

SERVICE TAX

01. Introduction –

Prior to July, 1994 only the manufacturing sector was subject to indirect tax in the form of Central Excise, placing a disproportionate burden on this sector. Considering that service element constitutes significant part of the GDP, Service Tax was imposed in 1994 for the first time on telephone services, services relating to non – life insurance and services provided by Stock Brokers. A number of new services were brought under tax net over a period of time and 100 services were subject to service tax. Service tax was applicable to the whole of India except the State of Jammu and Kashmir. It also extended to the designated areas in the Continental Shelf and Exclusive Economic Zone of India.

02. Entry 97 of List –I of Schedule VII of the Constitution of India extends the constitutional rights to the Central Government to levy service tax. The Government of India, through the Department of Revenue administers the levy and collection of service tax in India. The service tax being an indirect tax, its administrative control is vested with the Central Board of Excise and Customs(CBEC).

03. The legal provisions for the levy and collection of Service Tax were introduced through Chapter V of the Finance Act, 1994. Initially the service tax rate was 5% of the gross value of service. This was enhanced to 8% in the 2003 Budget (with extension of credit facility across the services). In 2004 Budget the rate was again enhanced to 10% (+ a Cess of 2% thereon, introduced from September 2004) with extension of credit across goods and services. The rate was enhanced to 12% in the 2006 Budget. The rate was enhanced to 14% in 2015 with 0.50% Swachh Bharat Cess. In addition to the Swachh Bharat Cess 0.5% Krishi Kalyan Cess was also imposed from 2016 on 14% Service tax.

04. Authority for levy (charging section)

4.1 The authority for levy of service tax on specified services was contained in Section 66 of the Finance Act, 1994. With effect from 01.07.2012, the authority for levy of service tax was contained in Section 66B of the Finance Act, 1994 which stipulated a rate of 14 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 any as may be prescribed.

4.2 The negative list of services is provided in Section 66D of the Finance Act, 1994 and the same comprises of the following services: -

- (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) any service, other than 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) ***]
- (g) selling of space or time slots for advertisements in print media;
- (h) service by way of access to a road or a bridge on payment of toll charges;
 - (i) betting, gambling or lottery;
- [(j) ***]
- (k) transmission or distribution of electricity by an electricity transmission or distribution utility;
- [(l) ***]
- (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 authorized dealers of foreign exchange or amongst banks and such dealers;
- (o) service of transportation of passengers, with or without accompanied belongings, by-
 - [(i) ***]
 - (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 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]**]
 - (iii) by inland waterways;
- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

4.3 Certain Services have also been exempted vide Notification No. 25/2012- Service Tax dated 20.06.2012.

05. **Person liable to pay service tax**

The tax is normally payable by the service provider. However, law empowers the Government to notify a person other than the service provider to pay the service tax. Notification No. 30/2012- Service Tax dated 20.06.2012 provides the taxable services on which tax is to be paid under reverse charge and the extent of service tax payable thereon by the person who provides the service and the person who receives the service for the specified taxable services have been specified.

06. **Taxable value**

“Value of taxable service” as defined under Section 67 of the Finance Act,1994 means the gross amount charged by the service provider for the taxable service rendered by him. The Point of Taxation Rules, 2011 have been made for the purpose of collection and determination of rate of service tax. Place of Provision of Services Rules, 2012 have been made for the purpose of determination of the place of provision of services.

07. **Presumption that incidence is passed on**

Service Tax is collected from the service provider. However, being an indirect tax, its incidence is normally passed on by the service provider to his client. Under the law, therefore, every person who has paid service tax is deemed to have passed on its full incidence to the buyer of the service. Section 12B of the Central Excise Act has been made applicable to Service Tax, which requires that any amount (which represents service tax) if collected, is required to be deposited in government exchequer.

08. **Registration**

The application for Service Tax Registration has to be submitted online in Form ST-1 within 30 days from the date on which the Service Tax had to be levied or within 30 days from the date of commencement of business, whichever is later. There is no registration fee. Where a taxpayer provides more than one taxable service, he may make a single application stating therein all the services provided by him.

09. **Assessment and payment of service tax**

Self-assessment is to be done by the taxpayer and return filed with the jurisdictional Superintendent of Central Excise (Section 70 of the Finance Act, 1994).

Service tax is to be paid to the credit of the Central Government by the 6th day of the month, if the duty is deposited electronically and 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. There is a simple interest on delayed payment of tax under Section 75 of the Finance Act, 1994. In addition, penalty under Section 76 is also attracted on failure to pay tax.

10. Return

A half yearly return has to be filed by every taxpayer in form ST-3 or ST-3A or ST-3C (i.e. for periods April to September and October to March) by the 25th of the month following the half year. Section 77 of the Finance Act, 1994 provides for a penalty for failure to furnish returns. Returns for the period of 1st April, 2017 to 30th June, 2017, had to be submitted by the 15th August, 2017 in form ST- 3 or ST- 3C. Revised Return for the said period had to be submitted within a period of 45 days from the date of submission of Return.

11. Service tax short paid, not paid, short levied or not levied

For any wilful omission or incorrect supply of facts involving short payment of tax, the department can initiate recovery proceedings extending up- to a retrospective period of 5 years. In the remaining cases of short payment, dues can be recovered within thirty months. Provision has been made for voluntary payment by an assessee of any amount collected in excess of the service tax leviable but not deposited with the Central Government or recovery of such excess amount. It may be noted that any amount collected as service tax, whether or not legally required to be paid, is to be deposited with the Government. This has been made applicable not only to a person liable to pay service tax but also to any person, even if he is not an assessee.

Section 73A has been inserted to provide for payment or recovery of any amount representing service tax, that has been collected by a person but not deposited with the Central Government.

Section 73B enables the Central Government to collect interest on the amount referred to in Section 73A.

Section 73C provides for provisional attachment of property by the Central Excise Officer during the pendency of any proceedings under Section 73 or Section 73A.

Section 73D provides for publishing the name of any person and particulars of any proceedings in relation to such person, in public interest.

Section 76 provides for imposition of penalty for failure to pay service tax by the due date. The penalty for delayed payment has also been linked to the amount due.

12. Refund

Notification 187/6/2015 dated 10.11.2015 has been issued to expedite the sanction of refund claims of unutilized input tax credit under rule 5 of the CENVAT Credit Rules, 2004 pending as on 31.3.2015.

13. Prosecution provisions

- (1) Whoever commits any of the following offences, namely:
- (a) knowingly evades the payment of service tax under this Chapter; or
 - (b) avails and utilizes credit of taxes or duty without actual receipt of 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 two hundred 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 two hundred 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 case of any other offences, with imprisonment for a term which may extend to one year.

13.2. A person shall not be prosecuted for any offence under this section except with the previous sanction of the Principal Chief Commissioner of Central Excise and Chief Commissioner of Central Excise.

13.3. An offence under clause (ii) of sub-section (1) of section 89 shall be cognizable.

13.4. If the Principal Commissioner of Central Excise or Commissioner of Central Excise has reason to believe that any person has committed an offence specified in clause (ii) of sub-section (1) of section 89, he may, by general or special order, authorize any officer of

Central Excise, not below the rank of Superintendent of Central Excise, to arrest such person. The officer authorized to arrest a person shall, inform such person of the grounds of arrest and produce him before a magistrate within twenty-four hours. 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.

14. Credit of service tax and excise duty paid on input goods and services

The Cenvat Credit Rules, 2004 provides for allowing credit of service tax paid on input service and excise duty (or CVD) paid on input goods and capital goods used in relation to providing a taxable output service.

15. Repeal of the Act

With effect from 01.07.2017, Service Tax has been subsumed in Goods and Service Tax (GST)

16. Link to websites:

For more details please visit www.cbec.gov.in or www.aces.gov.in