except the period of eighteen months of serving the notice for recovery of service tax), the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the

grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.

- (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.
- (2A) Where any appellate authority or Tribunal or court concludes that the notice issued under the proviso to sub-section (1) is not sustainable for the reason that the charge of,-
- (a) fraud; or
  - (b) collusion; or
  - (c) wilful misstatement; or
  - (d) suppression of facts; or
  - (e) contravention of any of the provisions of this Chapter or the rules made thereunder with intent to evade payment of service tax, has not been established against the person chargeable with the service tax, to whom the notice was issued, the Central Excise Officer shall determine the service tax payable by such person for the period of eighteen months, as if the notice was issued for the offences for which limitation of eighteen months applies under sub-section (1).
- (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 "eighteen months" 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) 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 intent to evade payment of service tax.

(4A) Notwithstanding anything contained in sub-section (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.

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 per cent 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 the 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 per cent of the amount of default for 10 days

$1/100 \times 10,00,000 \times 10/31 = \text{Rs. } 3,225.80$

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

Penalty liable to be paid is Rs. 3226.00.

### 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;

(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 services

(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 subsection (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 subsection (1) or the first proviso to sub-section (2) shall be adjusted against the total amount due from such person.

#### **78A Penalty for offences by director, etc., of company**

Where a company has committed any of the following contraventions, namely:-

- (a) evasion of service tax; or
- (b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions

- of this Chapter; or
- (c) availment and utilisation of 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
- (d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, then any director, manager, secretary or other officer of such company, who at the time of such contravention was in charge of, and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention, shall be liable to a penalty which may extend to one lakh rupees.

#### **79 Penalty for failure to comply with notice**

Omitted

#### **80 Penalty not to be imposed in certain cases**

- (1) 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 imposed 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.
- (2) Notwithstanding anything contained in the provisions of section 76 or section 77 or section 78, no penalty shall be imposed for failure to pay service tax payable, as on the 6th day of March, 2012, on the taxable service referred to in sub-clause (zzzz) of clause (105) of section 65, subject to the condition that the amount of service tax along with interest is paid in full within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President.;

#### **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:-

subsection (2) of section 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F, 35FF to 35-0 (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)**

- (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 any order under sub-section (1), the adjudicating authority or any other officer authorised 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 the 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 113 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 made before the date on which the Finance Bill, 2012 receives the assent of the President:  
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:
- (3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, 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 two months, allow it to be presented within a further period of one month.

(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 order 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 within three months of the date of receipt of the 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 section 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 it 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 it 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 (2) or sub-section (2A) shall be filed within four months from the date on which the order



sought to be appealed against is received by the Committee of Chief Commissioners or, as the case may be, the Committee of Commissioners.

- (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 (1) or 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 tax, 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 (1 of 1956) and the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of 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) knowingly evades the payment of service tax under this Chapter; or
  - (b) avails and utilises 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 specified in clauses (a), (b) or (c) 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 the case of the offence specified in clause (d), where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to seven 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;
    - (iii) in the case of any other offences, with imprisonment for a term, which may extend to one year.
- (2) If any person is convicted of an offence punishable under-
    - (a) clause (i) or clause (iii), then, he shall be punished for the second and for every subsequent offence with imprisonment for a term which may extend to three years;
    - (b) clause (ii), then, he shall be punished for the second and for every subsequent offence with imprisonment for a term which may extend to seven years.
  - (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 the previous sanction of the Chief Commissioner of Central Excise.

#### **90 Cognizance of Offences**

- (1) An offence under clause (ii) of section 89 shall be cognizable.
- (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences, except the offences specified in sub-section (1), shall be non-cognizable and bailable.

## **91 Power to arrest**

- (1) If the Commissioner of Central Excise has reason to believe that any person has committed an offence specified in clause (i) or clause (ii) of sub-section (1) of section 89, he may, by general or special order, authorise any officer of Central Excise, not below the rank of Superintendent of Central Excise, to arrest such person.
- (2) Where a person is arrested for any cognizable offence, every officer authorised to arrest a person shall, inform such person of the grounds of arrest and produce him before a magistrate within twenty-four hours.
- (3) In the case of a non-cognizable and bailable offence, the Assistant Commissioner, or the Deputy Commissioner, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer in charge of a police station has, and is subject to, under section 436 of the Code of Criminal Procedure, 1973(2 of 1974.).
- (4) All arrests under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974.) relating to arrests.

## **92 Institution of proceedings**

Omitted

## **93 Power to grant exemption from service tax**

- (1) If the Central Government is satisfied that it is necessary in the public interest to do so, 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 or removal or export 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.

## **93B Rules made under section 94 to be applicable to services other than taxable services**

All rules made under section 94 and applicable to the taxable services shall also be applicable to any other service in so far as they are relevant to the determination of any tax liability, refund, credit of service tax or duties paid on inputs and input services or for carrying out the provisions of Chapter V of the Finance Act, 1994 (32 of 1994).

#### 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 section 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 subsections (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 subsection (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 a memorandum of cross-objections under sub-section (4) of section 86 may be verified;
  - (ee) Omitted
  - (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 under section 66C;
  - (i) provide for the amount to be paid for compounding and the manner of compounding of offences;
  - (j) provide for the settlement of cases, in accordance with sections 31, 32 and 32A to 32P (both inclusive), in Chapter V of the Central Excise Act, 1944 (1 of 1944) as made applicable to service tax vide section 83;
  - (k) 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 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 Act (No.2) Bill, 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.

- (1-I) If any difficulty arises in giving effect to

section 143 of the Finance Act, 2012, in so far as it relates to insertion of sections 65B, 66B, 66C, 66D, 66E and section 66F in Chapter V of the Finance Act, 1994, (32 of 1994) the Central Government may, by order published in the Official Gazette, which is not inconsistent with the provisions of this Chapter, make such provisions, as may be necessary or expedient for the purpose of removing the difficulty from such date, which shall include the power to give retrospective effect from a date not earlier than the date of coming into force of the Finance Act, 2012;

Provided that no such order shall be made after the expiry of a period of two years from the date of coming into force of these provisions.

- (1-J) If any difficulty arises in giving effect to section 93 of the Finance Act, 2013, in so far as it relates to amendments made by the Finance Act, 2013 in Chapter V of the Finance Act, 1994 (32 of 1994), the Central Government may, by an 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, 2013 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 of the Finance Act, 1994 - 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 duty or tax in terms of the rules made in this regard;
  - (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 Procedures 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 16 th day of June, 2005 to the 31 st 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.

**97 Special provision for exemption in certain cases relating to management, etc., of roads**

- (1) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of roads, during the period on and from the 16th day of June, 2005 to the 26th day of July, 2009 (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 had sub-section (1) 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 a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President.

**98 Special provision for exemption in certain cases relating to management, etc., of noncommercial Government buildings.**

- (1) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of non-commercial Government buildings, during the period on and from the 16th day of June, 2005 till the date on which section 66B comes into force.
- (2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) 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 a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President.

**99 Special provision for taxable services provided by Indian Railways**

- (1) Notwithstanding anything contained in section 66, as it stood prior to the 1st day of July, 2012, or in section 66B, no service tax shall be levied or collected in respect of taxable services provided by the Indian Railways during the period prior to the 1st day of October, 2012.
- (2) No refund shall be made of service tax paid in respect of taxable services provided by the Indian Railways during the said period prior to the 1st day of October, 2012.

# Service Tax Rules, 1994



## 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;
  - (bb) "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);
  - (bc) "body corporate" has the meaning assigned to it in clause (7) of section 2 of the Companies Act, 1956 (1 of 1956);
  - (bd) "financial institution" has the meaning assigned to it in clause (c) of section 45-1 of the Reserve Bank of India Act, 1934 (2 of 1934);
  - (c) "Form" means a Form appended to these rules;
  - (c1a) "goods carriage" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);
  - (ca) "half year" means the period between 1st April to 30th September or 1st October to 31st March of a financial year;
  - (cb) "input service distributor" has the meaning assigned to it in clause (m) of rule (2) of the CENVAT Credit Rules, 2004;
  - (cba) "insurance agent" has the meaning assigned to it in clause (10) of section 2 of the Insurance Act, 1938 (4 of 1938);
  - (cc) "large taxpayer" shall have the meaning assigned to it in the Central Excise Rules, 2002.
  - (cca) "legal service" means any service provided

- in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority;
- (ccb) "life insurance business" has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);
- (ccc) "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);
- (cd) "partnership firm" includes a limited liability partnership;
- (d) "person liable for paying service tax", -
- (i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-
- (A) in relation to service provided or agreed to be provided by an insurance agent to any person carrying on the insurance business, the recipient of the service;
- (B) in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—
- (I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (III) any co-operative society established by or under any law;
- (IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- (V) any body corporate established, by or under any law; or
- (VI) any partnership firm whether registered or not under any law including association of persons;
- any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage :
- Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.
- (C) in relation to service provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory, the recipient of such service;
- (D) in relation to service provided or agreed to be provided by,-
- (I) an arbitral tribunal, or
- (II) an individual advocate or a firm of advocates by way of legal services, to any business entity located in the taxable territory, the recipient of such service;
- (E) in relation to support services provided or agreed to be provided by Government or local authority except,-
- (a) renting of immovable property, and
- (b) services specified sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994, to any business entity located in the taxable territory, the recipient of such service;

- (EE) in relation to service provided or agreed to be provided by a director of a company to the said company, the recipient of such service;
- (F) in relation to services provided or agreed to be provided by way of :-
- (a) renting of a motor vehicle designed to carry passengers, to any person who is not engaged in a similar business; or
- (b) supply of manpower for any purpose or security services; or
- (c) service portion in execution of a works contract-  
by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as a body corporate, located in the taxable territory, both the service provider and the service recipient to the extent notified under sub-section (2) of section 68 of the Act, for each respectively.
- (G) in relation to any taxable service provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory, the recipient of such service;
- (ii) in a case other than sub-clause (i), means the provider of service.
- (dd) "place of provision" shall be the place as determined by Place of Provision of Services Rules, 2012;
- (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;
- (f) "renting of immovable property" means any service provided or agreed to be provided by renting of immovable property or any other service in relation to such renting;
- (fa) "security services" means services relating to

the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity;

- (g) "supply of manpower" means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control.
- (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 thereunder 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 66B 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.

- (1A) For the purposes of sub-rule (1), the Central Board of Excise and Customs may, by an order specify the documents which are to be submitted by the assessee along with the application within such period, as may be specified in the said order.
- (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 shall, not later than thirty 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, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect of such taxable service provided or agreed 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, and value of taxable service provided or agreed 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 providing service to any person, 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 thirty 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 a banking company or a financial institution including a non-banking financial company providing service to any person, the period within which the invoice, bill or challan, as the case may be, is to be issued, shall be forty-five days:

Provided also that in case the provider of taxable service is providing the service of 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 provider of service and address of the recipient of service but containing other information in such documents as required under this sub-rule:

Provided also that wherever the provider of taxable service receives an amount upto rupees one thousand in excess of the amount indicated in the invoice and the provider of taxable service has opted to determine the point of taxation based on the option as given in Point of Taxation Rules, 2011, no invoice is required to be issued to such extent.

(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 authorized 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 services 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 providing service to any person 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 names 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,
    - (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.**

Omitted

#### **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 further 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.

Provided also that in case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the previous financial year, the service provider shall have the option to pay tax on taxable services provided or agreed to be provided by him up to a total of rupees fifty lakhs in the current financial year, by the dates specified in this sub-rule with respect to the month or quarter, as the case may be, in which payment is received.

- (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 TR-6 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 a contract, the assessee may take the 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 condition that the excess amount paid is on account of reasons not involving interpretation of law, taxability, valuation or applicability of any exemption notification.
- (4C) Notwithstanding anything contained in sub-rules (4), (4A) and (4B), where the person liable to pay service tax in respect of service of renting of immovable property 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. 29/2012-Service Tax, dated the 20th June, 2012, 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 and 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 of 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 TR-6" means a memorandum or challan referred to in rule 92 of the Treasury Rules of the Central Government.

(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 along with 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 of booking of tickets for travel by air 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 66B

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) in all other cases, 3 per cent of the premium charged from policy holder in the first year and 1.5 per cent of the premium charged from policy holder in the subsequent years; towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66B 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, 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 66B of Chapter V of the Act, namely:-

(a) 0.12 per cent of the gross amount of currency exchanged for an amount upto rupees 100,000, subject to the minimum amount of rupees 30;

- (b) rupees 120 and 0.06 per cent of the gross amount of currency exchanged for an amount of rupees exceeding rupees 100,000 and upto rupees 10,00,000; and
- (c) rupees 660 and 0.012 per cent of the gross amount of currency exchanged for an amount of rupees exceeding 10,00,000, subject to maximum amount of rupees 6000:  
 Provided that the person providing the service shall exercise such option for a 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, 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 66B of Chapter V of the said Act:

**Table**

Sl. No.	Rate	Condition
(1)	(2)	(3)
1	Rs. 7000 on every Rs. 10 Lakh (or part of Rs. 10 Lakh) of aggregate face value of lottery tickets printed by the organizing State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is more than 80%
2	Rs. 11000 on every Rs. 10 Lakh (or part of Rs. 10 Lakh) of aggregate face value of lottery tickets printed by the organizing 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 such service 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) "organizing 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.

#### **6A Export of services**

- (1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-
  - (a) the provider of service is located in the taxable territory,
  - (b) the recipient of service is located outside India,
  - (c) the service is not a service specified in the section 66D of the Act,
  - (d) the place of provision of the service is outside India,
  - (e) the payment for such service has been received by the provider of service in convertible foreign exchange, and
  - (f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act.
- (2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.

## 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 TR-6, 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 the Form 'ST-3' required to be submitted by the 25th day of October, 2012 shall cover the period between 1st April to 30th June, 2012 only.  
Provided further that the Form ST- 3 for the period between the 1st day of July 2012 to the 30th day of September 2012, shall be submitted by the 25th day of March, 2013
- (3) Every assessee shall submit the half yearly return electronically
- (4) The Central Board of Excise and Customs may, by an order extend the period referred to in sub-rule (2) by such period as deemed necessary under circumstances of special nature to be specified in such order.

### 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' along with copy of Form TR-6 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, insofar as they are not inconsistent with the provisions of this rule shall mutatis mutandis apply in case of a large taxpayer.

# Point of Taxation Rules, 2011



## 1 Short title 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) Omitted
- (ba) "change in effective rate of tax" shall include a change in the portion of value on which tax is payable in terms of a notification issued in the Official Gazette under the provisions of the Act, or rules made thereunder;
- (c) "continuous supply of service" means any service which is provided, or to be provided continuously or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time, or where the Central

Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition;

- (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) Omitted

## 2A Date of payment

For the purposes of these rules, "date of payment" shall be the earlier of the dates on which the payment is entered in the books of accounts or is credited to the bank account of the person liable to pay tax:

Provided that —

- (A) the date of payment shall be the date of credit in the bank account when —
  - (i) there is a change in effective rate of tax

or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account; and

- (ii) the credit in the bank account is after four working days from the date when there is change in effective rate of tax or a service is taxed for the first time; and
- (iii) the payment is made by way of an instrument which is credited to a bank account,
- (B) if any rule requires determination of the time or date of payment received, the expression "date of payment" shall be construed to mean such date on which the payment is received;

### 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 agreed to be provided is issued: Provided that where the invoice is not issued within the time period specified in Rule 4A of the Service Tax Rules, 1994, the point of taxation shall be the date of completion of provision of the service.
- (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.  
Provided that for the purposes of clauses (a) and (b), —
  - (i) in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall

be deemed to be the date of completion of provision of service;

- (ii) wherever the provider of taxable service receives a payment up to rupees one thousand in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined in accordance with the provisions of clause (a).

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.- Omitted

### 5 Payment of tax in case of new services

Where a service is taxed for the first time, then-

- (a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;
- (b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within fourteen days of the date when the service is taxed for the first time.

### 6 Determination of point of taxation in case of continuous supply of service

Omitted

### 7 Determination of point of taxation in case of specified services or persons

Notwithstanding anything contained in these rules,

the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made:

Provided that, 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 further 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 debit 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.

### 8A Determination of point of taxation in other cases

Where the point of taxation cannot be determined as per these rules as the date of invoice or the date of payment or both are not available, the Central Excise officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account such material and the

effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.

### **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.

# Place of Provision of Services Rules, 2012



## 1 Short title, extent and commencement

- (1) These rules may be called the Place of Provision of Services Rules, 2012.
- (2) They shall come into force on 1st day of July, 2012.

## 2 Definitions

In these rules, unless the context otherwise requires,-

- (a) "Act" means the Finance Act, 1994 (32 of 1994);
- (b) "account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;
- (c) "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);
- (d) "continuous journey" means a journey for which a single or more than one ticket or invoice is issued at the same time, either by one service provider or through one agent acting on behalf of more than one service provider, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued;
- (e) "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);
- (f) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) between two or more persons, but does not include a person who provides the main service on his account;
- (g) "leg of journey" means a part of the journey that begins where passengers embark or disembark the conveyance, or where it is stopped to allow for its servicing or refuelling, and ends where it is next stopped for any of those purposes;

- (h) "location of the service provider" means-
- (a) where the service provider has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;
  - (b) where the service provider is not covered under sub-clause (a):
    - (i) the location of his business establishment; or
    - (ii) where the services are provided from a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or
    - (iii) where services are provided from more than one establishment, whether business or fixed, the establishment most directly concerned with the provision of the service; and
    - (iv) in the absence of such places, the usual place of residence of the service provider.
- (i) "location of the service receiver" means:-
- (a) where the recipient of service has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;
  - (b) where the recipient of service is not covered under sub-clause (a):
    - (i) the location of his business establishment; or
    - (ii) where services are used at a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or
    - (iii) where services are used at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service; and
    - (iv) in the absence of such places, the usual place of residence of the recipient of service.
- Explanation 1:- For the purposes of clauses (h) and (i), "usual place of residence" in case of a body corporate means the place where it is incorporated or otherwise legally constituted.
- Explanation 2:- For the purpose of clause (i), in the case of telecommunication service, the usual place of residence shall be the billing address.
- (j) "means of transport" means any conveyance designed to transport goods or persons from one place to another;
- (k) "non-banking financial company" means-
- (i) a financial institution which is a company; or
  - (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; or
  - (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette specify;
- (l) "online information and database access or retrieval services" means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;
- (m) "person liable to pay tax" shall mean the person liable to pay service tax under section 68 of the Act or under sub-clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994;
- (n) "provided" includes the expression "to be provided";
- (o) "received" includes the expression "to be received";
- (p) "registration" means the registration under rule 4 of the Service Tax Rules, 1994;

- (q) “telecommunication service” means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means but shall not include broadcasting services.
- (r) 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 Place of provision generally

The place of provision of a service shall be the location of the recipient of service:

Provided that in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

### 4 Place of provision of performance based services

The place of provision of following services shall be the location where the services are actually performed, namely:-

- (a) services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service:

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:

Provided further that this sub-rule shall not apply in the case of a service provided in respect of goods that are temporarily

imported into India for repairs, reconditioning or reengineering for re-export, subject to conditions as may be specified in this regard.

- (b) services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.

### 5 Place of provision of services relating to immovable property

The place of provision of services provided directly in relation to an immovable property, including services provided in this regard by experts and estate agents, provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or coordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

### 6 Place of provision of services relating to events

The place of provision of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held.

### 7 Place of provision of services provided at more than one location

Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided.



### **8 Place of provision of services where provider and recipient are located in taxable territory**

Place of provision of a service, where the location of the provider of service as well as that of the recipient of service is in the taxable territory, shall be the location of the recipient of service.

### **9 Place of provision of specified services**

The place of provision of following services shall be the location of the service provider:-

- (a) Services provided by a banking company, or a financial institution, or a nonbanking financial company, to account holders;
- (b) Online information and database access or retrieval services;
- (c) Intermediary services;
- (d) Service consisting of hiring of means of transport, upto a period of one month.

### **10 Place of provision of goods transportation services**

The place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods:

Provided that the place of provision of services of goods transportation agency shall be the location of the person liable to pay tax.

### **11 Place of provision of passenger transportation service**

The place of provision in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

### **12 Place of provision of services provided on board a conveyance**

Place of provision of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

### **13 Powers to notify description of services or circumstances for certain purposes**

In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.

### **14 Order of application of rules**

Notwithstanding anything stated in any rule, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.

# Service Tax (Determination of Value) Rules, 2006

## 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 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) "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 service portion in the execution of a works contract

Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-

- (i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Explanation. - For the purposes of this clause,-

- (a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, 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 relatable to supply of labour and services;
  - (vii) other similar expenses relatable to supply of labour and services; and
  - (viii) profit earned by the service provider relatable to supply of labour and services;
- (c) where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.
    - (ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-
      - (A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;
      - (B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy per cent of the total amount charged for the works contract;
      - (C) in case of other works contracts, not

covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property, service tax shall be payable on sixty per cent of the total amount charged for the works contract;

Explanation 1. - For the purposes of this rule,-

(a) "original works" means-

- (i) all new constructions;
- (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- (iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

(b) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

- (i) the amount charged for such goods or services, if any; and
- (ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2. - For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

## **2B Determination of value of service in relation to money changing**

Subject to the provisions of section 67, the value of taxable service provided for the services, 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: INR 70000 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.

**2C Determination of value of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering**

Subject to the provisions of section 67, the value of service portion, in an activity wherein goods being food or any other article of human consumption

or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity at a restaurant or as outdoor catering, shall be the specified percentage of the total amount charged for such supply, in terms of the following Table, namely:-

Table

Sl. No.	Description	Percentage of the total amount
(1)	(2)	(3)
1	Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity, at a restaurant	40
2	Service portion in outdoor catering wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of such outdoor catering	60

Explanation 1. - For the purposes of this rule, "total amount" means the sum total of the gross amount charged and the fair market value of all goods and services supplied in or in relation to the supply of food or any other article of human consumption or any drink (whether or not intoxicating), whether or not supplied under the same contract or any other contract, after deducting -

- (i) the amount charged for such goods or services, if any; and
- (ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2. - For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986).

### 3 Manner of determination of value

Subject to the provisions of section 67, the value of taxable service, where such value is not ascertainable, 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 value of the telecommunication service shall be the gross amount paid by the person to whom telecommunication service is actually provided.

- (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 travelling 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;
- (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; and

- (x) the amount realised as demurrage or by any other name whatever called for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service.

(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 delayed payment of any consideration for the provision of services or sale of property, whether movable or immovable;
- (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;
- (vi) accidental damages due to unforeseen actions not relatable to the provision of service; and
- (vii) subsidies and grants disbursed by the Government, not directly affecting the value of service.

## **7 Actual consideration to be the value of taxable service provided from outside India**

Omitted

# Service Tax (Settlement of Cases) Rules, 2012



## 1 Short title and commencement

- (1) These rules may be called the Service Tax (Settlement of Cases) Rules, 2012.
- (2) They shall come into force on the date of publication in the Official Gazette.

## 2 Definitions

In these rules, unless the context otherwise requires,-

- (a) "Act" means Chapter V of the Finance Act, 1994 (32 of 1994);
- (b) "Excise Act" means the Central Excise Act, 1944 (1 of 1944);
- (c) "Form SC(ST)-1" means the form appended to these rules;
- (d) "Section" means a section of the Act;
- (e) Words and expressions used herein and not defined but defined in the Act or Excise Act, shall have the respective meanings assigned to them in those Acts.

## 3 Form and manner of Application

- (1) An application under sub-section (1) of section 32E of Excise Act, made applicable to service

tax vide section 83 of the Act, shall be made in the Form SC(ST)-1.

- (2) The application referred to in sub-rule (1), the verification contained therein and all relevant documents accompanying such application shall be signed,-
  - (a) in the case of an individual, by the individual himself or where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is a minor or is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;
  - (b) in the case of a Hindu undivided family, by the Karta of such family and, where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by the senior most adult member of the family available;
  - (c) in the case of a company or local authority, by the principal officer thereof;
  - (d) in the case of a firm, by any partner



- thereof, not being a minor;
- (e) in case of any other association, by any member of the association or the principal officer thereof; and
  - (f) in the case of any other person, by that person or some person competent to act on his behalf.
- (3) Every application in the Form SC(ST)-1 shall be filed in quintuplicate and shall be accompanied by a fee of one thousand rupees.
- (4) The additional amount of service tax accepted by the applicant along with interest due thereon, shall be deposited by him in any of the authorised bank under TR-6, referred to in the Service Tax Rules, 1994 (hereinafter referred to as TR-6 Challan) in quintuplicate, or G.A.R.-7 and shall be disclosed by him in the Form.

#### **4 Disclosure of information in the application for settlement of cases**

The Settlement Commission shall, while calling for a report from the Commissioner of Central Excise having jurisdiction or Commissioner of Service Tax having jurisdiction, under sub-section (3) of section 32F of Excise Act, made applicable to service tax vide section 83 of the Act, forward a copy of the application referred to in sub-rule (1) of rule 3 along with the annexure to the application and the statements and other documents accompanying such annexure.

#### **5 Manner of provisional attachment of property**

- (1) Where the Settlement Commission orders attachment of property under sub-section (1) of section 32G of Excise Act, made applicable to service tax vide section 83 of the Act, it shall send a copy of such order to the Commissioner of Central Excise or Commissioner of Service Tax having jurisdiction over the place in which the applicant owns any movable or immovable property or resides or carries on his business or has his bank account.

- (2) On receipt of the order referred to in sub-rule (1), the Commissioner may authorise any officer subordinate to him and not below the rank of an Assistant Commissioner of Central Excise or Service Tax to take steps to attach such property of the applicant.
- (3) The officer authorised under sub-rule (2) shall prepare an inventory of the property attached and specify in it, in the case of the immovable property, the description of such property sufficient to identify it and in case of the movable property, the place where such property is lodged or kept and shall hand over a copy of the same to the applicant or to the person from whose charge the property is attached.
- (4) The officer authorised under sub-rule (2) shall send a copy of the inventory so prepared each to the Commissioner of Central Excise and the Settlement Commission.

#### **6 Fee for copies of reports**

Any person who makes an application under section 32J of Excise Act, made applicable to service tax vide section 83 of the Act, for obtaining copies of reports made by any Central Excise Officer, shall pay a fee of five rupees per page of each report or part thereof.

# Service Tax (Compounding of Offences) Rules, 2012



- jurisdiction over the place where the offence under the Act, have been or alleged to have been committed;
- (d) "Excise Act" means the Central Excise Act, 1944 (1 of 1944);
  - (e) "form" means the form appended to these rules;
  - (f) "reporting authority" means, the Commissioner of Central Excise or Commissioner of Service Tax, having jurisdiction over the place where the offences under the Act have been or are alleged to have been committed or any other officer as may be authorised in this regard by the Chief Commissioner of Central Excise having jurisdiction over the place where such offences under the Act, have been or are alleged to have been committed;
  - (g) "section" means a section of the Act; and
  - (h) words and expressions used in these rules and not defined but defined in the Act or Central Excise Act, 1944 shall have the respective meanings assigned to them in the Act or Central Excise Act, 1944, as the case may be.

## 1 Short title and commencement

- (1) These rules may be called the Service Tax (Compounding of Offences) Rules, 2012.
- (2) They shall come into force on the date of publication in the Official Gazette.

## 2 Definitions

In these rules, unless the context otherwise requires,-

- (a) "Act" means Chapter V of the Finance Act, 1994 (32 of 1994);
- (b) "applicant" means any assessee or any other person, but shall not include officers of Central Excise appointed for exercising the powers under the Act under rule 3 of the Service Tax Rules, 1994;
- (c) "compounding authority" means the Chief Commissioner of Central Excise, having

## 3 Form and manner of application

An applicant may, either before or after the institution of prosecution, make an application under sub-section (2) of section 9A of Excise Act, made applicable to service tax vide section 83 of the Act, in the form appended to these rules, to the compounding authority to compound the offence.

Explanation.- Where an offence under the Act has been committed at more than one place falling under the jurisdiction of more than one compounding authority, then the Chief Commissioner of Central Excise having jurisdiction over such place where the amount of service tax evaded is more than the others, shall be the competent authority.

#### 4 Procedure on receipt of application under rule 3

- (1) On receipt of an application under rule 3, the compounding authority shall call for a report from the reporting authority with reference to the particulars furnished in the application, or any other information, which may be considered relevant for examination of such application.
- (2) Such report shall be furnished by the reporting authority within a period of one month or within such extended period as may be allowed by the compounding authority, from the date of receipt of communication from the compounding authority.
- (3) The compounding authority, after taking into account the contents of the said application, may, by order, either allow the application indicating the compounding amount in terms of rule 5 and grant him immunity from prosecution in terms of rule 6 or reject such application: Provided that application shall not be rejected unless an opportunity has been given to the applicant of being heard and the grounds of such rejection are mentioned in such order: Provided further that application shall not be allowed unless the service tax, penalty and interest liable to be paid have been paid for the case for which application has been made.
- (4) A copy of every order under sub-rule (3) shall be sent to the applicant.
- (5) The applicant shall, within a period of thirty days from the date of receipt of order under sub-rule (3) allowing the compounding of offences, pay the compounding amount, as ordered to be paid by the compounding authority and shall furnish the proof of such payment to the compounding authority.

- (6) The compounding amount once paid shall not be refunded except in cases where the court rejects grant of immunity from prosecution.
- (7) The applicant shall not claim, as of right, that his offence be compounded.

#### 5 Fixation of the compounding amount

For the purpose of compounding of offences under the provisions of the Act, the compounding amount shall be as provided in the following Table, namely:-

**Table**

Sl. No.	Offence	Compounding amount
(1)	(2)	(3)
1	Offence specified under section 89 (1)(a) of the Act	Up to fifty per cent of the amount of service tax evasion, subject to minimum of ten per cent of amount of tax evaded
2	Offence specified under section 89 (1)(b) of the Act	Upto fifty per cent. of the amount of CENVAT Credit wrongly taken or utilised, subject to minimum of ten per cent of said amount.
3	Offence specified under section 89 (1)(c) of the Act	Rupees fifty thousand for the first offence and to be increased by hundred per cent of this amount for each subsequent offence
4	Offence specified under section 89 (1)(d) of the Act	Upto twenty five per cent of the amount of service tax not deposited subject to a minimum of two per cent for each month for which the amount has not been so deposited.

Provided that if a person has committed offences falling under more than one category specified above and where the amount of service tax evasion or amount of CENVAT Credit wrongly taken or utilised is the same for all such offences, the compounding amount, in such cases, shall be the amount as determined for the offence for which a higher compounding amount has been prescribed.

## **6 Power of compounding authority to grant immunity from prosecution**

The compounding authority, if he is satisfied that any person who has made the application for compounding of offence under these rules has co-operated in the proceedings before him and has made full and true disclosure of facts relating to the case, grant such person, subject to such conditions as he may think fit to impose, immunity from prosecution for any offence under the Act, with respect to the case covered by the compounding of offence.

## **7 Withdrawal of immunity from prosecution in certain conditions**

- (1) An immunity granted to a person under rule 6 shall stand withdrawn if such person fails to pay any sum specified in the order of compounding passed by the compounding authority, under sub-rule (3) of rule 4 within the time specified in the order or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of the Act, shall apply as if no such immunity had been granted.
- (2) An immunity granted to a person under sub-rule (1) may, at any time, be withdrawn by the compounding authority, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any material particulars, or had given false evidence, and thereupon the person may be tried for the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and, thereupon, the provisions of the Act, shall apply as if no such immunity had been granted.

# Service Tax Voluntary Compliance Encouragement Scheme



## Service Tax Voluntary Compliance Encouragement Scheme, 2013

### 104 Short Title

This Scheme may be called the Service Tax Voluntary Compliance Encouragement Scheme, 2013.

### 105 Definitions

- (1) In this Scheme, unless the context otherwise requires,-
- (a) "Chapter" means Chapter V of the Finance Act, 1994 (32 of 1994);
  - (b) "declarant" means any person who makes a declaration under sub-section (1) of section 107;
  - (c) "designated authority" means an officer not below the rank of Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise for the purposes of this Scheme;
  - (d) "prescribed" means prescribed by rules made under this Scheme;
  - (e) "tax dues" means the service tax due or

payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from the 1st day of October, 2007 and ending on the 31st day of December, 2012 including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013.

- (2) Words and expressions used herein and not defined but defined in the Chapter or the rules made thereunder shall have the meanings respectively assigned to them in the Chapter or the rules made thereunder.

### 106 Person who may make declaration of tax dues

- (1) Any person may declare his tax dues in respect of which no notice or an order of determination under section 72 or section 73 or section 73A of the Chapter has been issued or made before the 1st day of March, 2013:  
Provided that any person who has furnished return under section 70 of the Chapter and

disclosed his true liability, but has not paid the disclosed amount of service tax or any part thereof, shall not be eligible to make declaration for the period covered by the said return: Provided further that where a notice or an order of determination has been issued to a person in respect of any period on any issue, no declaration shall be made of his tax dues on the same issue for any subsequent period.

- (2) Where a declaration has been made by a person against whom,-
- (a) an inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by way of -
    - (i) search of premises under section 82 of the Chapter; or
    - (ii) issuance of summons under section 14 of the Central Excise Act, 1944 (1 of 1944), as made applicable to the Chapter under section 83 thereof; or
    - (iii) requiring production of accounts, documents or other evidence under the Chapter or the rules made thereunder; or
  - (b) an audit has been initiated, and such inquiry, investigation or audit is pending as on the 1st day of March, 2013, then, the designated authority shall, by an order, and for reasons to be recorded in writing, reject such declaration.

#### **107 Procedure for making declaration and payment of tax dues**

- (1) Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2013 in such form and in such manner as may be prescribed.
- (2) The designated authority shall acknowledge the declaration in such form and in such manner as may be prescribed.

(3) The declarant shall, on or before the 31st day of December, 2013, pay not less than fifty per cent of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority.

(4) The tax dues or part thereof remaining to be paid after the payment made under sub-section (3) shall be paid by the declarant on or before the 30th day of June, 2014:

Provided that where the declarant fails to pay said tax dues or part thereof on or before the said date, he shall pay the same on or before the 31st day of December, 2014 along with interest thereon, at such rate as is fixed under section 75 or, as the case may be, section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014.

(5) Notwithstanding anything contained in sub-section (3) and sub-section (4), any service tax which becomes due or payable by the declarant for the month of January, 2013 and subsequent months shall be paid by him in accordance with the provisions of the Chapter and accordingly, interest for delay in payment thereof, shall also be payable under the Chapter.

(6) The declarant shall furnish to the designated authority details of payment made from time to time under this Scheme along with a copy of acknowledgement issued to him under sub-section (2).

(7) On furnishing the details of full payment of declared tax dues and the interest, if any, payable under the proviso to sub-section (4) the designated authority shall issue an acknowledgement of discharge of such dues to the declarant in such form and in such manner as may be prescribed.

#### **108 Immunity from penalty, interest and other proceeding**

- (1) Notwithstanding anything contained in any provision of the Chapter, the declarant, upon

payment of the tax dues declared by him under sub-section (1) of section 107 and the interest payable under the proviso to sub-section (4) thereof, shall get immunity from penalty, interest or any other proceeding under the Chapter.

- (2) Subject to the provisions of section 111, a declaration made under sub-section (1) of section 107 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 107 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority or court relating to the period covered by such declaration.

#### **109 No refund of amount paid under the scheme**

Any amount paid in pursuance of a declaration made under sub-section (1) of section 107 shall not be refundable under any circumstances.

#### **110 Tax dues declared but not paid**

Where the declarant fails to pay the tax dues, either fully or in part, as declared by him, such dues alongwith interest thereon shall be recovered under the provisions of section 87 of the Chapter.

#### **111 Failure to make true declaration**

- (1) Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dues not paid or short-paid.
- (2) No action shall be taken under sub-section (1) after the expiry of one year from the date of declaration.
- (3) The show cause notice issued under sub-section (1) shall be deemed to have been issued under

section 73, or as the case may be, under section 73A of the Chapter and the provisions of the Chapter shall accordingly apply.

#### **112 Removal of doubts**

For the removal of doubts, it is hereby declared that nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant other than the benefit, concession or immunity granted under section 108.

#### **113 Power to remove difficulties**

- (1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, 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 this Scheme come into force.
- (2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

#### **114 Power to make Rules**

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.
- (2) 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 the manner in which a declaration may be made under sub-section (1) of section 107;
  - (b) the form and the manner of acknowledging the declaration under sub-section (2) of section 107;
  - (c) the form and the manner of issuing the acknowledgement of discharge of tax dues under sub-section (7) of section 107;
  - (d) any other matter which is to be, or may be,

prescribed, or in respect of which provision is to be made, by rules.

- (3) The Central Government shall cause every rule made under this Scheme to 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.

## **Service Tax Voluntary Compliance Encouragement Rules, 2013**

### **1 Short title and commencement**

- (1) These rules may be called the Service Tax Voluntary Compliance Encouragement Rules, 2013.
- (2) They shall come into force on the date of its publication in the Gazette of India.

### **2 Definitions**

- (1) In these rules, unless the context otherwise requires, -
- (a) "Act" means the Finance Act, 2013;
  - (b) "Form" means the Forms annexed to these rules.
  - (c) "Scheme" means the Service Tax Voluntary Compliance Encouragement Scheme, 2013 as specified in the Act;
- (2) Words and expressions used but not defined in these rules but defined in the Scheme shall have the meanings respectively assigned to them in the Scheme.

### **3 Registration**

Any person, who wishes to make a declaration under the Scheme, shall, if not already registered, take registration under rule 4 of the Service Tax Rules, 1994.

### **4 Form of declaration**

The declaration under sub-section (1) of section 107 of the Act, in respect of tax dues under the Scheme shall be made in Form VCES -1 .

### **5 Form of acknowledgment of declaration**

The designated authority on receipt of declaration shall issue an acknowledgement thereof, in Form VCES -2, within a period of seven working days from the date of receipt of the declaration.

### **6 Payment of tax dues**

- (1) The tax dues payable under the Scheme along with interest, if any, under section 107 of the Act shall be paid to the credit of the Central Government in the manner prescribed for the payment of service tax under the Service Tax Rules, 1994.
- (2) The CENVAT credit shall not be utilised for payment of tax dues under the Scheme.

### **7 Form of acknowledgement of discharge**

- (1) The designated authority shall issue an acknowledgement of discharge under sub-section (7) of section 107 of the Act, in Form VCES - 3.
- (2) The acknowledgement of discharge shall be issued within a period of seven working days from the date of furnishing of details of payment of tax dues in full along with interest, if any, by the declarant.



# CENVAT Credit Rules, 2004



## 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;
- (vii) storage tank; and
- (viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis but including dumpers and tippers used –

- (1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or
- (1A) outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory; or
- (2) for providing output service,
- (B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for-
  - (i) providing an output service of renting of such motor vehicle; or
  - (ii) transportation of inputs and capital

- goods used for providing an output service; or
- (iii) providing an output service of courier agency;
- (C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of-
- (i) transportation of passengers; or
  - (ii) renting of such motor vehicle; or
  - (iii) imparting motor driving skills;
- (D) components, spares and accessories of motor vehicles which are capital goods for the assessee;
- (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 or under entries at serial numbers 67 and 128 of Notification No. 12/2012-CE., dated the 17th March, 2012 is availed;
- (e) "exempted service" means a-
- (1) taxable service which is exempt from the whole of the service tax leviable thereon; or
  - (2) service, on which no service tax is leviable under section 66B of the Finance Act; or
  - (3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;
- but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules,
- 1994;
- (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 or execution of works contract of a building or a civil

structure or a part thereof; or  
 (b) laying of foundation or making of structures for support of capital goods, except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the 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 output 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 -

- (A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -
  - (a) construction or execution of works contract of a building or a civil structure or a part thereof; or
  - (b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or
- (B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or
- (BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -
  - (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or
  - (b) an insurance company in respect of a motor vehicle insured or reinsured by such person; 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 falling under heading 7113 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 service provided by a provider of service located in the taxable

territory but shall not include a service,-

- (1) specified in section 66D of the Finance Act; or
- (2) where the whole of service tax is liable to be paid by the recipient of service;
- (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 output 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-
- (a) in respect of which the benefit of an exemption under notification No.1/2011-CE, dated the 1st March, 2011 is availed;
- (b) specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under Notification No. 12/2012-CE, dated the 17th March, 2012 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 (Textiles 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 a 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;
  - (ixb) the service tax leviable under section 66B 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);
  - (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 Finance Act, 2005 (18 of 2005),
- paid on -
- (i) any input or capital goods received in the factory of manufacture of final product or by 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 debonding 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 9801 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.

Explanation - CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient.

(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.

(5A) (a) 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:-

(i) 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%
---

(ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter:

Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

(b) 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 output 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.

Explanation. – If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), and (5B), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

(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 percent of  $[X \text{ multiplied by } \{(1+BCD/100) \text{ multiplied by } (CVD/100)\}]$ , where BCD and CVD denote ad valorem rates, in percent 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 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] shall be equal to  $[X \text{ multiplied by } \{(1+BCD/200) \text{ multiplied by } (CVD/100)\}]$ :

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);
  - (iiia) 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);
  - (via) 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
  - (vii) the additional duty of excise leviable under [section 85 of Finance Act, 2005 (18 of 2005)], shall be utilised 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 said 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 Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007), 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 taxable services can be utilized, either for payment of the education cess on excisable goods or for the payment of the 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 utilized, 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 falling under heading 7113 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:

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

- (2) (a) The CENVAT credit in respect of capital goods received in a factory or in the premises of 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:

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

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 up to 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 the 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

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

$$\text{Refund amount} = \frac{(\text{Export turnover of goods} + \text{Export turnover of services}) \times \text{Net CENVAT credit}}{\text{Total turnover}}$$

Where,-

- (A) "Refund amount" means the maximum refund that is admissible;
- (B) "Net CENVAT credit" means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;
- (C) "Export turnover of goods" means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;
- (D) "Export turnover of services" means the value of the export service calculated in the following manner, namely:-  
Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period . advances received for export services for which the provision of service has not been completed during the relevant period;
- (E) "Total turnover" means sum total of the value of -
  - (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;
  - (b) export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and
  - (c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.

(2) This rule shall apply to exports made on or after the 1st April, 2012:

Provided that the refund may be claimed under this rule, as existing, prior to the commencement of the CENVAT Credit (Third Amendment) Rules, 2012, within a period of one year from such commencement:

Provided further 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 and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Service Tax Rules, 1994 in respect of such tax.

Explanation 1- For the purposes of this rule,-

- (1) "export service" means a service which is provided as per rule 6A of the Service Tax Rules 1994;
- (2) "relevant period" means the period for which the claim is filed.

Explanation 2.-For the purposes of this rule, the value of services, shall be determined in the same manner as the value for the purposes of sub-rule (3) and (3A) of rule 6 is determined.

#### **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.

#### **5B Refund of CENVAT credit to service providers providing services taxed on reverse charge basis**

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

#### **6 Obligation of a manufacturer or producer of final products and a provider of output 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 six 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 subclauses (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 subclauses (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 six per cent of the value so exempted:

Provided that in case of transportation of goods or passengers by rail the amount required to be paid under clause (i) shall be an amount equal to 2 per cent of value of the exempted services.

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 output 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 output 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 output 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 output 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, 1[N] denotes total value of output and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and 1[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 output 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, engaged in providing services by way of extending deposits, loans or advances, 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) Omitted.

(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 thereunder or, as the case may be, the value determined under section 3, 4 or 4A of the Excise Act, read with rules made

thereunder;

- (b) in the case of a taxable service, when the option available under sub-rules (7),(7A),(7B) or (7C) of rule 6 of the Service Tax Rules, 1994, has been availed, shall be the value on which the rate of service tax under section 66B of the Finance Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed;
- (c) in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten per cent of the cost of goods sold, whichever is more;
- (d) in case of trading of securities, shall be the difference between the sale price and the purchase price of the securities traded or one per cent of the purchase price of the securities traded, whichever is more;
- (e) shall not include the value of services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Explanation II. - The amount mentioned in sub-rules (3), (3A), and (3B), 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), and (3B), 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”.

(3B) Notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances, 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.

(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 of notification No. 12/2012-Central Excise dated the 17th March, 2012, number G.S.R. 163(E), dated the 17th March, 2012; 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. 12/2012-Central Excise, dated the 17th March, 2012.
- (viii) supplies made for setting up of solar power generation projects or facilities

- (7) 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 or when a service is exported.
- (8) For the purpose of this rule, a service provided or agreed to be provided shall not be an exempted service when:-
- (a) the service satisfies the conditions specified under rule 6A of the Service Tax Rules, 1994 and the payment for the service is to be received in convertible foreign currency; and
  - (b) such payment has not been received for a period of six months or such extended period as maybe allowed from time-to-time by the Reserve Bank of India, from the date of provision.

### **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.
- (c) credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit; and
- (d) credit of service tax attributable to service used in more than one unit shall be distributed pro rata on the basis of the turnover during the relevant

period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period.

Explanation 1.- For the purposes of this rule, "unit" includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise.

Explanation 2.- For the purposes of this rule, the total turnover shall be determined in the same manner as determined under rule 5.

Explanation 3. - (a) The relevant period shall be the month previous to the month during which the CENVAT credit is distributed.

- (b) In case if any of its unit pays tax or duty on quarterly basis as provided in rule 6 of Service Tax Rules, 1994 or rule 8 of Central Excise Rules, 2002 then the relevant period shall be the quarter previous to the quarter during which the CENVAT credit is distributed.
- (c) In case of an assessee who does not have any total turnover in the said period, the input service distributor shall distribute any credit only after the end of such relevant period wherein the total turnover of its units is available."

### **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 there under 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; or

- (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 service recipient as the person liable to pay service tax; 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 output 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 the 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:

- (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 :
- (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).
- (5) Every assessee shall file electronically the declaration or the returns, as the case may be, specified in this rule.
- 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.

#### **10A Transfer of CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act**

- (1) A manufacturer or producer of final products, having more than one registered premises, for each of which registration under the Central Excise Rules, 2002 has been obtained on the basis of a common Permanent Account Number under the Income-tax Act, 1961 (43 of 1961), may transfer unutilised CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises at the end of a quarter, to his other registered premises by—
  - (i) making an entry for such transfer in the documents maintained under rule 9;
  - (ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i), and such recipient premises may take CENVAT credit on the basis of the transfer challan:

Provided that nothing contained in this sub-rule shall apply if the transferring and recipient registered premises are availing the benefit of the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), namely:-

    - (i) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999];
    - (ii) No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 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];
  - (viii) No.20/2007-Central Excise, dated the 25th April, 2007 [G.S.R. 307 (E), dated the 25th April, 2007]; and
  - (ix) No. 1/2010-Central Excise dated the 6th February, 2010 [G.S.R. 62 (E), dated the 6th February, 2010].
- (2) The manufacturer or producer shall submit the monthly return, as specified under these rules, separately in respect of transferring and recipient registered premises.

### 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 but subject to the proviso to clause (i) of sub-rule (1) of rule 3 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 [GSR 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 [GSR 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 tax payer**

Notwithstanding anything contained in these rules, the following procedure shall apply to a large tax payer, -

- (1) A large tax payer 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 tax payer, 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 tax payer fails to pay any amount due in terms of the first and second provisos, 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];
- (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 [GSR 307(E), dated the 25th April, 2007]; and :
- (ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62 (E), dated the 6th February, 2010]

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 tax payer 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 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];
  - (viii) No. 20/2007-Central Excise, dated the 25th April, 2007 [GSR 307(E), dated the 25th April, 2007; and
  - (ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62 (E), dated the 6th February, 2010.
- (5) A large tax payer 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 tax payer unit, shall be deemed to have been issued by Central Excise officers of the said unit.
  - (7) Provisions of these rules, insofar as they are not inconsistent with the provisions of this rule shall mutatis mutandis apply in case of a large tax payer.

### **12AAA 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 the 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 authorized 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 output service, declared in that notification, but contained in the said final products, or as the case may be, used in providing the output service.

### **14 Recovery of CENVAT credit wrongly taken or erroneously refunded**

Where the CENVAT credit has been taken and 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 11AA 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 thereunder 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 thereunder 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 provision 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.

# Relevant Provisions of Central Excise Act, 1944



## **9A Certain offences to be non-cognizable**

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offences under section 9, except the offences referred to in sub-section (1A), shall be non-cognizable within the meaning of that Code.
- (1A) The offences relating to excisable goods where the duty leviable thereon under this Act exceeds fifty lakh rupees and punishable under clause (b) or clause (bbbb) of sub-section (1) of section 9, shall be cognizable and non-bailable.
- (2) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount and in such manner of compounding as may be prescribed:  
Provided that nothing contained in this sub-section shall apply to -
  - (a) a person who has been allowed to compound once in respect of any of the offences under the provisions of clause (a),(b),(bb),(bbb),(bbbb) or (c) of sub-section (1) of section 9;
  - (b) a person who has been accused of committing an offence under this Act which is also an offence under the Narcotic Drugs and Psychotropic Substance Act, 1985 (61 of 1985);
  - (c) a person who has been allowed to compound once in respect of any of the offence under this Chapter for goods of value exceeding rupees one crore;
  - (d) a person who has been convicted by the court under this Act on or after the 30th day of December, 2005.

## **9AA Offences by companies**

- (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed was

in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section, -

- (a) "company" means any body corporate and includes a firm or other association of individuals; and  
(b) "director" in relation to a firm means a partner in the firm.

#### **9B Power of Court to publish name, place of business, etc., of persons convicted under the Act**

- (1) Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the Court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the

person has been so convicted and such other particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person, in such newspapers or in such manner as the Court may direct.

- (2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the Court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.  
(3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the Court.

#### **9C Presumption of culpable mental state**

- (1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation. — In this section, "culpable mental state" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.

- (2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

#### **9D Relevancy of statements under certain circumstances**

- (1) A statement made and signed by a person before any Central Excise Officer of a Gazette rank during the course of any inquiry or proceeding under this Act shall be relevant, for



the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -

- (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or
  - (b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.
- (2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

**9E Application of section 562 of the Code of Criminal Procedure, 1898, and of the Probation of Offenders Act, 1958.**

- (1) Nothing contained in section 562 of the Code of Criminal Procedure, 1898 (5 of 1898), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.
- (2) The provisions of sub-section (1) shall have effect notwithstanding anything contained in sub-section (3) of section 9.

**11B Claim for refund of duty and interest, if any, paid on such duty**

- (1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to

the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :  
Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act:

Provided further that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.

- (2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :  
Provided that the amount of duty of excise and interest, if any, paid on such duty as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such

amount is relatable to –

- (a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
- (b) unspent advance deposits lying in balance in the applicant's account current maintained with the Commissioner of Central Excise;
- (c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;
- (d) the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (e) the duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (f) the duty of excise and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

- (3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

- (4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.
- (5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.

Explanation. — For the purposes of this section, -

- (A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
- (B) "relevant date" means, -
  - (a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -
    - (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods

- are loaded, leaves India, or
- (ii) if the goods are exported by land, the date on which such goods pass the frontier, or
- (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;
- (b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;
- (c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;
- (d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;
- (e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;
- (ea) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 5A, the date of issue of such order;
- (eb) in case where duty of excise is paid

provisionally under this Act or the rules made there under, the date of adjustment of duty after the final assessment thereof;

- (ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;
- (f) in any other case, the date of payment of duty.

#### **11BB Interest on delayed refunds**

If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:

Provided that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation. - Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any court against an order of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by

the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section.

### **11C Power not to recover duty of excise not levied or short-levied as a result of general practice**

- (1) Notwithstanding anything contained in this Act, if the Central Government is satisfied -
- (a) that a practice was, or is, generally prevalent regarding levy of duty of excise (including non-levy thereof) on any excisable goods; and
  - (b) that such goods were, or are, liable -
    - (i) to duty of excise, in cases where according to the said practice the duty was not, or is not being, levied, or
    - (ii) to a higher amount of duty of excise than what was, or is being, levied, according to the said practice, then, the Central Government may, by notification in the Official Gazette, direct that the whole of the duty of excise payable on such goods, or as the case may be, the duty of excise in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty of excise was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.
- (2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty of excise paid on such goods or, as the case may be, the duty of excise paid in excess of that payable on such goods, which would not have been paid if the said notification had been in force, shall be dealt with in accordance with the provisions of

sub-section (2) of section 11B:

Provided that the person claiming the refund of such duty or, as the case may be, excess duty, makes an application in this behalf to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, in the form referred to in sub-section (1) of section 11B, before the expiry of six months from the date of issue of the said notification.

### **12 Application of the provisions of [Act No. 52 of 1962] to Central Excise Duties.**

The Central Government may, by notification in the Official Gazette, declare that any of the provisions of the Customs Act, 1962 (52 of 1962), relating to the levy of and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by section 3 and section 3A.

### **12A Price of goods to indicate the amount of duty paid thereon**

Notwithstanding anything contained in this Act or any other law for the time being in force, every person who is liable to pay duty of excise on any goods shall, at the time of clearance of the goods, prominently indicate in all the documents relating to assessment, sales invoice, and other like documents, the amount of such duty which will form part of the price at which such goods are to be sold.

### **12B Presumption that the incidence of duty has been passed on to the buyer**

Every person who has paid the duty of excise on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such

goods.

### **12C Consumer Welfare Fund**

- (1) There shall be established by the Central Government a fund, to be called the Consumer Welfare Fund.
- (2) There shall be credited to the Fund, in such manner as may be prescribed, -
  - (a) the amount of duty of excise referred to in sub-section (2) of section 11B or sub-section (2) of section 11C or sub-section (2) of section 11D;
  - (b) the amount of duty of customs referred to in sub-section (2) of section 27 or sub-section (2) of section 28A, or sub-section (2) of section 28B of the Customs Act, 1962 (52 of 1962);
  - (c) any income from investment of the amount credited to the Fund and any other monies received by the Central Government for the purposes of this Fund.
  - (d) the surplus amount referred to in sub-section (6) of section 73A of the Finance Act, 1994 (32 of 1994).

### **12D Utilisation of the Fund**

- (1) Any money credited to the Fund shall be utilised by the Central Government for the welfare of the consumers in accordance with such rules as that Government may make in this behalf.
- (2) The Central Government shall maintain or, if it thinks fit, specify the authority which shall maintain, proper and separate account and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

### **12E Powers of Central Excise Officers**

- (1) A Central Excise Officer may exercise the powers and discharge the duties conferred or

imposed under this Act on any other Central Excise Officer who is subordinate to him.

- (2) Notwithstanding anything contained in sub-section (1), the Commissioner of Central Excise (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on a Central Excise Officer other than those specified in section 14 or Chapter VI-A.

### **14 Power to summon persons to give evidence and produce documents in inquiries under this Act**

- (1) Any Central Excise Officer duly empowered by the Central Government in this behalf, shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.
- (2) All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required:  
Provided that the exemptions under Sections 132 and 133 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to requisitions for attendance under this section.
- (3) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860 (45 of 1860).

### **15 Officers required to assist Central Excise Officers**

All officers of Police and Customs and all officers of Government engaged in the collection of land revenue, and all village officers are hereby empowered and required to assist the Central Excise Officers in the execution of this Act.

### **31 Definitions**

In this Chapter, unless the context otherwise requires, -

- (a) "assessee" means any person who is liable for payment of excise duty assessed under this Act or any other Act and includes any producer or manufacturer of excisable goods or a registered person under the rules made under this Act, of a private warehouse in which excisable goods are stored;
- (b) "Bench" means a Bench of the Settlement Commission;
- (c) "case" means any proceeding under this Act or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application under sub-section (1) of section 32E is made:  
Provided that when any proceeding is referred back in any appeal or revision, as the case may be, by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, as the case may be, then such proceeding shall not be deemed to be a proceeding pending within the meaning of this clause;
- (d) "Chairman" means the Chairman of the Settlement Commission;
- (e) "Commissioner (Investigation)" means an officer of the Customs or a Central Excise Officer appointed as such Commissioner to conduct inquiry or investigation for the purposes of this Chapter;
- (f) "Member" means a Member of the Settlement

Commission and includes the Chairman and the Vice-Chairman;

- (g) "Settlement Commission" means the Customs and Central Excise Settlement Commission constituted under section 32; and
- (h) "Vice-Chairman" means a Vice-Chairman of the Settlement Commission.

### **32 Customs and Central Excise Settlement Commission**

- (1) The Central Government shall, by notification in the Official Gazette, constitute a Commission to be called the Customs and Central Excise Settlement Commission for the settlement of cases under this Chapter and Chapter XIVA of the Customs Act, 1962 (52 of 1962).
- (2) The Settlement Commission shall consist of a Chairman and as many Vice-Chairmen and other Members as the Central Government thinks fit and shall function within the Department of the Central Government dealing with Customs and Central Excise matters.
- (3) The Chairman, Vice-Chairman and other Members of the Settlement Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, administration of customs and central excise laws:  
Provided that, where a member of the Board is appointed as the Chairman, Vice-Chairman or as a Member of the Settlement Commission, he shall cease to be a member of the said Board.

### **32A Jurisdiction and powers of Settlement Commission**

- (1) Subject to the other provisions of this Chapter, the jurisdiction, powers and authority of the Settlement Commission may be exercised by Benches thereof.
- (2) Subject to the other provisions of this section, a Bench shall be presided over by the Chairman

or a Vice-Chairman and shall consist of two other Members.

- (3) The Bench for which the Chairman is the presiding officer shall be the principal Bench and other Benches shall be known as additional Benches.
- (4) Notwithstanding anything contained in sub-section (1) and sub-section (2), the Chairman may authorise the Vice-Chairman or other Member appointed to one Bench to discharge also the functions of the Vice-Chairman or, as the case may be, other Member of another Bench.
- (5) The principal Bench shall sit at Delhi and the Central Government shall, by notification in the Official Gazette, establish additional Benches at such places as it considers necessary.
- (6) Notwithstanding anything contained in the foregoing provisions of this section, and subject to any rules that may be made in this behalf, when one of the persons constituting a Bench (whether such person be the presiding officer or other Member of the Bench) is unable to discharge his functions owing to absence, illness or any other cause or in the event of the occurrence of any vacancy either in the office of the presiding officer or in the office of one or the other Members of the Bench, the remaining Members may function as the Bench and if the presiding officer of the Bench is not one of the remaining Members, the senior among the remaining Members shall act as the presiding officer of the Bench:  
Provided that if at any stage of the hearing of any such case or matter, it appears to the presiding officer that the case or matter is of such a nature that it ought to be heard of by a Bench consisting of three Members, the case or matter may be referred by the presiding officer of such Bench to the Chairman for transfer to such Bench as the Chairman may deem fit.  
Provided further that at any stage of the

hearing of any such case or matter, referred to in the first proviso, the Chairman may, if he thinks that the case or matter is of such a nature that it ought to be heard by a Bench consisting of three Members, constitute such Bench and if Vice-Chairman is not one of the Members, the senior among the Members shall act as the presiding officer of such Bench.

- (7) Notwithstanding anything contained in the foregoing provisions of this section, the Chairman may, for the disposal of any particular case, constitute a special Bench consisting of more than three Members.
- (8) Subject to the other provisions of this Chapter, the special Bench shall sit at a place to be fixed by the Chairman.

### **32B Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances**

- (1) In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Chapter to fill such vacancy, enters upon his office.
- (2) When the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.

### **32C Power of Chairman to transfer cases from one Bench to another**

On the application of the assessee or the Chief Commissioner or Commissioner of Central Excise and after giving notice to them, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to another Bench.

### **32D Decision to be by majority**

If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Settlement Commission and such point or points shall be decided according to the opinion of the majority of the Members of the Settlement Commission who have heard the case, including those who first heard it.

### **32E Application for settlement of cases**

(1) An assessee may, in respect of a case relating to him, make an application, before adjudication, to the Settlement Commission to have the case settled, in such form and in such manner as may be prescribed and containing a full and true disclosure of his duty liability which has not been disclosed before the Central Excise Officer having jurisdiction, the manner in which such liability has been derived, the additional amount of excise duty accepted to be payable by him and such other particulars as may be prescribed including the particulars of such excisable goods in respect of which he admits short levy on account of misclassification, under-valuation, inapplicability of exemption notification or Cenvat credit or

otherwise and any such application shall be disposed of in the manner hereinafter provided:

Provided that no such application shall be made unless, —

- (a) the applicant has filed returns showing production, clearance and Central excise duty paid in the prescribed manner;
- (b) a show cause notice for recovery of duty issued by the Central Excise Officer has been received by the applicant;
- (c) the additional amount of duty accepted by the applicant in his application exceeds three lakh rupees; and
- (d) the applicant has paid the additional amount of excise duty accepted by him along with interest due under section 11AB : Provided further that no application shall be entertained by the Settlement Commission under this sub-section in cases which are pending with the Appellate Tribunal or any court:  
Provided also that no application under this sub-section shall be made for the interpretation of the classification of excisable goods under the Central Excise Tariff Act, 1985 (5 of 1986).

- (1A) Notwithstanding anything contained in sub-section (1), where an application was made under sub-section (1), before the 1st day of June, 2007 but an order under sub-section (1) of section 32F has not been made before the said date or payment of amount so ordered by the Settlement Commission under sub-section (1) of section 32F has not been made, the applicant shall within a period of thirty days from the 1st day of June, 2007, pay the accepted duty liability failing which his application shall be liable to be rejected.
- (2) Where any excisable goods, books of accounts, other documents have been seized under the provisions of this Act or rules made



thereunder, the assessee shall not be entitled to make an application under sub-section (1), before the expiry of one hundred and eighty days from the date of the seizure.

- (3) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed.
- (4) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

### **32F Procedure on receipt of an application under section 32E**

- (1) On receipt of an application under sub-section (1) of section 32E, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant to explain in writing as to why the application made by him should be allowed to be proceeded with, and after taking into consideration the explanation provided by the applicant, the Settlement Commission, shall, within a period of fourteen days from the date of the notice, by an order, allow the application to be proceeded with, or reject the application as the case may be, and the proceedings before the Settlement Commission shall abate on the date of rejection :

Provided that where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

- (2) A copy of every order under sub-section (1), shall be sent to the applicant and to the Commissioner of Central Excise having jurisdiction.
- (3) Where an application is allowed or deemed to have been allowed to be proceeded with under sub-section (1), the Settlement Commission shall, within seven days from the date of order under sub-section (1), call for a

report along with the relevant records from the Commissioner of Central Excise having jurisdiction and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission:

Provided that where the Commissioner does not furnish the report within the aforesaid period of thirty days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

- (4) Where a report of the Commissioner called for under sub-section (3) has been furnished within the period specified in that sub-section, the Settlement Commission may, after examination of such report, if it is of the opinion that any further enquiry or investigation in the matter is necessary, direct, for reasons to be recorded in writing, the Commissioner (Investigation) within fifteen days of the receipt of the report, to make or cause to be made such further enquiry or investigation and furnish a report within a period of ninety days of the receipt of the communication from the Settlement Commission, on the matters covered by the application and any other matter relating to the case:

Provided that where the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order under sub-section (5) without such report.

- (5) After examination of the records and the report of the Commissioner of Central Excise received under sub-section (3), and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under sub-section (4), and after giving an opportunity to the applicant and to the Commissioner of Central Excise having jurisdiction to be heard, either in person or through a representative duly authorised in this behalf, and after examining

such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner of Central Excise and Commissioner (Investigation) under sub-section (3) or sub-section (4).

- (6) An order under sub-section (5) shall not be passed in respect of an application filed on or before the 31st day of May, 2007, later than the 29th day of February, 2008 and in respect of an application made on or after the 1st day of June, 2007, after nine months from the last day of the month in which the application was made, failing which the settlement proceedings shall abate, and the adjudicating authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 32E had been made.

Provided that the period specified under this sub-section may, for reasons to be recorded in writing, be extended by the Settlement Commission for a further period not exceeding three months.

- (7) Subject to the provisions of section 32A, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (5) and, in relation to the passing of such order, the provisions of section 32D shall apply.
- (8) The order passed under sub-section (5) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective and in case

of rejection contain the reasons therefore and it shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts: Provided that the amount of settlement ordered by the Settlement Commission shall not be less than the duty liability admitted by the applicant under section 32E.

- (9) Where any duty, interest, fine and penalty payable in pursuance of an order under sub-section (5) is not paid by the assessee within thirty days of receipt of a copy of the order by him, the amount which remains unpaid, shall be recovered along with interest due thereon, as the sums due to the Central Government by the Central Excise Officer having jurisdiction over the assessee in accordance with the provisions of section 11.
- (10) Where a settlement becomes void as provided under sub-section (8), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the Central Excise Officer having jurisdiction may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the settlement became void.

### **32G Power of Settlement Commission to order provisional attachment to protect revenue**

- (1) Where during the pendency of any proceeding before it, the Settlement Commission is of the opinion that for the purpose of protecting the interests of revenue it is necessary so to do, it may, by order, attach provisionally any property belonging to the applicant in the manner as

may be prescribed.

- (2) Every provisional attachment made by the Settlement Commission under sub-section (1) shall cease to have effect from the date, the sums due to the Central Government for which such attachment is made are discharged by the applicant and evidence to that effect is submitted to the Settlement Commission.

### **32H Power of Settlement Commission to reopen completed proceedings**

If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act before application for settlement under section 32E was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also:

Provided that no proceeding shall be reopened by the Settlement Commission under this section after the expiry of five years from the date of application.

Provided further that no proceeding shall be reopened by the Settlement Commission under this section in a case where an application under section 32E is made on or after the 1st day of June, 2007.

### **32 I Powers and procedure of Settlement Commissions**

- (1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in a Central Excise Officer under this Act or the rules made thereunder.

- (2) Where an application made under section 32E has been allowed to be proceeded with under section 32F, the Settlement Commission shall, until an order is passed under sub-section (5) of section 32F, have, subject to the provisions of sub-section (4) of that section, exclusive jurisdiction to exercise the powers and perform the functions of any Central Excise Officer, under this Act in relation to the case.
- (3) In the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission.
- (4) The Settlement Commission shall, subject to the provisions of this Chapter, have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers, or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

### **32J Inspection, etc. of reports**

No person shall be entitled to inspect, or obtain copies of, any reports made by any Central Excise Officer to the Settlement Commission; but the Settlement Commission may, in its discretion furnish copies thereof to any such person on an application made to it in this behalf and on payment of the prescribed fee :

Provided that, for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on payment of the prescribed fee by such person, furnish him with a certified copy of any such report or part thereof relevant for the purpose.

### **32K Power of Settlement Commission to grant immunity from prosecution and penalty**

- (1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 32E has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his duty liability, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act and also either wholly or in part from the imposition of any penalty and fine under this Act, with respect to the case covered by the settlement:

Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 32E.

Explanation. — For the removal of doubts, it is hereby declared that applications filed before the Settlement Commission on or before the 31st day of May, 2007 shall be disposed of as if the amendment in this section had not come into force.

- (2) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of the settlement passed under [sub-section (5) of section 32F within the time specified in such order or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.
- (3) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particular material to the settlement or had

given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had no such immunity been granted.

### **32L Power of Settlement Commission to send a case back to the Central Excise Officer**

- (1) The Settlement Commission may, if it is of opinion that any person who made an application for settlement under section 32E has not co-operated with the Settlement Commission in the proceedings before it, send the case back to the Central Excise Officer having jurisdiction who shall thereupon dispose of the case in accordance with the provisions of this Act as if no application under section 32E had been made.
- (2) For the purpose of sub-section (1), the Central Excise Officer shall be entitled to use all the materials and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence had been produced before such Central Excise Officer or held or recorded by him in the course of the proceedings before him.
- (3) For the purposes of the time limit under section 11A and for the purposes of interest under section 11BB, in a case referred to in sub-section (1), the period commencing on and from the date of the application to the Settlement Commission under section 32E and ending with the date of receipt by the Central Excise Officer of the order of the Settlement Commission sending the case back to the

Central Excise Officer shall be excluded.

### **32M Order of settlement to be conclusive**

Every order of settlement passed under sub-section (5) of section 32F shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

### **32N Recovery of sums due under order of settlement**

Any sum specified in an order of settlement passed under sub-section (5) of section 32F may, subject to such conditions if any, as may be specified therein, be recovered, and any penalty for default in making payment of such sum may be imposed and recovered as sums due to the Central Government in accordance with the provisions under section 11 by the Central Excise Officer having jurisdiction over the person who made the application for settlement under section 32E.

### **32O Bar on subsequent application for settlement in certain cases**

(1) Where-

- (i) an order of settlement passed under sub-section (7) of section 32F, as it stood immediately before the commencement of section 122 of the Finance Act, 2007 (22 of 2007) or sub-section 5 of section 32F, provides for the imposition of a penalty on the person who made the application under section 32E for settlement, on the ground of concealment of particulars of his duty liability; or
- (ii) after the passing of an order of settlement under the said sub-section (7), as it stood immediately before the commencement of section 122 of the Finance Act, 2007 (22 of 2007) or sub-section 5 of section 32F, in

relation to a case, such person is convicted of any offence under this Act in relation to that case; or

- (iii) the case of such person is sent back to the Central Excise Officer having jurisdiction by the Settlement Commission under section 32L, then, he shall not be entitled to apply for settlement under section 32E in relation to any other matter.

### **32P Proceedings before Settlement Commission to be judicial proceedings**

Any proceedings under this Chapter before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196 of the Indian Penal Code (45 of 1860).

### **33A Adjudication procedure**

- (1) The Adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.
- (2) The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:  
Provided that no such adjournment shall be granted more than three times to a party during the proceeding.

### **34A Confiscation or penalty not to interfere with other punishments**

No confiscation made or penalty imposed under the provisions of the Act or of any rule made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any

other law.

### **35EE Revision by Central Government**

(1) The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 35B, annul or modify such order :

Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.

Explanation. — For the purposes of this sub-section, “order passed under section 35A” includes an order passed under that section before the commencement of section 47 of the Finance Act, 1984 against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

(1A) The Commissioner of Central Excise may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 35A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made: Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

(3) An application under sub-section (1) shall be in such form and shall be verified in such manner

as may be specified by rules made in this behalf and shall be accompanied by a fee of, -

- (a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise officer in the case to which the application relates is one lakh rupees or less;
- (b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise officer in the case to which the application relates is more than one lakh rupees :

Provided that no such fee shall be payable in the case of an application referred to in sub-section (1A).

- (4) The Central Government may, of its own motion, annul or modify any order referred to in sub-section (1).
- (5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section, —
  - (a) in any case in which an order passed under section 35A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value; and
  - (b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.
- (6) Where the Central Government is of opinion that any duty of excise has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time-limit specified in section 11A.

### **35F Deposit, pending appeal, of duty demanded or penalty levied**

Where in any appeal under this Chapter, the

decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of Central Excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied:

Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue:

Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing.

Explanation. — For the purposes of this section “duty demanded” shall include, —

- (i) amount determined under section 11D;
- (ii) amount of erroneous Cenvat credit taken;
- (iii) amount payable under rule 57CC of Central Excise Rules, 1944;
- (iv) amount payable under rule 6 of Cenvat Credit Rules, 2001 or Cenvat Credit Rules, 2002 or Cenvat Credit Rules, 2004;
- (v) interest payable under the provisions of this Act or the rules made thereunder.

### **35FF Interest on delayed refund of amount deposited under the proviso to Section 35F**

Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter

referred to as the appellate authority), under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount.

### **35G Appeal to High Court**

- (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.
- (2) The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be -
  - (a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;
  - (b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;
  - (c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.
- (2A) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (2),

- if it is satisfied that there was sufficient cause for not filing the same within that period.
- (3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.
  - (4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question: Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.
  - (5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.
  - (6) The High Court may determine any issue which-
    - (a) has not been determined by the Appellate Tribunal; or
    - (b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).
  - (7) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.
  - (8) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

- (9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

### **35H Application to High Court**

- (1) The Commissioner of Central Excise or the other party may, within one hundred and eighty days of the date upon which he is served with notice of an order under section 35C passed before the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, apply to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal.
- (2) The Commissioner of Central Excise or the other party applying to the High Court under sub-section (1) shall clearly state the question of law which he seeks to be referred to the High Court and shall also specify the paragraph in the order of the Appellate Tribunal relevant to the question sought to be referred.
- (3) On receipt of notice that an application has been made under sub-section (1), the person against whom such application has been made, may, notwithstanding that he may not have filed such application, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order in relation to which an application for reference has been made and such memorandum shall be disposed of by the High Court as if it were an application presented within the time specified



in sub-section (1).

(3A) The High Court may admit an application or permit the filing of a memorandum of cross objections after the expiry of the relevant period referred to in sub-section (1) or sub-section (3), if it is satisfied that there was sufficient cause for not filing the same within that period.

(4) If, on an application made under sub-section (1), the High Court directs the Appellate Tribunal to refer the question of law raised in the application, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such direction, draw up a statement of the case and refer it to the High Court.

#### **35-I Power of High Court or Supreme Court to require statement to be amended\***

If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

\* This section is to be omitted (from a date to be notified) by s.30 read with Schedule to the National Tax Tribunal Act, 2005 (49 of 2005)

#### **35J Case before High Court to be heard by not less than two judges\***

(1) When any case has been referred to the High Court [under section 35G or section 35H, it shall be heard by a Bench of not less than two judges of the High Court and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

(2) Where there is no such majority, the judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the other judges of the High Court, and such point shall

be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

\* This section is to be omitted (from a date to be notified) by s.30 read with Schedule to the National Tax Tribunal Act, 2005 (49 of 2005)

#### **35K Decision of High Court or Supreme Court on the case stated**

(1) \*\*[The High Court or] the Supreme Court hearing any such case shall decide the question of law raised therein and shall deliver its judgment thereon containing the grounds on which such decision is founded and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with such judgment.

(1A) Where the High Court delivers a judgment in an appeal filed before it under section 35G, effect shall be given to the order passed on the appeal by the concerned Central Excise Officer on the basis of a certified copy of the judgment.

(2) The costs of any reference to \*\*[the High Court or] an appeal to \*\*[the High Court or] the Supreme Court, \*\*\*[as the case may be] which shall not include the fee for making the reference, shall be in the discretion of the Court.

\*\* The words 'the High Court or' shall be omitted (from a date to be notified) by s.30 read with Schedule to the National Tax Tribunal Act, 2005 (49 of 2005)

\*\*\* The words 'as the case may be' shall be omitted (from a date to be notified) by s.30 read with Schedule to the National Tax Tribunal Act, 2005 (49 of 2005)

#### **35L Appeal to the Supreme Court**

An appeal shall lie to the Supreme Court from-

- (a) any judgment of the High Court delivered -
- (i) in an appeal made under section 35G; or
  - (ii) on a reference made under section 35G by

the Appellate Tribunal before the 1st day of July, 2003;

- (iii) on a reference made under section 35H, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or
- (b) any order passed before the establishment of the National Tax Tribunal by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

### **35M Hearing before Supreme Court**

- (1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 35L as they apply in the case of appeals from decrees of a High Court :
- Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (1) of section 35K or section 35N.
- (2) The costs of the appeal shall be in the discretion of the Supreme Court.
- (3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 35K in the case of a judgment of the High Court.

### **35N Sums due to be paid notwithstanding reference, etc**

Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, under this Act before the commencement of the National Tax Tribunal Act, 2005 sums due to the Government as a result of an order passed under sub-section (1) of section 35C shall be payable in

accordance with the order so passed.

### **35-O Exclusion of time taken for copy**

In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

### **35Q Appearance by authorised representative**

- (1) Any person who is entitled or required to appear before a Central Excise Officer or the Appellate Tribunal in connection with any proceedings under this Act, otherwise than when required under this Act to appear personally for examination on oath or affirmation, may, subject to the other provisions of this section, appear by an authorised representative.
- (2) For the purposes of this section, "authorized representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being —
- (a) his relative or regular employee; or
  - (b) any legal practitioner who is entitled to practise in any civil court in India; or
  - (c) any person who has acquired such qualifications as the Central Government may prescribe for this purpose.
- (3) Notwithstanding anything contained in this section, no person who was a member of the Indian Customs and Central Excise Service — Group A and has retired or resigned from such Service after having served for not less than three years in any capacity in that Service, shall be entitled to appear as an authorised representative in any proceedings before a Central Excise Officer for a period of two years from the date of his retirement or resignation,

as the case may be.

- (4) No person, —
- (a) who has been dismissed or removed from Government service; or
  - (b) who is convicted of an offence connected with any proceeding under this Act, the Customs Act, 1962 (52 of 1962) or the Gold (Control) Act, 1968 (45 of 1968); or
  - (c) who has become an insolvent,
- shall be qualified to represent any person under sub-section (1), for all times in the case of a person referred to in clause (a), and for such time as the Commissioner of Central Excise or the competent authority under the Customs Act, 1962 or the Gold (Control) Act, 1968, as the case may be, may, by order, determine in the case of a person referred to in clause (b), and for the period during which the insolvency continues in the case of a person referred to in clause (c).
- (5) If any person, —
- (a) who is a legal practitioner, is found guilty of mis-conduct in his professional capacity by any authority entitled to institute proceedings against him, an order passed by that authority shall have effect in relation to his right to appear before a Central Excise Officer or the Appellate Tribunal as it has in relation to his right to practise as a legal practitioner;
  - (b) who is not a legal practitioner, is found guilty of mis-conduct in connection with any proceedings under this Act by the prescribed authority, the prescribed authority may direct that he shall thenceforth be disqualified to represent any person under sub-section (1).
- (6) Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely:—
- (a) no such order or direction shall be made in

respect of any person unless he has been given a reasonable opportunity of being heard;

- (b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and
- (c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

### **35R Appeal not to be filed in certain cases**

- (1) The Central Board of Excise and Customs may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal, application, revision or reference by the Central Excise Officer under the provisions of this Chapter.
- (2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the Central Excise Officer has not filed an appeal, application, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Central Excise Officer from filing appeal, application, revision or reference in any other case involving the same or similar issues or questions of law.
- (3) Notwithstanding the fact that no appeal, application, revision or reference has been filed by the Central Excise Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Central Excise Officer has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.

- (4) The Appellate Tribunal or court hearing such appeal, application, revision or reference shall have regard to the circumstances under which appeal, application, revision or reference was not filed by the Central Excise Officer in pursuance of the orders or instructions or directions issued under sub-section (1).
- (5) Every order or instruction or direction issued by the Central Board of Excise and Customs on or after the 20th day of October, 2010, but before the date on which the Finance Bill, 2011 receives the assent of the President, fixing monetary limits for filing of appeal, application, revision or reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly

### 36 Definitions

In this Chapter —

- (a) “appointed day” means the date of coming into force of the amendments to this Act specified in Part II of the Fifth Schedule to the Finance (No. 2) Act, 1980;
- (b) “High Court” means, —
- (i) in relation to any State, the High Court for that State;
  - (ii) in relation to a Union Territory to which the jurisdiction of the High Court of a State has been extended by law, that High Court;
  - (iii) in relation to the Union Territories of Dadra and Nagar Haveli and Daman and Diu, the High Court at Bombay;
  - (iv) in relation to any other Union Territory, the highest court of civil appeal for that territory other than the Supreme Court of India;
- (c) “President” means the President of the Appellate Tribunal.

### 36A Presumption as to documents in certain cases

Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall, —

- (a) unless the contrary is proved by such person, presume —
- (i) the truth of the contents of such document;
  - (ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person’s handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
- (b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

### 36B Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence

- (1) Notwithstanding anything contained in any other law for the time being in force, —
- a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
  - b) a facsimile copy of a document; or
  - c) a statement contained in a document and included in a printed material produced

by a computer (hereinafter referred to as a "computer printout"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question, shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

- (2) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following, namely:—
- a) the computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
  - b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;
  - c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and
  - d) the information contained in the statement reproduced or is derived from information supplied to the computer in the ordinary

course of the said activities.

- (3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether —
- a) by a combination of computers operating over that period; or
  - b) by different computers operating in succession over that period; or
  - c) by different combinations of computers operating in succession over that period; or
  - d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.
- (4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —
- a) identifying the document containing the statement and describing the manner in which it was produced;
  - b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
  - c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position

in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

- (5) For the purposes of this section, —
- a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
  - b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
  - c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. — For the purposes of this section, —

- a) “computer” means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and
- b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

### **37A Delegation of powers**

The Central Government may, by notification in the Official Gazette, direct that subject to such conditions, if any, as may be specified in the notification —

- a) any power exercisable by the Board under this Act may be exercisable also by a Chief Commissioner of Central Excise or a Commissioner of Central Excise empowered in this behalf by the Central Government;
- b) any power exercisable by a Commissioner of Central Excise under this Act may be exercisable also by a Joint Commissioner of Central Excise or an Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise empowered in this behalf by the Central Government;
- c) any power exercisable by a Joint Commissioner of Central Excise under this Act may be exercisable also by an Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise empowered in this behalf by the Central Government; and
- d) any power exercisable by an Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under this Act may be exercisable also by a gazetted officer of Central Excise empowered in this behalf by the Board.

### **37B Instructions to Central Excise Officers**

The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe

and follow such orders, instructions and directions of the said Board :

Provided that no such orders, instructions or directions shall be issued—

- a) so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or
- b) so as to interfere with the discretion of the Commissioner of Central Excise (Appeals) in the exercise of his appellate functions.

### **37C Service of decisions, orders, summons, etc**

- (1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served, -
  - a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963, to the person for whom it is intended or his authorised agent, if any;
  - b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;
  - c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.
- (2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have

been served on the date on which the decision, order, summons or notice is tendered or delivered by post or courier referred to in sub-section (1) or a copy thereof is affixed in the manner provided in sub-section (1).

### **37D Rounding off of duty, etc**

The amount of duty, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

### **38A Effect of amendments, etc. of rules, notifications or orders**

Where any rule, notification or order made or issued under this Act or any notification or order issued under such rule, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not -

- a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or
- b) affect the previous operation of any rule, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or
- c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, notification or order so amended, repealed, superseded or rescinded; or
- d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, notification or order so amended, repealed, superseded or rescinded; or
- e) affect any investigation, legal proceeding or

remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the rule, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded.

#### **40 Protection of action taken under the Act**

- (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Central Government or a State Government for anything which is done, or intended to be done, in good faith, in pursuance of this Act or any rule made thereunder.
- (2) No proceeding, other than a suit, shall be commenced against the Central Government or any officer of the Central Government or a State Government for anything done or purported to have been done in pursuance of this Act or any rule made thereunder, without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof or after the expiration of three months from the accrual of such cause.



# Negative List of Services

The negative list shall comprise of the following services, namely:

- (a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—
  - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
  - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
  - (iii) transport of goods or passengers; or
  - (iv) support services, other than the services covered under clauses (i) to (iii) above, provided to business entities;
- (b) services by the Reserve Bank of India;
- (c) services by a foreign diplomatic mission located in India;
- (d) services relating to agriculture or agricultural produce by way of—
  - (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
  - (ii) supply of farm labour;
  - (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
  - (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
  - (v) loading, unloading, packing, storage or warehousing of agricultural produce;
  - (vi) agricultural extension services;
  - (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;
- (e) trading of goods;
- (f) any process amounting to manufacture or production of goods;
- (g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television;
- (h) service by way of access to a road or a bridge on payment of toll charges;
  - (i) betting, gambling or lottery;
  - (j) admission to entertainment events or access to amusement facilities;
- (k) transmission or distribution of electricity by an electricity transmission or distribution utility;
- (l) services by way of—
  - (i) pre-school education and education up to higher secondary school or equivalent;
  - (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
  - (iii) education as a part of an approved vocational education course;
- (m) services by way of renting of residential dwelling for use as residence;
- (n) services by way of—
  - (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
  - (ii) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers;
- (o) service of transportation of passengers, with or without accompanied belongings, by—
  - (i) a stage carriage;
  - (ii) railways in a class other than—
    - (A) first class; or
    - (B) an air conditioned coach;
  - (iii) metro, monorail or tramway;
  - (iv) inland waterways;

- (v) public transport, other than predominantly for tourism purpose, in a vessel, between places located in India; and
- (vi) metered cabs, radio taxis or auto rickshaws;
- (p) services by way of transportation of goods—
  - (i) by road except the services of—
    - (A) a goods transportation agency; or
    - (B) a courier agency;
  - (ii) by an aircraft or a vessel from a place outside India upto the customs station of clearance in India; or
  - (iii) by inland waterways;
- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

# Exempted List of Services



## Notification No. 25/2012 – Service Tax dated 20 June 2012 (as amended)

1. Services provided to the United Nations or a specified international organization;
2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;
3. Services by a veterinary clinic in relation to health care of animals or birds;
4. Services by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of charitable activities;
5. Services by a person by way of—
  - (a) renting of precincts of a religious place meant for general public; or
  - (b) conduct of any religious ceremony;
6. Services provided by—
  - (a) an arbitral tribunal to—
    - (i) any person other than a business entity; or
    - (ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;
  - (b) an individual as an advocate or a partnership firm of advocates by way of legal services to,—
    - (i) an advocate or partnership firm of advocates providing legal services ;
    - (ii) any person other than a business entity; or
    - (iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or
  - (c) a person represented on an arbitral tribunal to an arbitral tribunal;
7. Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India;
8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;
9. Services provided to an educational institution in respect of education exempted from service

- tax, by way of,—
- (a) auxiliary educational services; or
  - (b) renting of immovable property;
- 9A. Any services provided by,—
- (i) the National Skill Development Corporation set up by the Government of India;
  - (ii) a Sector Skill Council approved by the National Skill Development Corporation;
  - (iii) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation;
  - (iv) a training partner approved by the National Skill Development Corporation or the Sector Skill Council in relation to (a) the National Skill Development Programme implemented by the National Skill Development Corporation; or (b) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or (c) any other Scheme implemented by the National Skill Development Corporation;
10. Services provided to a recognised sports body by—
- (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;
  - (b) another recognised sports body;
11. Services by way of sponsorship of sporting events organised,—
- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
  - (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
  - (c) by Central Civil Services Cultural and Sports Board;
  - (d) as part of national games, by Indian Olympic Association; or
  - (e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme;
12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of—
- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
  - (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
  - (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
  - (d) canal, dam or other irrigation works;
  - (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
  - (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;
13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,—
- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;
  - (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
  - (c) a building owned by an entity registered under section 12AA of the Income-tax

- Act, 1961 (43 of 1961) and meant predominantly for religious use by general public;
- (d) a pollution control or effluent treatment plant, except located as a part of a factory; or  
a structure meant for funeral, burial or cremation of deceased;
14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,—
- (a) an airport, port or railways, including monorail or metro;
- (b) a single residential unit otherwise than as a part of a residential complex;
- (c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
- (d) post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
- (e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;
15. Services provided by way of temporary transfer or permitting the use or enjoyment of a copyright,—
- (a) covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical or artistic works; or
- (b) of cinematograph films for exhibition in a cinema hall or cinema theatre;
16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;
17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;
18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;
19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year;
- 19A. Services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air-heating at any time during the year;
20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods—
- (a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- (b) defence or military equipments;
- (c) newspaper or magazines registered with the Registrar of Newspapers;
- (d) railway equipments or materials;
- (e) agricultural produce;
- (f) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or
- (g) chemical fertilizer and oilcakes;
21. Services provided by a goods transport agency, by way of transport in a goods carriage of,-
- (a) agricultural produce;
- (b) goods, where gross amount charged for the transportation of goods on a consignment

- transported in a single carriage does not exceed one thousand five hundred rupees;
- (c) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty;
- (d) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;
- (e) chemical fertilizer and oilcakes;
- (f) newspaper or magazines registered with the Registrar of Newspapers;
- (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
- (h) defence or military equipments;
22. Services by way of giving on hire—
- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
- (b) to a goods transport agency, a means of transportation of goods;
23. Transport of passengers, with or without accompanied belongings, by—
- (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;
- (b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or
- (c) ropeway, cable car or aerial tramway;
24. Omitted
25. Services provided to Government, a local authority or a governmental authority by way of -
- (a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or
- (b) repair or maintenance of a vessel;
26. Services of general insurance business provided under following schemes—
- (a) Hut Insurance Scheme;
- (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
- (c) Scheme for Insurance of Tribals;
- (d) Janata Personal Accident Policy and Gramin Accident Policy;
- (e) Group Personal Accident Policy for Self-Employed Women;
- (f) Agricultural Pumpset and Failed Well Insurance;
- (g) premia collected on export credit insurance;
- (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;
- (i) Jan Arogya Bima Policy;
- (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);
- (k) Pilot Scheme on Seed Crop Insurance;
- (l) Central Sector Scheme on Cattle Insurance;
- (m) Universal Health Insurance Scheme;
- (n) Rashtriya Swasthya Bima Yojana; or
- (o) Coconut Palm Insurance Scheme;
- 26A. Services of life insurance business provided under following schemes -
- (a) Janashree Bima Yojana (JBY); or
- (b) Aam Aadmi Bima Yojana (AABY);
27. Services of life insurance business provided under following schemes -
- (a) Janashree Bima Yojana (JBY); or
- (b) Aam Aadmi Bima Yojana (AABY);
- Services provided by an incubatee up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:—
- (a) the total turnover had not exceeded fifty

- lakh rupees during the preceding financial year; and
- (b) a period of three years has not been elapsed from the date of entering into an agreement as an incubatee;
28. Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution—
- (a) as a trade union;
- (b) for the provision of carrying out any activity which is exempt from the levy of service tax; or
- (c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;
29. Services by the following persons in respective capacities—
- (a) sub-broker or an authorised person to a stock broker;
- (b) authorised person to a member of a commodity exchange;
- (c) mutual fund agent to a mutual fund or asset management company;
- (d) distributor to a mutual fund or asset management company;
- (e) selling or marketing agent of lottery tickets to a distributor or a selling agent;
- (f) selling agent or a distributor of SIM cards or recharge coupon vouchers;
- (g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or
- (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;
30. Carrying out an intermediate production process as job work in relation to—
- (a) agriculture, printing or textile processing;
- (b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);
- (c) any goods on which appropriate duty is payable by the principal manufacturer; or
- (d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;
31. Services by an organiser to any person in respect of a business exhibition held outside India;
32. Services by way of making telephone calls from—
- (a) departmentally run public telephone;
- (b) guaranteed public telephone operating only for local calls; or
- (c) free telephone at airport and hospital where no bills are being issued;
33. Services by way of slaughtering of animals;
34. Services received from a provider of service located in a non-taxable territory by—
- (a) Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
- (b) an entity registered under section 12AA

of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or

- (c) a person located in a non-taxable territory;
- 35. Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material;
- 36. Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 (34 of 1948);
- 37. Services by way of transfer of a going concern, as a whole or an independent part thereof;
- 38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;
- 39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution.

Definitions. - For the purpose of this notification, unless the context otherwise requires,—

- (a) "Advocate" has the meaning assigned to it in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961 ( 25 of 1961);
- (b) "appropriate duty" means duty payable on manufacture or production under a Central Act or a State Act, but shall not include 'Nil' rate of duty or duty wholly exempt;
- (c) "arbitral tribunal" has the meaning assigned to it in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 (26 of 1996);
- (d) "authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;

- (e) "authorised person" means any person who is appointed as such either by a stock broker (including trading member) or by a member of a commodity exchange and who provides access to trading platform of a stock exchange or a commodity exchange as an agent of such stock broker or member of a commodity exchange;
- (f) "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;
- (g) "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);
- (h) "brand ambassador" means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person;
- (i) "business facilitator or business correspondent" means an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by Reserve Bank of India;
- (j) "clinical establishment" means a hospital, nursing home, clinic, sanatorium or any



- other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;
- (k) "charitable activities" means activities relating to—
- (i) public health by way of—
    - (a) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
    - (b) public awareness of preventive health, family planning or prevention of HIV infection;
  - (ii) advancement of religion or spirituality;
  - (iii) advancement of educational programmes or skill development relating to,-
    - (a) abandoned, orphaned or homeless children;
    - (b) physically or mentally abused and traumatized persons;
    - (c) prisoners; or
    - (d) persons over the age of 65 years residing in a rural area;
  - (iv) preservation of environment including watershed, forests and wildlife;
- (l) "commodity exchange" means an association as defined in section 2(j) and recognized under section 6 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);
- (m) "contract carriage" has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);
- (n) "declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit;
- (o) "distributor or selling agent" has the meaning assigned to them in clause (c) of 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, Extraordinary, Part-II, Section 3, Sub-section (i), vide number G.S.R. 278(E), dated the 1st April, 2010 and shall include distributor or selling agent authorised by the lottery- organising State;
- (p) "general insurance business" has the meaning assigned to it in clause (g) of section 3 of General Insurance Business (Nationalisation) Act, 1972 (57 of 1972);
- (q) "general public" means the body of people at large sufficiently defined by some common quality of public or impersonal nature;
- (r) "goods carriage" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);
- (s) "governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;
- (t) "health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by

way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;

- (u) "incubatee" means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to develop and produce hi-tech and innovative products;
- (v) "insurance company" means a company carrying on life insurance business or general insurance business;
- (w) "legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority;
- (x) "life insurance business" has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);
- (y) "original works" means has the meaning assigned to it in Rule 2A of the Service Tax (Determination of Value) Rules, 2006;
- (z) "principal manufacturer" means any person who gets goods manufactured or processed on his account from another person;
- (za) "recognized sports body" means - (i) the Indian Olympic Association, (ii) Sports Authority of India, (iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations, (iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government, (v) the International Olympic Association or a federation recognised by the International Olympic Association or (vi) a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India;
- (zb) "religious place" means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality;
- (zc) "residential complex" means any complex comprising of a building or buildings, having more than one single residential unit;
- (zd) "rural area" means the area comprised in a village as defined in land revenue records, excluding- the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or any area that may be notified as an urban area by the Central Government or a State Government;
- (ze) "single residential unit" means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;
- (zf) "specified international organization" means an international organization declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply;
- (zg) "state transport undertaking" has the

meaning assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(zh) "sub-broker" has the meaning assigned to it in sub-clause (gc) of clause 2 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992;

(zi) "trade union" has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926 (16 of 1926).

# Abatement Notification

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act), and in supersession of notification number 13/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, section 3, Sub-section (i) vide number G.S.R. 211 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of the description specified in

column (2) of the Table below, from so much of the service tax leviable thereon under section 66B of the said Act, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (3) of the said Table, of the amount charged by such service provider for providing the said taxable service, unless specified otherwise, subject to the relevant conditions specified in the corresponding entry in column (4) of the said table.

**Table**

Sl. No.	Description of taxable service	Percentage	Conditions
(1)	(2)	(3)	(4)
1	Services in relation to financial leasing including hire purchase	10	Nil
2	Transport of goods by rail	30	Nil
3	Transport of passengers, with or without accompanied belongings by rail	30	Nil
4	Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises	70	(i) CENVAT credit on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
5	Transport of passengers by air, with or without accompanied belongings	40	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	60	Same as above.
7	Services of goods transport agency in relation to transportation of goods.	25	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
8	Services provided in relation to chit	70	Same as above.

9	Renting of any motor vehicle designed to carry passengers	40	Same as above.
10	Transport of goods in a vessel	50	Same as above.
11	Services by a tour operator in relation to,- (i) a package tour	25	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
	(ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour	10	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
	(iii) any services other than specified at (i) and (ii) above.	40	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii)The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.
12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority,-		(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The value of land is included in the amount charged from the service receiver.
	(a) for a residential unit satisfying both the following conditions, namely:- (i) the carpet area of the unit is less than 2000 square feet; and (ii) the amount charged for the unit is less than rupees one crore;	25	
	(b) for other than the (a) above	30	

Explanation. -

A. For the purposes of exemption at Serial number 1 -

- (i) the amount charged shall be an amount, forming or representing as interest, i.e. the difference between the installments paid towards repayment of the lease amount and the principal amount contained in such installments;
- (ii) the exemption shall not apply to an amount, other than an amount forming or representing as interest, charged by the service provider such as lease management fee, processing fee, documentation charges and administrative fee, which shall be added to the amount calculated in terms of (i) above.

B. For the purposes of exemption at Serial number 4 -

The amount charged shall be the sum total of the gross amount charged and the fair market value of all goods and services supplied in or in relation to the supply of food or any other article of human consumption or any drink (whether or not intoxicating) and whether or not supplied under the same contract or any other contract, after deducting-

- (i) the amount charged for such goods or services supplied to the service provider, if any; and
- (ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

C. For the purposes of exemption at Serial number 12 -

The amount charged shall be the sum total of the amount charged for the service including the fair market value of all goods and services supplied by the recipient(s) in or in relation to the service, whether or not supplied under the same contract

or any other contract, after deducting-

- (i) the amount charged for such goods or services supplied to the service provider, if any; and
- (ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

2. For the purposes of this notification, unless the context otherwise requires,-

- a. "chit" means a transaction whether called chit, chit fund, chitty, kuri, or by whatever name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical installments over a definite period and that each subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to a prize amount,
- b. "package tour" means a tour wherein transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour,
- c. "tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours,

3. This notification shall come into force on the 1st day of July, 2012.

# Reverse Charge Notifictaion

In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

## I. The taxable services,-

- (A) (i) provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;
- (ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,
  - (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
  - (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
  - (c) any co-operative society established by or under any law;
  - (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
  - (e) any body corporate established, by or under any law; or
  - (f) any partnership firm whether registered or not under any law including association of persons;
- (iii) provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory;
- (iv) provided or agreed to be provided by,-
  - (A) an arbitral tribunal, or
  - (B) an individual advocate or a firm of advocates by way of legal services, or
  - (C) Government or local authority by way of support services excluding,-
    - (1) renting of immovable property, and
    - (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994, to any business entity located in the taxable territory;
  - (iva) provided or agreed to be provided by a director of a company to the said company;
  - (v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or security services or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;
- (B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;
- (II) The extent of service tax payable thereon by

the person who provides the service and the person who receives the service for the taxable services specified in (l) shall be as specified in the following Table, namely:-

**Table**

Sl.No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
1	in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	Nil	100%
2	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%
3	in respect of services provided or agreed to be provided by way of sponsorship	Nil	100%
4	in respect of services provided or agreed to be provided by an arbitral tribunal	Nil	100%
5	in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services	Nil	100%
5A	in respect of services provided or agreed to be provided by a director of a company to the said company	Nil	100%
6	in respect of services provided or agreed to be provided by Government or local authority by way of support services excluding,- (1) renting of immovable property, and (2) services specified in subclauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994	Nil	100%
7	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business	Nil	100%
	(b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business	60%	40%



8	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose or security services	25%	75%
9	in respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%
10	in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Nil	100%

Explanation-I. - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

Explanation-II. - In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

2. This notification shall come into force on the 1st day of July, 2012.

**CORRIGENDUM Dated 29th June, 2012**

In the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 30/2012-Service Tax, dated the 20th June, 2012 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 472 (E), dated the 20th June, 2012, in para I, in clause (A), in sub-clause (iv), in item (B),-  
for " support", read " legal".



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