

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE: TRICHY.
NO.1, WILLIAMS ROAD, CONTONMENT, TRICHY-620 001.

Trade Notice No.17/2007 S. Tax

Dated: 27-8-2007.

Subject: **Service Tax –Communication of Circular No. 96/7/2007-ST
& No.97/8/2007-ST dt. 23-8-07 regarding**
**1) Clarification on technical issues relating to taxation of
services under the Finance Act, 1994 –**
(2) Procedural issues in Service Tax-circular-reg.

Ministry's Service Tax Circular **No. 96/7/2007-ST & No.97/8/2007-ST**, both dated **23-8-07** issued vide **F.No. 354/28/2007-TRU & F.No.137/85/2007-CX.4** on the above subjects are enclosed herewith for information, guidance and necessary action.

The contents of this Trade Notice may be brought to the knowledge of all constituent members of the Trade Associations and Chamber of Commerce.

(Issued from C.No.IV/16/905/2007 S.Tax Vol-II)

Sd./-
(A.RAJENDRAN)
ASSISTANT COMMISSIONER (ST).

To
The Mailing list I / II / III.

F.No.354/28/2007-TRU
Government of India
Ministry of Finance
Department of Revenue
Tax Research Unit

Sub: Clarification on technical issues relating to taxation of services under the Finance Act, 1994 – Regarding.

Service Tax was introduced in the year 1994 with three taxable services. At present, one hundred services are specified as taxable services. Since the introduction of service tax, number of clarifications in the form of circulars / instructions / letters have been issued by the Central Board of Excise & Customs (CBEC), Director General (Service Tax) and field formations.

2. Government decided to undertake a comprehensive review of all the clarifications issued since the introduction of service tax on matters relating to service tax in various forms by different authorities keeping in view the changes that had been made in the statutory provisions, the judicial pronouncements and other relevant factors, and appointed a Committee under Shri T.R.Rustagi, former Chief Commissioner of Customs & Central Excise and Director General of Inspection to undertake the review of the clarifications.

3. Comments, views and suggestions were also sought from the trade and industry associations, departmental officers and interested persons.

4. Shri T.R.Rustagi submitted his report to the Government. The report of Shri T.R.Rustagi was placed on the CBEC web site for comments and suggestions.

5. Taking into consideration the report submitted by Shri T.R.Rustagi and the views and suggestions received from the trade and industry associations, departmental officers and other stakeholders, it is proposed to codify and issue a comprehensive circular on the technical issues.

6. This circular supersedes all circulars, clarifications and communications, other than Orders issued under section 37B of the Central Excise Act, 1944 (as made applicable to service tax by section 83 of the Finance Act, 1994), issued from time to time by the CBEC, DG (Service Tax) and various field formations on all technical issues including the scope and classification of taxable services, valuation of taxable services, export of services, services received from outside India, scope of exemptions and all other matters on levy of service tax. With the issue of this circular, all earlier clarifications issued on technical issues relating to service tax stand withdrawn.

7. At the time of introduction of the Finance Bills and after enactment of respective Finance Acts, letters are issued by TRU explaining the provisions contained in the Finance Bills / Finance Acts. Such letters explaining the provisions contained in the Finance Bill / Finance Act would be read in the relevant context.

8. Views stated in the circular reflect the interpretation of the law and the current practice of the department. This circular is not to be treated as part of law and does not override the legal provisions. The relevant statutory provisions must be referred to and they will prevail.

9. **CODING SYSTEM:**

For ease of reference, a coding system is followed. Views of CBEC are indicated separately for each individual issue. Individual reference code is given for each issue. Unique three-digit reference code followed by the date of issue is given for each issue-wise classification. Individual taxable service is identified by a three-digit code. First three digits of the reference code relates to a specific taxable service. In addition to three digit codes for individual taxable services, three-digit codes are also provided for issues other than individual taxable services:

- 996 – Services provided from outside India and received in India.
- 997 – Export of Services
- 998 – Valuation of taxable services.
- 999 – Miscellaneous purposes.

Three-digit code is followed by a dot and two digits. Two digits after the dot indicate the issue clarified under that particular three-digit code. Digit codes are followed by a slash and thereafter the date of issue of the clarification is indicated.

10. List of three-digit codes and the corresponding subjects is given in Annexure.
11. Trade and field formations may be informed accordingly.
12. Hindi version will follow.

Reference Code	Issue	Clarification
(1)	(2)	(3)
002.01 / 23.08.07	Whether service tax is liable on the amount collected as surcharge for delayed payment of telephone bills?	An amount collected for delayed payment of a telephone bill is not to be treated as consideration charged for provision of telecom service and, therefore, does not form part of the value of taxable service under section 67 read with Service Tax (Determination of Value) Rules, 2006.
004.01 / 23.08.07	Persons / agencies canvass advertisements for publishing, on commission basis. Such persons / agencies do not provide any other services like making, preparation, display or exhibition of advertisement. Whether merely canvassing advertisement for publishing on a commission basis by persons / agencies is classifiable as Advertising Agency service [section 65(105)(e)] or not?	Merely canvassing advertisements for publishing, on commission basis, is not classifiable under the taxable service falling under section 65(105)(e). Such services are liable to service tax under business auxiliary service [section 65(105)(zzb)].
005.01 / 23.08.07	Some transporters undertake door- to-door transportation of goods or articles and they have made special arrangements for speedy transportation and timely delivery of such goods or articles. Such services are known as 'Express Cargo Service' with assurance of timely delivery. Whether such 'Express cargo service' is covered under courier agency service [section 65(105)(f)]?	The nature of service provided by 'Express Cargo Service' provider falls within the scope and definition of the courier agency. Hence, the said service is liable to service tax under courier agency service [section 65(105)(f)].
005.02 / 23.08.07	"Angadia" undertakes delivery of documents, goods or articles received from a customer to another person for a consideration. Whether services provided by angadia is liable to service tax under courier agency service [section 65(105)(f)]?	Angadias are covered within the definition of 'courier agency' [section 65(33)]. Therefore, such services provided by angadia is liable to service tax under courier agency service [section 65(105)(f)].
006.01 / 23.08.07	Whether a self-employed professionally qualified engineer can be considered as 'consulting engineer' [section 65(31)] and	Consulting engineers include self-employed professionally qualified engineer, whether or not employing others for

Reference Code	Issue	Clarification
(1)	(2)	(3)
	service provided by such self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering is liable to service tax under consulting engineer service [section 65(105)(g)]?	assistance. Services provided by such self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering is liable to service tax under consulting engineer service [section 65(105)(g)].
010.01 / 23.08.07	Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses / MNCs, who come to the institutes for recruiting candidates through campus interviews. Whether services provided by such institutions in relation to recruitment of manpower are liable to service tax under 'manpower recruitment or supply agency' service [section 65(105)(k)]?	'Manpower recruitment or supply agency' is defined as <i>"any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to a client"</i> [section 65(68)]. Educational institutes such as IITs and IIMs fall within the definition of 'manpower recruitment or supply agency', and service tax is liable on services provided by such institutions in relation to campus recruitment under section 65(105)(k).
010.02 / 23.08.07	Business or industrial organisations engage services of manpower recruitment or supply agencies for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. Whether service tax is liable on such services under manpower recruitment or supply agency's service [section 65(105)(k)]	In the case of supply of manpower, individuals are contractually employed by the manpower recruitment or supply agency. The agency agrees for use of the services of an individual, employed by him, to another person for a consideration. Employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual. Such cases are covered within the scope of the definition of the taxable service [section 65(105)(k)] and, since they act as supply agency, they fall within the definition of "manpower recruitment or supply agency" [section 65(68)] and are liable to service tax.
012.01 / 23.08.07	"Mandap" is defined as any immovable property as defined in section 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor coverings therein let out for a consideration for organizing any official, social or business function. [section 65(66)] "Mandap keeper" is defined as a person who allows temporary occupation of a mandap for a consideration for organising any official, social or business function [section 65(67)]. Whether hotels / restaurants letting out their halls, rooms etc. for social, official or	Halls, rooms etc. let out by hotels / restaurants for a consideration for organising social, official or business functions are covered within the scope of "mandap" [section 65(66)], and such hotels and restaurants are covered within the scope of "mandap keeper" [section 65(67)]. Accordingly, service tax is leviable on services provided by hotels and restaurants in relation to letting out of halls, rooms, etc. for organizing any official, social or business function under mandap keeper service [section 65(105)(m)].

Reference Code	Issue	Clarification
(1)	(2)	(3)
	business functions fall within the definition of “mandap” and allowing temporary occupation of halls, rooms etc by such hotels / restaurants for organizing any official, social or business function is liable to service tax under “mandap keeper service” [section 65(105)(m)]?	
012.02 / 23.08.07	Whether allowing temporary occupation of a hall for the purpose of holding dance, drama or music programme or competitions is liable to service tax under Mandap Keeper Service?	Dance, drama or music programme or competitions are social functions and allowing temporary occupation of a hall for a consideration for organizing such functions are liable to service tax under Mandap Keeper Service [section 65(105)(m)].
032.01 / 23.08.07	Whether Prasar Bharati Corporation (Doordarshan and All India Radio) are liable to pay service tax under Broadcasting Service [section 65(105) (zk)]?	Prior to 1.3.2003, Prasar Bharati Corporation did not pay service tax by virtue of erstwhile section 22 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990. However, the said section 22 was omitted vide section 163 of the Finance Act, 2002 with effect from 1.4.2003. In view of the above statutory changes, with effect from 1.4.2003 Prasar Bharati Corporation is liable to pay service tax for the broadcasting services provided like any other broadcasting agency or organization engaged in providing service in relation to broadcasting.
034.01 / 23.08.07	Moneychangers are persons authorized under section 7 of Foreign Exchange Management Act, 1973 to deal in foreign currency. Explanation given under Section 7 of the said Act states that ‘dealing’ means purchasing foreign currency in the form of notes, coins or traveller’s cheques or selling foreign currency in the form of notes, coins or traveller’s cheques. Whether services provided by a money changer in relation to dealing of foreign currency (buying or selling), at specified rates, without separately charging any amount as commission for such dealing, is liable to service tax as foreign exchange broking under ‘banking and other financial services’ [section 65(105) (zm)]?	Moneychangers are authorized by RBI to buy and sell foreign exchange at the prevalent market rates. Buying or selling of foreign exchange by such persons without separately charging any amount as commission or brokerage does not fall within the scope of foreign exchange broking and is not liable to service tax under section 65(105)(zm).
034.02 / 23.08.07	‘Asset management and all other forms of fund management’ are liable to service tax under ‘banking and other financial service’ [section 65(12)]. Whether the amount charged as ‘entry and exit load’ from the investor by a mutual fund is liable to service tax as asset / fund	Entry load and exit load charged by a mutual fund are not for the purpose of management of assets. Thus, amount charged as “entry and exit load” are not to be treated as consideration received by an Asset Management Company for asset management and hence not liable to service tax under Banking and other

Reference Code	Issue	Clarification
(1)	(2)	(3)
	management services under banking and other financial services [section 65(105)(zm)]?	Financial service [section 65(105)(zm)].
034.03 / 23.08.07	Whether depository services and Electronic Access to Securities Information (EASI) services provided by Central Depository Services (India) Ltd., (CDSL) is liable to service tax under Banking and other Financial Services[section 65(105)(zm)]?	Definition of “Banking and other Financial Services” specifically includes “provision and transfer of information and data processing [section 65(12)(a)(vii)]”. Services provided by CDSL falls within the scope of “provision and transfer of information and data processing”. These services are not in the nature of “on-line information and data base access or retrieval services”. Therefore, the depository services provided by CDSL including Electronic Access to Securities Information (EASI) for a fee are liable to service tax under Banking and other Financial Services. [section 65(105)(zm)]
034.04 / 23.08.07	<p>Services provided by banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern in relation to asset management including portfolio management, and all forms of fund management, is leviable to service tax under “banking and other financial services” [section 65(105)(zm) and section 65(12)]. The said taxable service also includes cash management services provided.</p> <p>Services are provided in relation to chit funds. Chit Funds are of two types, namely:-</p> <p>(a) <u>Simple Chit Funds</u>: In this case, members agree to contribute to the fund a certain amount at regular interval. Lots are drawn periodically and the member, whose name appears, gets the periodical collection. No separate amount is charged from the members.</p> <p>(b) <u>Business Chit Funds</u>: In this case, there is a promoter known as foreman who draws up the terms and conditions of the scheme and enrolls subscribers. Every subscriber has to pay his subscription in regular installments. The foreman charges a separate amount for the services provided. Some States prescribe a ceiling limit for the amount to be charged by such promoter for the services provided. Commission amount is retained by the promoter as consideration for providing the services in relation to chit fund.</p> <p>Whether services provided in relation to chit fund is leviable to service tax under “banking and other financial services” or not?</p>	<p>Reserve Bank of India has clarified that the business of a chit fund is to mobilize cash from the subscribers and effectively cause movement of such cash to keep it working and, therefore, the activity of chit funds is in the nature of cash management.</p> <p>(a) In the case of Simple Chit Funds, no consideration is paid or received for the services provided and, therefore, the question of levy of service tax does not arise.</p> <p>(b) In the case of Business Chit Funds, cash management service is provided for a consideration and, therefore, leviable to service tax under “banking and other financial services”.</p>

Reference Code	Issue	Clarification
(1)	(2)	(3)
035.02 / 23.08.07	<p>Management Committee of Paradeep Port was constituted as per the directions of Supreme Court of India. The Committee operates under the "Paradeep Port, Clearing, Forwarding and Handling Workers (Regulation of Employment) Scheme, 1994". Officers of the Paradeep Port Trust are associated with the Committee. The Committee is authorized by the Port Trust to provide a number of services within the port area for a consideration.</p> <p>Whether services provided by the Management Committee within the port area for a consideration is liable to service tax under Port Service?</p>	<p>As the Management Committee of Paradeep Port is authorized by the Port Trust to provide services within the port area at the prescribed rates, such services provided by the Committee are liable to service tax under Port Service. [section 65(105) (zn)]</p>
036.01 / 23.08.07	<p>Authorized dealers of motor vehicles provide to customers free servicing of motor vehicles without charging any amount as service charge from the customers. The vehicle manufacturer promises such a facility to attract customers and reimburses the service charges to the authorised dealers, who provide to customers free servicing of motor vehicles. However, as per agreement, consideration for the service provider is not directly paid by the customer but by the vehicle manufacturer.</p> <p>Whether such 'free services' given to the customer free of cost by the authorized dealers (for which they are reimbursed by the vehicle manufacturers) are liable to service tax under authorised service station service [section 65(105) (zo)]?</p>	<p>In this case, service is provided by an authorised service station to a customer and the service provider receives the consideration for the services provided from the manufacturer.</p> <p>Service tax is liable on the amount received from the vehicle manufacturer for the purpose of servicing of vehicles.</p>
036.02 / 23.08.07	<p>Whether servicing / repair of heavy vehicles like trucks by authorized service station is liable to service tax under section 65(105)(zo)?</p>	<p>Service tax is liable on services provided by an authorised service station to a customer in relation to service, repair, reconditioning or restoration of motorcars, light motor vehicles or two-wheeled motor vehicles [section 65(105)(zo)].</p> <p>Thus, servicing of heavy vehicles like trucks, not being one of the specified categories of motor vehicles, is at present not covered within the scope of the said taxable service.</p>
036.03 / 23.08.07	<p>Whether spare parts sold by a service station during the servicing of vehicles is liable to payment of service tax?</p> <p>Whether exemption can be claimed on the cost of consumables that get consumed during the course of providing service?</p>	<p>Service tax is not leviable on a transaction treated as sale of goods and subjected to levy of sales tax / VAT. Whether a given transaction between the service station and the customer is a sale or not, is to be determined taking into account the real nature and material facts of the transaction. Payment of VAT / sales tax on a transaction indicates that the said</p>

Reference Code	Issue	Clarification
(1)	(2)	(3)
		<p>transaction is treated as sale of goods.</p> <p>Any goods used in the course of providing service are to be treated as inputs used for providing the service and accordingly, cost of such inputs form integral part of the value of the taxable service.</p> <p>Where spare parts are used by a service station for servicing of vehicles, service tax should be levied on the entire bill, including the value of the spare parts, raised by the service provider, namely, service stations. However, the service provider is entitled to take input credit of excise duty paid on such parts or any goods used in providing the service wherein value of such goods has been included in the bill. The service provider is also entitled to take input credit of service tax paid on any taxable services used as input services for servicing of vehicles.</p>
<p>041.01 / 23.08.07</p>	<p>Organizers of Trade Fairs and Exhibitions solicit participation from the trade and industry and provide space and other facilities, including furniture, cabins, security, electricity, etc., to display products and provision of services.</p> <p>Whether services provided by the organizers of trade fairs / exhibitions are covered within the scope of event management service [section 65(015)(zu)]?</p>	<p>Trade fairs and exhibitions are organised by persons. Such organisers of trade fairs and exhibitions provide services to exhibitors in relation to business exhibition. Services provided by an organizer of trade fairs and exhibitions to an exhibitor in relation to business exhibition is liable to service tax under “Business Exhibition Service” [Section 65(105)(zzo)] w.e.f. 10.09.2004.</p> <p>In addition, an organiser of the trade fair or business exhibition may engage an event manager to provide service to the organiser in relation to organising trade fairs and exhibitions. In such cases, the event manager renders the service of “Event Management” to the organisers and is liable to pay service tax under “Event Management Service”.</p> <p>The two services, namely “Business Exhibition Service” and “Event Management Service”, and the two service providers of the respective services are distinct.</p>
<p>047.01 / 23.08.07</p>	<p>Whether services provided in relation to handling / storage and warehousing of empty containers is liable to service tax under storage and warehousing service [section 65(105)(zza)]?</p>	<p>Empty containers are covered within the meaning of “goods” [section 65(50)]. Thus, services provided in relation to storage and warehousing of empty containers is liable to service tax under storage and warehousing service [section 65(105)(zza)].</p>
<p>048.01 /</p>	<p>Whether commission received by</p>	<p>Distributors receive commission from</p>

Reference Code	Issue	Clarification
(1)	(2)	(3)
23.08.07	distributors for distribution of mutual fund units is liable to Service Tax under business auxiliary service?	mutual fund for providing services relating to purchase and sale of Mutual fund units. Services provided by such distributors are in the nature of commission agent and are, thus, liable to service tax under business auxiliary service [section 65(105)(zzb)].
053.01 / 23.08.07	<p>Services provided by any person to a customer in relation to management, maintenance or repair is liable to service tax [section 65(105)(zzg)]. "Management, maintenance or repair" includes maintenance or repair of any goods, excluding motor vehicle [section 65(64)].</p> <p>Whether maintenance or repair of software is liable to service tax?</p>	<p>Explanation to section 65(64) provides that "goods" includes computer software.</p> <p>Since, maintenance or repair of any goods is liable to service tax, services provided in relation to maintenance or repair or servicing of computer software is liable to service tax under "management, maintenance or repair" service [section 65(105)(zzg)].</p>
076.01 / 23.08.07	<p>"Club or association" is defined as any person or body of persons providing services, facilities or advantages, for a subscription or any other amount, to its members, but does not include such person or body of persons engaged in any activity having objectives which are of a charitable nature.</p> <p>Whether a club or association enjoying exemption under the provisions of Income Tax Act as a public charitable institution gets automatically excluded from levy of service tax under section 65(105)(zzze) read with section 65(25a) of the Finance Act, 1994?</p>	<p>Exemption under the Income Tax Act on the ground of being a public charitable institution is of no consequence or relevance for service tax purposes.</p> <p>Levy of service tax is entirely governed by the provisions contained in the Finance Act, 1994 and the rules made thereunder.</p> <p>"Charity" is defined as "aid given to the poor, the suffering or the general community for religious, educational, economic, public safety, or medical purposes", and "charitable" is defined as "dedicated to a general public purpose, usually for the benefit of needy people who cannot pay for the benefits received" [Black's Law Dictionary].</p> <p>Whether a club or association is engaged in activity having objectives which are of a charitable nature or not is to be determined purely on the basis of the facts and circumstances of the case.</p>
076.02 / 23.08.07	<p>Services provided by a resident welfare association to its members under club or association service [section 65(105) (zzze)] is exempted from service tax vide notification No.8/2007-Service Tax, dated 01.03.07, subject to the condition that the total consideration received from an individual member by the said association for providing the said services does not exceed three thousand rupees per month.</p> <p>Whether a resident welfare association registered as a co-operative society with the Registrar of Co-operative Societies is entitled for the benefit of service tax</p>	<p>A resident welfare association, even if it is registered as a co-operative society with the Registrar of Co-operative Societies, is eligible to avail of exemption from levy of service tax vide notification No.8/2007-Service Tax, dated 01.03.2007 provided the following conditions are satisfied, namely:-</p> <p>(i) The exemption is available for the services specified under section 65(105)(zzze) of the Finance Act, 1994 and provided or to be provided by the association to its members.</p> <p>(ii) The sole criterion for membership</p>

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(1)	(2)	(3)
	exemption under notification No.8/2007-Service Tax, dated 01.03.2007 or not?	of the resident welfare association is the residential status of a person in a residential complex or locality i.e., membership of the association is restricted to the residents of the complex or locality. (iii) The value of total consideration received from an individual member by the association for providing the services does not exceed Rs.3,000/- per month.
079.01 / 23.08.07	<p>Whether service tax is liable under construction of complex service [section 65(105)(zzzh)] on builder, promoter, developer or any such person,-</p> <p>(a) who gets the complex built by engaging the services of a separate contractor, and</p> <p>(b) who builds the residential complex on his own by employing direct labour?</p>	<p>(a) In a case where the builder, promoter, developer or any such person builds a residential complex, having more than 12 residential units, by engaging a contractor for construction of the said residential complex, the contractor in his capacity as a taxable service provider (to the builder / promoter / developer / any such person) shall be liable to pay service tax on the gross amount charged for the construction services under 'construction of complex' service [section 65(105)(zzzh)].</p> <p>(b) If no other person is engaged for construction work and the builder / promoter / developer / any such person undertakes construction work on his own without engaging the services of any other person, then in such cases,- (i) service provider and service recipient relationship does not exist, (ii) services provided are in the nature of self-supply of services. Hence, in the absence of service provider and service recipient relationship and the services provided are in the nature of self-supply of services, the question of providing taxable service to any person by any other person does not arise.</p>
086.01 / 23.08.07	<p>An international journey commencing from an Indian airport involves stopover / transfer at intermediate airports outside India before reaching the destination (say Mumbai-Dubai-London-New York).</p> <p>Whether service tax would be liable in such case on the value indicated in the ticket for the entire journey or only on that part of the value attributable to the first sector (Mumbai-Dubai) of the journey?</p>	<p>Aim of the passenger is to travel from Mumbai to New York. Actual destination of the international journey is the criterion to decide the value of the service (in this case, New York). Stopover / transfer at intermediate airports, being merely incidental and part of the main journey, is of no relevance or consequence for levy of service tax under section 65(105)(zzzo) read with section 66.</p> <p>Service tax in such cases is leviable on the total consideration of a single composite service relating to the entire journey. i.e., value indicated on the ticket for the entire journey.</p>
086.02 / 23.08.07	An international journey (say Delhi-Mumbai-London) includes travel in a domestic sector	In this case, the journey is a single composite journey. The aim of the

Reference Code	Issue	Clarification
(1)	(2)	(3)
	<p>(Delhi – Mumbai) as part of the international journey.</p> <p>Whether service tax is liable on the value of whole journey or after excluding the value attributable to the domestic sector from the total value of the ticket?</p>	<p>passenger is to travel from India to a place outside India. Part of the travel in the domestic sector cannot be segregated from the single journey. Service tax is, therefore, leviable on the total value of the ticket treating the domestic sector as integral part of the international journey without excluding the value attributable, if any, to travel in the domestic sector.</p>
086.03 / 23.08.07	<p>An international journey commences from an airport outside India and completed at an airport outside India but including a sector wherein the passenger disembarks and subsequently embarks at an Indian airport as part of international journey (say Sydney-Mumbai-Dubai-Singapore-Sydney).</p> <p>Whether service tax is liable for Mumbai-Dubai sector only or on the total value of the ticket?</p>	<p>In this case, the journey being a single one and the aim of the passenger is not to travel from India to a place outside India, service tax is not leviable under section 65(105)(zzzo).</p>
086.04 / 23.08.07	<p>Whether ticket issued outside India for an international journey commencing from India (say Delhi–London) is liable to service tax?</p>	<p>Service tax is payable by the service provider, namely aircraft operator, for the taxable service provided. Place of purchase/ issue of ticket is of no relevance or consequence to determine the levy of service tax under section 65(105)(zzzo) read with section 66. Service tax is leviable as long as the passenger embarks in India for an international journey, in any class other than economy class.</p>
086.05 / 23.08.07	<p>Whether service tax is liable on the total value of the ticket or only half the value of the ticket in the case of round trip / return ticket (say Delhi-London-Delhi)?</p>	<p>Service tax is leviable on the total value of the ticket.</p>
097.01 / 23.08.07	<p>Whether CENVAT credit of duty paid on capital goods and service tax paid on input services can be taken by a service provider who opts to pay an amount equivalent to two per cent. of the gross amount charged for the works contract instead of paying service tax at the rate specified in section 66, under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, notified vide notification No.32/2007-Service Tax dated 22.05.07?</p>	<p>Rule 3(2) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 provides that the provider of taxable service opting to pay service tax under the composition scheme is not entitled to take CENVAT credit of duty on inputs, used in or in relation to the said works contract, under the provisions of the CENVAT Credit Rules, 2004.</p> <p>There is no restriction under notification No.32/2007-Service Tax dated 22.05.07 to take CENVAT credit of duty paid on capital goods and service tax paid on input services.</p>
999.01 / 23.08.07	<p>Sovereign/public authorities perform functions assigned to them under the law in force, known as “statutory functions”. For example,</p> <ul style="list-style-type: none"> · Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and 	<p>Activities assigned to and performed by the sovereign / public authorities under the provisions of any law are statutory duties. The fee or amount collected as per the provisions of the relevant statute for performing such functions is in the nature of a compulsory levy and are deposited into</p>

Reference Code	Issue	Clarification
(1)	(2)	(3)
	<p>measuring instruments;</p> <ul style="list-style-type: none"> · Regional Transport Officers (RTO) issue fitness certificate to motor vehicles; · Directorate of Boilers inspects and issues certificates for boilers; or · Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant laws. <p>Authorities providing such functions, required to be performed as per law, may collect specific amount or fee and the amount so collected is deposited into government account.</p> <p>Whether such activities of a sovereign / public authority, performed under a statute, can be considered as 'provision of service' for the purpose of levy of service tax and the amount or fee collected, if any, for such purposes can be treated as consideration for the services provided?</p>	<p>the Government account.</p> <p>Such activities are purely in public interest and are undertaken as mandatory and statutory functions. These are not to be treated as services provided for a consideration. Therefore, such activities assigned to and performed by a sovereign / public authority under the provisions of any law, do not constitute taxable services. Any amount / fee collected in such cases are not to be treated as consideration for the purpose of levy of service tax.</p> <p>However, if a sovereign / public authority provides a service, which is not in the nature of statutory activity and the same is undertaken for a consideration (not a statutory fee), then in such cases, service tax would be leviable as long as the activity undertaken falls within the scope of a taxable service as defined.</p>
<p>999.02 / 23.08.07</p>	<p>Department of Posts provides a number of services. What is the status of those services for the purpose of levy of service tax?</p>	<p>(i) Following services provided by Department of Posts are not liable to service tax.</p> <ul style="list-style-type: none"> · Basic mail services known as postal services such as post card, inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations. · Transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services. <p>(ii) In addition to the services mentioned in (i) above, Department of Posts also provides a number of services such as courier services (Speed Post), insurance services (Postal Life Insurance), agency or intermediary services on commission basis (distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills), which are also provided by other commercial organizations. Such services are liable to service tax under appropriate taxable services.</p>
<p>999.03 / 23.08.07</p>	<p>A taxable service provider outsources a part of the work by engaging another service provider, generally known as sub-contractor. Service tax is paid by the service provider for the total work. In such cases, whether service tax is liable to be paid by the service provider known as sub-</p>	<p>A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor.</p>

Reference Code	Issue	Clarification
(1)	(2)	(3)
	contractor who undertakes only part of the whole work.	Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.

ANNEXURE

Three digit Code	Taxable Service / Others
001	Stock broker [Section (105)(a)]
002	Telecommunication Service [Section (105)(zzzx)]
003	General insurance [Section (105)(d)]
004	Advertising agency [Section (105)(e)]
005	Courier agency [Section (105)(f)]
006	Consulting engineer [Section (105)(g)]
007	Custom house agent [Section (105)(h)]
008	Steamer agent [Section (105)(i)]
009	Clearing and forwarding agent [Section (105)(j)]
010	Manpower recruitment agent [Section (105)(k)]
011	Air travel agent [Section (105)(l)]
012	Mandap keeper [Section (105)(m)]
013	Tour operator [Section (105)(n)]
014	Rent-a-cab scheme operator [Section (105)(o)]
015	Architect [Section (105)(p)]
016	Interior decorator [Section (105)(q)]
017	Management or Business consultant [Section (105)(r)]
018	Chartered accountant [Section (105)(s)]
019	Cost accountant [Section (105)(t)]
020	Company secretary [Section (105)(u)]
021	Real estate agent [Section (105)(v)]
022	Security agency [Section (105)(w)]
023	Credit rating agency [Section (105)(x)]
024	Market research agency [Section (105)(y)]
025	Underwriter [Section (105)(z)]
026	Scientific or technical consultancy [Section (105)(za)]
027	Photography [Section (105)(zb)]
028	Convention [Section (105)(zc)]
029	On-line information and database access or retrieval [Section (105)(zh)]
030	Video tape production [Section (105)(zi)]
031	Sound recording [Section (105)(zj)]
032	Broadcasting agency or organization [Section (105)(zk)]
033	Insurance auxiliary services concerning general insurance business [Section (105)(zl)]
034	Banking and other financial services [Section (105)(zm)]
035	Port [Section (105)(zn)]
036	Authorized service station [Section (105)(zo)]
037	Beauty treatment [Section (105)(zq)]

038	Cargo handling [Section (105)(zr)]
039	Cable operator [Section (105)(zs)]
040	Dry cleaning [Section (105)(zt)]
041	Event management [Section (105)(zu)]
042	Fashion designing [Section (105)(zv)]
043	Health club and fitness [Section (105)(zw)]
044	Life insurance in relation to risk cover [Section (105)(zx)]
045	Insurance auxiliary services concerning life insurance business [Section (105)(zy)]
046	Rail travel agent [Section (105)(zz)]
047	Storage and warehousing [Section (105)(zza)]
048	Business auxiliary service [Section (105)(zzb)]
049	Commercial coaching or training [Section (105)(zzc)]
050	Erection, commissioning or installation [Section (105)(zzd)]
051	Franchise [Section (105)(zze)]
052	Internet café [Section (105)(zzf)]
053	Management, maintenance or repair [Section (105)(zzg)]
054	Technical testing and analysis [Section (105)(zzh)]
055	Technical inspection and certification [Section (105)(zzi)]
056	Foreign exchange broker [Section (105)(zzk)]
057	Other port [Section (105)(zzl)]
058	Airport [Section (105)(zzm)]
059	Transport of goods by aircraft [Section (105)(znn)]
060	Business exhibition [Section (105)(zno)]
061	Transport of goods by road [Section (105)(znp)]
062	Commercial or industrial construction [Section (105)(znpq)]
063	Intellectual property [Section (105)(znr)]
064	Opinion poll [Section (105)(zns)]
065	Outdoor caterer [Section (105)(znt)]
066	Programme producer [Section (105)(znu)]
067	Survey and exploration of mineral [Section (105)(znv)]
068	Pandal or shamiana [Section (105)(znw)]
069	Travel agent [Section (105)(znx)]
070	Forward contract [Section (105)(zny)]
071	Transport of goods other than water through pipeline or other conduit [Section (105)(znz)]
072	Site formation and clearance, excavation and earthmoving and demolition and such other activities [Section (105)(znza)]
073	Dredging [Section (105)(znzb)]
074	Survey and map-making [Section (105)(znzc)]
075	Cleaning activity [Section (105)(znzd)]
076	Club or association [Section (105)(znze)]
077	Packaging activity [Section (105)(znzf)]
078	Mailing list compilation and mailing [Section (105)(znzg)]
079	Construction of complex [Section (105)(znzh)]
080	Registrar to an issue [Section (105)(znzi)]
081	Share transfer agent [Section (105)(znzj)]
082	Automated teller machine operations, maintenance or management [Section (105)(znzk)]
083	Recovery agent [Section (105)(znzl)]
084	Sale of space or time for advertisement [Section (105)(znzm)]
085	Sponsorship [Section (105)(znzn)]
086	Transport of passenger embarking in India for international journey by air [Section (105)(znzo)]
087	Transport of goods in containers by rail [Section (105)(znzp)]
088	Support services of business or commerce [Section (105)(znzq)]
089	Auctioneers [Section (105)(znzr)]
090	Public relations [Section (105)(znzs)]

091	Ship management [Section (105)(zzzt)]
092	Internet telephony [Section (105)(zzzu)]
093	Transport by cruise ship [Section (105)(zzzv)]
094	Credit card, debit card, charge card or other payment card [Section (105)(zzzw)]
095	Mining [Section (105)(zzzy)]
096	Renting of immovable property [Section (105)(zzzz)]
097	Services involved in the execution of works contract [Section (105)(zzzza)]
098	Development and supply of content [Section (105)(zzzzb)]
099	Asset management service by individuals [Section (105)(zzzzc)]
100	Design services [Section (105)(zzzzd)]
996	Services provided from outside India and received in India
997	Export of Services
998	Valuation of taxable services
999	Miscellaneous

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Under Secretary (Tax Research Unit)

Circular No. 97 / 8 /2007
New Delhi, the 23rd August, 2007

F. No. 137/85/2007-CX.4

Government of India

Ministry of Finance

Department of Revenue

(Central Board of Excise and Customs)

Subject:- Procedural issues in Service Tax-circular-reg.

Since the inception of the levy of service tax vide Chapter V of the Finance Act, 1994 (hereinafter called the Act) and rules made thereunder from time to time, a number of circulars/clarifications/instructions have been issued, for clarifying the scope of statutory provisions; providing legal interpretation of the provisions of the Act, the rules and the notifications; and clarifying as well as prescribing the procedures to be followed for administration of service tax. Over a period of time, there have been significant changes in law and procedures relating to service tax. While certain circulars/clarifications/ instructions have become redundant and anachronistic, new issues have arisen on account of changes in law and procedure. This circular aims to consolidate the **procedural issues** relating to service tax, including those relating to availment and utilization of CENVAT credit. This circular supersedes all previous circulars/clarifications/instructions issued on these subjects. It is, however, clarified that this circular is intended only to clarify the scope of the Act and the rules, and therefore, in the event of any inadvertent inconsistency or contradiction between this circular and the provisions of the Act or the rules, the latter shall prevail.

2. Registration:

2.1 As per the provisions of section 69 of the Act and rule 4 of the Service Tax Rules, 1994 (hereinafter called the Rules), every person providing a taxable service and liable to pay service tax is required to register with the Central Excise / Service Tax department (hereinafter called the department). Further, in a few cases liability to pay service tax has been shifted to the service receiver or other specified person, in terms of section 68(2) of the Act.

These cases are: -

- (i) insurer in case of service provided by insurance agent;
- (ii) person making payment of freight in such cases where a goods transport agency provides taxable service to a specified consignor and consignee;
- (iii) asset management company or mutual fund, in case of service provided by a distributor to them;
- (iv) where the service is provided to a person in India by any person from a country other than India; and
- (v) body corporate or a firm located in India receiving sponsorship service.

In all these cases, the person liable to pay service tax shall be obliged to register with the department.

2.2 The turnover limit, i.e., the aggregate value of taxable service for threshold based exemption is, currently, Rs. 8 lakh in a year. However, a person availing of this exemption is required (under section 69 of the Act, read with notification no.26/2005-ST) to register with the department on achieving a turnover of Rs 7 lakh in a financial year in respect of all taxable services provided by him. The expression "aggregate value not exceeding the threshold value of Rs 8 lakh" has been defined in notification No. 6/2005-ST.

2.3 An 'input service distributor' is an office or establishment of a manufacturer of excisable goods or provider of taxable service. It receives tax paid invoices/bills of input services procured (on which CENVAT credits can be taken) and distributes such credits to its units providing taxable services or manufacturing excisable goods. The distribution of credit is subject to the conditions that,- (a) the credit distributed against an eligible document shall not exceed the amount of service tax paid thereon, and (b) credit of service tax attributable to services used in a unit either exclusively manufacturing exempted goods or exclusively providing exempted services shall not be distributed. An input service distributor is required (under section 69 of the Act, read with notification no.26/2005-ST) to take a separate registration.

2.4 Application for registration is required to be made in Form ST-1 to the jurisdictional superintendent of Central Excise/Service tax within 30 days of levy of service tax on such service or, in case of an existing taxable service, within 30 days of the commencement of provision of such service. A person providing more than one taxable service is required to take only one single registration. He should indicate all taxable services provided by him in Form ST-1.

2.5 Any person liable to pay service tax, who,-
(a) provides taxable service from more than one premises;
(b) receives taxable services in more than one premises; or
(c) has more than one premises engaged in relation to such taxable service,
may seek centralised registration, provided he does centralised billing or maintains centralised accounting in respect of such taxable services in a premises. In certain cases the centralization can be at the zonal/regional level. In such case, each of such offices is to be registered individually. Such registrations are to be granted by the jurisdictional Commissioner where such offices/establishments are located.

2.6 The registration certificate will be granted by the department, in Form ST-2, within seven days of filing of an application complete and properly filled up. In case registration certificate is not issued within seven days, the registration is deemed to have been granted. Registration No., also known as 'Service Tax Code (STC)' is a fifteen digit PAN based number. First 10 digits of this number are the same as the PAN of such person. Next two digits are 'ST'. Next three digits are serial numbers indicating the number of registrations taken by the service taxpayer against a common PAN. In addition to PAN, another number, namely, 'premises code' is also given (mentioned at Sl. No. 5 of the Form ST-2). This number indicates the code of the jurisdictional Commissionerate, division, range and Sl. No. within the range. This number is issued for easy identification of location of registration of the service taxpayer.

2.7 In case an existing registrant wishes to add any new premises to the centralized registration or wishes to add new taxable services in his registration certificate or amend it as regards any other details, he may provide such details to the jurisdictional Superintendent in Form ST-1, indicating only the amendment/rectification required to be made in the registration certificate, along with a copy of the original registration certificate. In case the changes relate to deletion of any premises or taxable service, the registrant may file an intimation on plain paper along with copy of the registration certificate.

3. **Payment of service tax:**

3.1 In terms of rule 6 of the Rules read with section 68 of the Act, the service tax is required to be paid on monthly basis by all service taxpayers, other than individuals or proprietary/partnership concerns who are required to pay service tax on quarterly basis. Service tax liability for a particular month or quarter is to be discharged on the payments towards the

value of taxable service received during that month or quarter, as the case may be. It is to be deposited by the 5th day of the month following the month or quarter for which service tax is paid. However, for the month/quarter ending March, the payment is required to be made by the 31st March itself by all taxpayers.

3.2 e-payment of service tax: The service tax can be paid electronically. For this, the service taxpayer should have an account in any branch of the designated banks. For availing of the facility of e-payment, the service taxpayer shall obtain a user-ID and password from the designated bank in which he has the account. For e-payment, the service taxpayer should log on to the web-site of the bank with his user-ID and password. He should then choose the option of e-payment of service tax. On choosing this option, the service taxpayer would be guided to the e-payment portal wherein he would fill the challan for payment of service tax and would authorize payment of service tax by way of debit to his account. Thereafter, a copy of the acknowledgement would be generated for the records of the service taxpayer. Subsequently, the bank would generate copies of challan and send a copy each to the Pay and Accounts Officer (PAO) and the department.

4. Mandatory e-payment of service tax

4.1 The e-payment of service tax has been made mandatory w.e.f . 1.10.2006, (vide sub-rule (2) of rule 6 of the Rules), for all assesseees who have paid (in cash plus through CENVAT Credit) a service tax amounting to Rs. 50 lakh or more in the preceding financial year or in the current financial year. The latter type of service taxpayers shall make any further payment of service tax in cash (i.e. other than through credit), only through e-payment.

4.2 In case a taxpayer faces any procedural problems, he may contact the jurisdictional service tax/ central excise office or the jurisdictional Commissioner, who would advise and extend all possible help to the taxpayers to comply with the requirement of mandatory e-payment. At the same time, such taxpayers should expeditiously complete the procedural formalities required at their end for availing of internet banking facility from designated banks and complying with this requirement.

4.3 For a person providing taxable service from more than one premises and where each of such premises has been separately registered with the department, the criterion of Rs 50 lakh would apply to each of the registered premises individually in view of its separate legal identity. The same procedure would apply to a person paying service tax on taxable services received by him. However, in case of a Large Taxpayer (those taxpayers associated with LTU), the cumulative service tax paid by all registered premises will be taken into account for working out the of service tax amount of Rs 50 lakh. Similarly, if a person providing taxable service also receives taxable services on which he is liable to pay service tax and has a single registered premises, the service tax amount of Rs 50 lakh would be the total amount of service tax paid by him.

5. Issuance of invoices, bills, challans, consignment notes and other documents:

5.1 In terms of the provisions of rules 4A and 4B of the Rules, every taxable service provider is required to issue a document (i.e. invoice, bill or challan) within 14 days from either the date of completion of provision of service or receipt of any service charges (whichever is earlier). Such document should be serially numbered and should contain the name, address of the service provider and the service receiver, description, classification and value of service provided and service tax payable thereon. For complying with the requirements of CENVAT Credit Rules, (i.e., to facilitate availing of credit by the recipient of taxable service), the amount of 'education cess' and 'secondary and higher education cess' should be shown separately on the invoice. Further, STC no./registration no. of the service provider should also be mentioned on the invoice for this purpose.

5.2 An input service distributor is also required to issue such a document in favour of the recipient of the credit so distributed. This document should also be serially numbered and should give the details of the invoices under which the taxable service has been received and the name, address and registration no. of the input service distributor as well as of the recipient of the credit. The amount of credit distributed shall also be mentioned.

5.3 For service providers providing 'banking & other financial services', certain relaxations are available. For such service providers, the invoice need not be serially numbered. They are also exempted from mentioning the address of the service receiver. Similar dispensation is available for input service distributors of such type of service providers.

5.4 For providers of taxable service of transport of goods by road (i.e. goods transport agency) the invoice/bill/challan should, in addition to the general information required (i.e. as mentioned in para 5.1), also contain the consignment note number, date and gross weight of the consignment.

5.5 Rule 4B of the Rules prescribes that the goods transport agency shall issue a consignment note, which would be serially numbered and would contain the names of the consignor and consignee, the vehicle registration number, details of goods transported, details of place of origin and destination, and the person (consignor / consignee/goods transport agency) liable to pay service tax. In case of less container load (LCL) cargo, where the goods transport agent is not aware of the vehicle registration number at the time when he receives the goods and issues consignment note, he may mention the non-availability of vehicle registration number on the copy issued to the consignor. However, after he comes to know about the vehicle registration number, he should mention the same, consignment note-wise, in the records maintained by him and produce the same in case of verification. Similarly, in case of trans-shipment of goods en-route (i.e. where the goods covered under a consignment note are shifted from one vehicle to another), the records of registration numbers of the vehicles carrying such goods under a consignment note must be recorded as soon as the said information is available to the goods transport agent. These procedural relaxations are provided for such special cases only and, in all other cases, mention of vehicle registration number on the consignment note, at the time of its issue would continue to remain a mandatory requirement.

6. **Service tax return**

6.1 The service tax return is required to be filed under Section 70 of the Act read with rule 7 of the Rules, by 'any person liable to pay the service tax'. This return is required to be filed on a half yearly basis, in Form ST-3. For the periods from April to September and October to March, it must be filed by the 25th October and the 25th April respectively. Further, 'Input Service Distributor' is also required to file this return. Persons who are not liable to pay service tax (because of an exemption including turnover based exemption), are not required to file ST-3 return.

6.2 A single service tax return should be filed (in Form ST-3) in respect of all taxable services provided by an assessee. Detailed instructions for filling the return are given in the return form itself.

6.3 **e-filing of return-** The service tax return can be filed electronically after logging into the website www.servicetaxefiling.com. For this purpose, the assessee shall obtain user-ID and log-in password from the department. A simple application may be made to the jurisdictional Central Excise Officer, giving details of STC no., and an 'e-mail ID'. The department would communicate the 'User ID', and 'password' along with technical details required for accessing the relevant site and the procedure for making entries and other guidance as may be necessary to the taxpayer by e-mail. While filing the return electronically, the service taxpayer must file details as contained in Form ST-3 and that of duty paying challans. On submission of the completed return, a key number and an acknowledgement would be generated by the system along with a copy of Form ST-3 and Challan, which could be printed by the service taxpayer for his records. In case of any difficulty faced in e-filing, the service taxpayer may send an e-mail to the address specified by the Commissioner, explaining the difficulties and if a reply is not received within two days, he may send an e-mail to saps@excise.nic.in

6.4 **Delay in filing of return:** The return is required to be filed by the stipulated date as mentioned at para 6.1 above. Delay in filing of return attracts late fee. The late fee presently prescribed vide rule 7C of the Rules, is (a) Rs 500 for delay upto 15 days; (b) Rs 1000 for delay between 15 days and 30 days; and (c) Rs 1000 plus Rs 100 per day beyond 30 days, till the filing of return, not exceeding Rs 2000/-. To avoid late fee, the taxpayer must ensure timely filing of return. In case of returns filed late, the appropriate late fees should be paid at the time of filing the

return, without waiting for any communication or notice from the department. Mere non-submission of evidence of payment of late fee along with the return is, however, not a ground for refusal to allow filing of the return.

6.5 Filing of revised return: Rule 7B of the Rules prescribes that an assessee can submit a revised return within 60 days of filing of original return to rectify any mistake or omission. It may be noted that in such cases where an assessee files a revised return, the limitation period for initiating any action for demanding the service tax not paid/ short paid/ not levied/short levied would be computed from the date of filing of revised return.

7 Assessment

7.1 Normally, under self assessment scheme, the service taxpayer assesses his tax liability himself and pays the same. However, if a service taxpayer is not in a position to determine the service tax liability, say, for the reason that valuation or classification of taxable service or issue of admissibility of an exemption notification cannot be determined (or any such other reason) at the time of filing the return, he may opt for assessment of service tax on provisional basis after obtaining an order from the jurisdictional Deputy Commissioner/ Assistant Commissioner. The assessment shall be made in terms of the said order and would continue to be provisional till the issue is finalized. Upon finalization, there may be additional tax liability or refund. In such cases, the taxpayer would have to either pay the differential amount of tax with interest or claim refund, as the case may be.

8. CENVAT Credit

8.1 With effect from 10.9.2004, under CENVAT Credit Rules, 2004, CENVAT Credit across goods and services has been allowed. This circular deals only with certain commonly raised issues relating to certain provisions of these rules that relate to service tax credit. The following are the issues which have been examined in this circular,-

(a) **ISSUE:** Whether a manufacturer or taxable service provider having credit balance in his account can utilize that credit for payment of service tax on goods transport by road, as a consignor or as a consignee?

COMMENTS: In terms of rule 3 (4) of the Rules, CENVAT credit can be utilized for the following payments:

- (a) *any duty of excise payable on any final product;*
- (b)
- (c)
- (d) *service tax on any output service*

In terms of the CENVAT Credit Rules, 'output service' means any taxable service provided by the provider of taxable service to the service receiver. Further, the definition of 'provider of taxable service' includes a person liable to pay service tax. Therefore, reading the two definitions in conjunction, it is clear that, to form 'output service', taxable service has to be actually provided by the 'provider of taxable service'. Even if due to a legal fiction, a consignor or a consignee qualifies to fall under the definition of 'a person liable to pay service tax' (and consequently a 'provider of taxable service'), it cannot be said that he has actually provided any taxable service. The service provided by a Goods Transport Agent (GTA) for which the consignor or the consignee is made liable to pay service tax does not become an 'output service' for such consignor or the consignee. Therefore, the service tax payable by the consignor or consignee on transportation of goods by road cannot be paid through credit accumulated by such consignor or consignee. For example, a manufacturer of steel sheets procures duty paid steel ingots as input and avails CENVAT credit of the excise duty paid on ingots. He clears his finished goods, i.e., steel sheets on payment of excise duty and sends the same to his customer, engaging the service of a goods transport agency. In this case, he pays service tax on service received by him for transportation of the goods. However, the input credit taken on steel ingots cannot be used for payment of service tax applicable to goods transport agency. The reason is that the such manufacturer (consignor) is not the service provider. The transport service is being provided by the 'goods transport agency' and the excise assessee pays the service tax *only* for the reason that the liability for payment of service tax has been shifted to the service receiver. Accordingly, the consignor or the consignee has to be pay service tax in cash on goods transport by road service.

(b) **ISSUE:** Whether a consignee can take credit of the amount paid as service tax either by himself (as consignee) or by the consignor or by the Goods Transport Agency?

COMMENTS: As per Rule 3 of the CENVAT Rules, 2004, CENVAT Credit of, *inter alia*, service tax leviable and paid on any 'input services' can be taken. The rule does not distinguish as to who (i.e. the GTA, the consignor or the consignee himself) has paid the aforesaid tax. The only condition required to be satisfied is that the consignee must be a manufacturer of excisable goods or a provider of taxable service and the service must be in the nature of 'input service' for such activity. In case of inward transportation of inputs or capital goods, such service (being specifically mentioned under the definition of 'input service') would qualify to be called as 'input service' and, thus, the service tax paid (by any of the persons mentioned above) on it would be eligible as credit to the receiver if he is either a manufacturer of excisable goods or a provider of taxable service.

(c) **ISSUE:** Up to what stage a manufacturer/consignor can take credit on the service tax paid on goods transport by road?

COMMENTS: This issue has been examined in great detail by the CESTAT in the case of M/s Gujarat Ambuja Cements Ltd. vs CCE, Ludhiana [2007 (006) STR 0249 Tri-D]. In this case, CESTAT has made the following observations:-

"the post sale transport of manufactured goods is not an input for the manufacturer/consignor. The two clauses in the definition of 'input services' take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport service credit cannot go beyond transport upto the place of removal. The two clauses, the one dealing with general provision and other dealing with a specific item, are not to be read disjunctively so as to bring about conflict to defeat the laws' scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions".

Similarly, in the case of M/s Ultratech Cements Ltd vs CCE Bhavnagar 2007-TOIL-429-CESTAT-AHM, it was held that after the final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input. The above observations and views explain the scope of the relevant provisions clearly, correctly and in accordance with the legal provisions. In conclusion, a manufacturer / consignor can take credit on the service tax paid on outward transport of goods up to the place of removal and not beyond that.

8.2 In this connection, the phrase 'place of removal' needs determination taking into account the facts of an individual case and the applicable provisions. The phrase 'place of removal' has not been defined in CENVAT Credit Rules. In terms of sub-rule (t) of rule 2 of the said rules, if any words or expressions are used in the CENVAT Credit Rules, 2004 and are not defined therein but are defined in the Central Excise Act, 1944 or the Finance Act, 1994, they shall have the same meaning for the CENVAT Credit Rules as assigned to them in those Acts. The phrase 'place of removal' is defined under section 4 of the Central Excise Act, 1944. It states that,-

"place of removal" means-

- (i) *a factory or any other place or premises of production or manufacture of the excisable goods ;*
- (ii) *a warehouse or any other place or premises wherein the excisable goods have been permitted to be stored without payment of duty ;*
- (iii) *a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory; from where such goods are removed."*

It is, therefore, clear that for a manufacturer /consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer /consignor may claim that the sale has taken place at the destination point because in terms of the sale contract /agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by

the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place.

8.3 A doubt has been raised regarding admissibility of CENVAT credit on service tax paid in respect of mobile phones. In the Service Tax Credit Rules, 2002, it was prescribed that credit of service tax was admissible only on telephone connection installed in the business premises. A clarification to this effect was also issued vide circular No. 59/8/2003-ST, dated 20.6.2003, in the context of the Service Tax Credit Rules, 2002. However, in the CENVAT Credit Rules, 2004 no such condition has been prescribed. Therefore, w.e.f. 10.9.2004, credit of service tax paid in respect of mobile telephone service is admissible, provided the mobile phone is used for providing output service or used in or in relation to manufacture of finished goods.

8.4 Input service distributor is an office or premises of the manufacturer or taxable service provider which receives bills/invoices etc., of input services. The input service distributor can distribute the eligible credit to any unit of the manufacturer or any premises/office of taxable service provider.

9 **Delay in payment of service tax**

9.1 Delay in payment of service tax, including a part thereof, attracts simple interest in terms of section 75 of the Act. The rate of interest is as prescribed from time to time, in accordance with this section. At present, the rate of interest is 13% per annum (notification No. 26/2004-ST, dated 10.9.2004). Further, failure to pay service tax also attracts a penalty under Section 76 of the Act, which shall not be less than Rs 200 for every day during which such failure continues or at the rate of 2% of such tax per month, which ever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax. However, such penalty would not exceed the service tax payable.

10 **Any amount recovered by any person as service tax**

10.1 Any amount collected by a person as service tax from any other person, even if it was not permissible in terms of the service tax law, is required to be deposited with the Central Government. In other words, no amount collected as service tax shall be retained by the person who has collected such amount. Any delay in depositing such amount attracts simple interest at the rate prescribed under section 73 B of the Act. At present, the rate of interest is 13% per annum (notification No. 8/2006-ST, dated 19.4.2006).

11 **Audit**

11.1 The selective audit of service taxpayers and other assesseees like input service distributors, may be done by the jurisdictional central excise officer (authorized for the purpose) or by an audit party deputed by the Comptroller and Auditor General of India. Rule 5 of the Rules makes it mandatory for every assessee to make available the records, on demand, for inspection and examination to such authorized person/audit party.

12. **Adjudication of cases**

12.1 Section 73 of the Act deals with adjudication of cases of short-levy or non-levy of service tax or service tax short paid or not paid or erroneously refunded. For quick settlement of disputes, this section prescribes that (i) in other cases involving fraud, collusions, wilful misstatement and suppression of facts etc., the dispute could be settled by making payment of the service tax amount specified in the notice along with interest and penalty equal to 25% of service tax amount, within thirty days of issue of show cause notice; (ii) and in any other case the person chargeable to service tax, or to whom service tax has been erroneously refunded, may make payment *suo moto* along with interest, as applicable, and, consequently no Show Cause Notice will be served in respect of the amount so paid.

12.2 Section 83A confers powers on the Central Excise Officer for adjudging a penalty under the provisions of the said Act or the rules made there under. Board has specified monetary limits for adjudication of cases under section 83A of the said Act vide notification No. 30/2005-Service Tax dated 10th August, 2005. The monetary limits are as follows:

S.No	Central Excise Officer	Amount of service tax or CENVAT credit specified in a notice for the purpose of adjudication under section 83A
(1)	(2)	(3)
(1).	Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise	Not exceeding Rs. 5 lakh
(2).	Joint Commissioner of Central Excise	Above Rs. 5 lakh but not exceeding Rs. 20 lakh
(3).	Additional Commissioner of Central Excise	Above Rs. 20 lakh but not exceeding Rs. 50 lakh
(4).	Commissioner of Central Excise	Without limit.

The monetary limits specified in the above tables for adjudication of service tax cases are irrespective of whether or not such cases involve fraud, collusion, wilful mis-statement, suppression of facts or contravention of any of the provisions of the Act or the rules made thereunder with an intent to evade payment of service tax and whether or not extended period has been invoked. Cases not involving non-payment of service tax or mis-utilization of CENVAT credit are to be adjudicated by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise.

12.3 Where different cases involving the same issue are due to be adjudicated in a Commissionerate, all such cases may be adjudicated by the Central Excise Officer competent to decide the case where the service tax or CENVAT credit involved is of the highest amount.

12.4 For cases where the appellate authority remands the case for de-novo adjudication, specifically mentioning the authority that has to adjudicate the case, then such authority specified in the said appellate order should adjudicate such cases. Where the appellate authority does not specifically mention any adjudicating authority, it should be decided by the authority competent in terms of the monetary limits mentioned in para 12.1.

12.5 Central Board of Excise & Customs (CBEC) has directed that in respect of demands for an amount upto one thousand rupees towards short payment/non-payment of service tax, if the service provider, on the default being pointed out, pays the service tax along with interest within a period of one month of the default in payment, the penalty should be waived, taking recourse to the provisions under section 80 of the Act. In other cases, i.e. where amount of service tax involved is over Rs one thousand, penal action prescribed under sections 76, 77 and 79 would be attracted.

13 **Revision of orders:**

13.1 The adjudication order passed by the officers subordinate to the Commissioner of Service Tax can be revised by the Commissioner after causing such inquiry as he deems fit, in terms of section 84 of the Act. The limitation period for issuing such revisional order is two years from the date on which the original order was passed. However, any issue against which an appeal has been filed by the service taxpayer before Commissioner (Appeals) cannot be revised. Thus, if an order deals with several issues and the party files an appeal only in respect of a few issues, the Commissioner may pass revisional order in respect of only such remaining issues against which an appeal has not been filed by the party. The principles of natural justice shall be followed while passing an order in revision.

14 **Appeal provisions**

14.1 A service taxpayer aggrieved by any order passed by an adjudicating authority lower than the Commissioner, may file an appeal before the Commissioner (Appeals). Such appeal shall be filed within three months of the communication of the original order to the party. An appeal against an order of the Commissioner, including an order in revision, and against an order of the Commissioner (Appeals) lies with the Appellate Tribunal (CESTAT).

15. **Other frequently asked question on procedural issues**

15.1 For other frequently asked questions on procedural issues, the information available on web-site www.cbec.gov.in (FAQ in Service Tax) may be referred to.

16. Trade and field formations may be informed accordingly.

17. Hindi version will follow.

Yours faithfully,
(Gautam Bhattacharya)
Commissioner(Service Tax)
[F. No. 137/85/2007-CX.4]