

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. The number of new services was brought under tax net over period of time and presently 100 services are subject to service tax (list of taxable services at annexure 'A'). Service Tax is applicable to the whole of India except the State of Jammu and Kashmir. It also extends to the designated areas in the Continental Shelf and Exclusive Economic Zone of India.

02. The legal provisions for the levy and collection of Service Tax were introduced through Finance Bill 1994. Thus, the law relating to Service Tax is still governed by Chapter V of the Finance Act, 1994 (Sections 64 to 96I). Initially the service tax rate was 5% of the gross value of service. This was enhanced to 8% in 2003 Budget (with extension of credit facility acrossed the services). In 2004 Budget the rate were further 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 the present rate of 12% in 2006 Budget.

03. Sub – section (105) of section (2) defines individual activities that fall under taxable service. Thus unlike excise & customs, there is no separate tariff for service tax.

04. Authority for levy (Charging section)

The authority for levy of Service Tax on specified services is contained in Section 66 of the Finance Act, 1994. At present, this section stipulates a rate of tax of 12 per cent of the value of a taxable service. In addition education cess @ 2% and secondary and higher education cess @1% of amount of service tax is also leviable.

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.. In some of the cases liability of payment of service tax has been shifted to the service provider. Considerations like administrative ease, cost of collection may require the shifting of the burden of payment from the service provider to service receiver or any other person. To illustrate, the service Tax leviable on service provided by an insurance agent is not to be paid by the insurance agent himself but by the

insurance company. Similarly in case a service provider is from outside India, the liability to pay service tax has been shifted to the person receiving service in India. In case of Goods Transport Agencies the liability to pay tax is on the consignor or consignee (who so ever pays the freight charges) if they fall under special category, as enumerate under notification No. 24/2005-ST dated 7.06.2005. In all other cases the Goods Transport Agency is required to pay service tax.

06. Taxable Value

“Value of taxable service” as defined under Section 67 of the aforesaid Act means the gross amount charged by the service provider for the taxable service rendered by him. Provisions have been made in 2006 Budget (by amending section 67) to provide, manner of determination of value of taxable service in cases where the consideration received in other than money terms or when the consideration received is not ascertainable. Valuation rules have also been made for this purpose .

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. This is because section 12B of the Central Excise Act has been made applicable to Service Tax, which requires that a any amount (which represents service tax) if is collected, is required to be deposited in government exchequer.

08. Exemption

A threshold limit of Rs 8 lakh has been provided vide notification No. 6/2005-ST. Full exemption is admissible for services provided to United Nations or an International Organisation (as defined) vide notification No. 16/2002 – ST dated 2.8.2002. Notification No. 17/2002 – ST dated 21.11.2002 provides full exemption to taxable service provided to a developer or units in a Special Economic Zone (SEZ) subject to specified terms and conditions. In addition to these there are certain service specific exemptions.

9. Registration

The taxpayer has to submit an application in form ST-1 for registering himself with the jurisdictional Superintendent of Central Excise. This application is to be made within 30 days

from the date a particular Service Tax is 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. The Superintendent grants a certificate of registration in form ST-2 within 7 days failing which it will be deemed as if the taxpayer has been registered. If a taxpayer has the system of centralized billing or centralised accounting, he may apply for a single registration for the office from where the centralised billing is done or where centralised accounts are maintained and not a separate one for each office.

10. **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).

The tax is to be paid for a particular period only on the value received for the taxable service provided and not on the amount billed to the client. In the case of corporate taxpayers, Service Tax on the value of taxable service received during a calendar month has to be paid by the 5th of the month immediately following that month. Non-corporate taxpayers have to pay the tax on a quarterly basis i.e by the 5th of the calendar month immediately following the last month of the quarter. Thus, payment of service tax is due from non-corporate taxpayers by the 5th of April, July, October and January respectively in each financial year. The tax is required to be paid under TR6 challan (yellow colour) in the specified branches of designated banks.

If the Service Tax is deposited by cheque, the date of presentation of cheque to the designated bank is deemed to be the date of payment. However, if the cheque is not honoured, it would amount to non-payment of Service Tax and would attract necessary penal consequences. 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 the tax.

11. **Return**

A half-yearly return has to be filed by every taxpayer in form ST-3 or ST-3A (i.e. for periods April to September and October to March) by the 25th of the month following the half year. Form ST 3 A is applicable to cases of provisional assessment and is in the nature of a Memorandum for provisional deposit. Section 77 provides for a penalty for failure to furnish returns.

12. **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 the normal time of one year. In case the taxpayer has paid Service Tax but the taxable service is not so provided by him either wholly or partially for any reason, he may adjust the excess Service Tax so paid by him (calculated on a pro-rata basis) against his tax liability for the subsequent period, provided the taxpayer has refunded the value of taxable service and the Service Tax thereon to the client.

Section 73 (1A) has been provided for conclusion of adjudication proceedings in respect of a person who has voluntarily deposited the service tax demanded along with interest and penalty equal to 25 per cent. of the service tax specified in the demand notice .

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 under this Section. This section 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 73 A 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 73 B enables the Central Government to collect interest on the amount referred to in section 73A;

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

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

The 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;

13. **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.

No Cenvat credit is admissible on inputs (services and goods) received and consumed in relation to rendering of such output service which is either exempt from whole of Service Tax leviable thereon or is not a taxable service. Also, no credit is admissible on capital goods used exclusively for providing exempt/non taxable service. In this regard the person availing credit is required to maintain separate records in respect of input goods and services meant for consumption in relation to rendering of output services which are chargeable to Service Tax and those meant for consumption in relation to rendering of output services which are exempted services or non-taxable services as the case may be. However, if the service provider opts not to comply with the provision stated in preceding para, he shall be allowed to utilize Service Tax credit for payment of Service Tax on any output service only to the extent of an amount not exceeding 20% of the amount of Service Tax payable on such output service.

Other significant features of the CENVAT credit are that refund or rebate of credit is admissible in case of export of services provided drawback is not availed; on input services credit is admissible only on or after the day which payment is made of the value of input service and the service tax paid or payable as indicated in the bill; credit of education cess is admissible for payment of education cess on output service; Cenvat credit is admissible on capital goods even if they are procured on lease, hire and purchase, or loan agreement from a financing company; person availing credit is required to maintain adequate record of receipt, disposal and inventory of input service and goods; assessee is required to furnish the information to the jurisdictional superintendent in the manner as may be specified by the Board regarding the credit availed and utilized by him; and irregular availment of credit attracts confiscation and penalty.

14. Link to websites:

www.cbec.gov.in, and www.servicetax.gov.in

15. **List of taxable services**

Taxable services

Advertising agency	International air travel
Airport Services	Internet Café
Air Transport of Goods service	Internet telephony
Air Travel Agent	Life Insurance
Architect	Mailing list compilation and mailing
Assets management	Man Power Recruitment and Supply agency
Auction service	Management Consultant
Authorised automobile repair and maintenance	Management, maintenance or repair
Automated teller machine operation , management, maintenance	Mandap Keeper
Banking and other financial services	Market Research agency
Beauty parlour	Mining of mineral, oil or gas
Broadcasting	On-line information and database access and/ or retrieval
Business auxiliary	Opinion Poll Service
Business Exhibition Service	Outdoor Catering Service
Business support service	Packaging service
Cable Operators	Pandal and Shamiana
Cargo handling	Photography
Chartered Accountant	Port services (major ports) in ‘zn’ above
Cleaning service	Port services (other than major ports)
Clearing and Forwarding	Public relation management
Clubs and associations service	Rail travel agent
Commercial coaching or training	Real Estate Agent/Consultant
Company Secretary	Recovery agents
Construction of commercial complex	Registrar service to an issue
Consulting Engineer	Rent- a- Cab operator
Containerized rail transport	Renting of immovable property
Convention services	Residential complex construction
Cost Accountant	Sale of space for advertisement
Courier	Scientific and technical consultancy
Credit Rating agency	Security Agency
Credit/debit/charged card	Share transfer agent
Custom House Agent	Ship Cruise tour
Design services	Ship management
Development and supply of content for telecom, advertising and online information and database retrievable	Site preparation
Dredging	Sound recording
Dry cleaning	Sponsorship
Erection, commissioning or installation	Steamer Agent

