

Concept of Services, Negative Lists, Exemptions & Abatements and Reverse Charge Mechanism

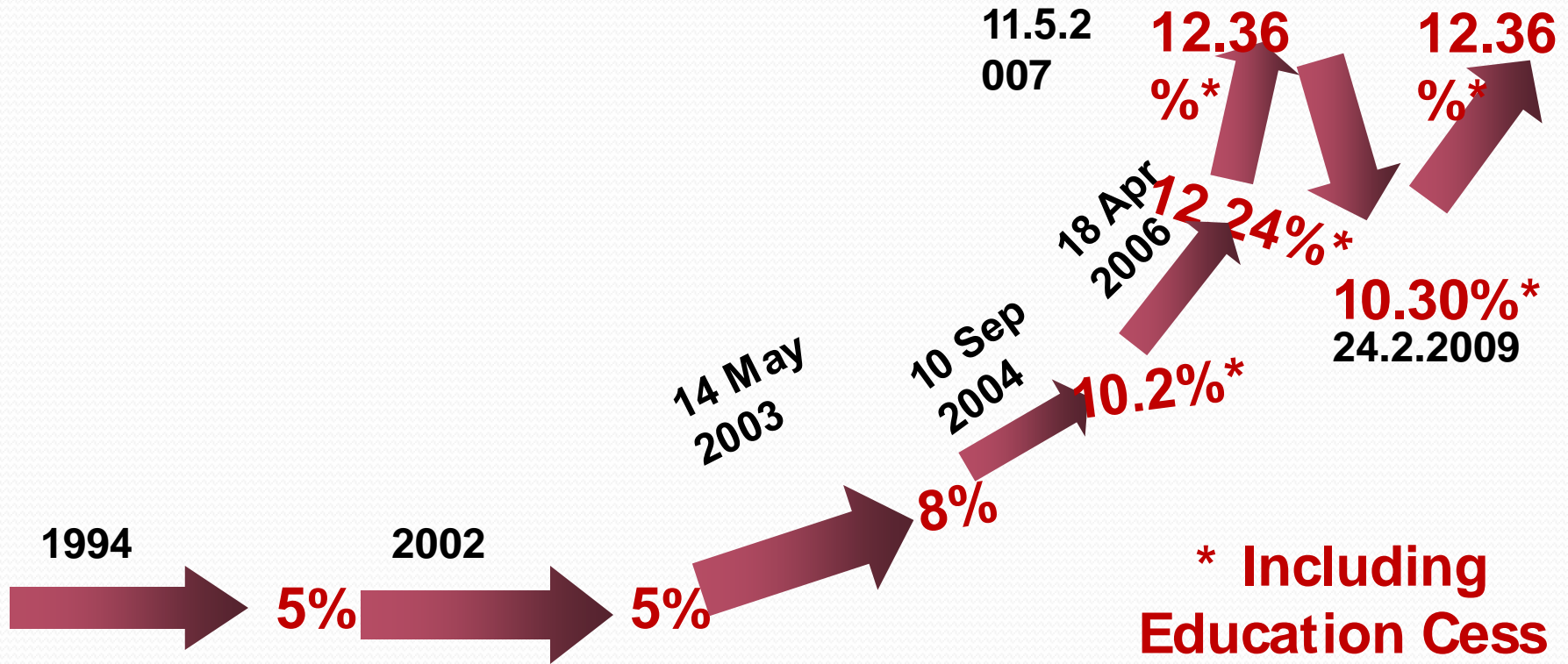
C.R. RAGHAVENDRA,

B.Com, FCA, LLB

INTRODUCTION

- Presently there is no separate Service tax legislation.
- Service tax legislation was enacted under the residuary entry 97 of the Union list of the Seventh Schedule to the Constitution.
- Service tax law is contained in Chapter V of the Finance Act, 1994 (Section 64 to 96)

Service Tax Rate structure



SERVICE TAX

- In Budget 2012 speech, Finance Minister mentioned that service tax has attained adulthood this year (18 years)
- Service tax is one of the emerging avenues of taxation and it can be called as 'tax of the future'.
- The first year collections was at a very modest at Rs 407 crore.
- ST collections touched Rs 3,302 crore in 2001-02,
- Service Tax contributed Rs 97,444 crore during 2011-12, an increase of nearly 37% over the previous year.

Background

- What is negative list
 - Instead of listing and defining what is taxable
 - List of services would be defined as non taxable
 - Rest would be taxable

What is negative list

- A negative list of services implies two things: (1) a list of services which will not be subject to service tax; (2) other than the services mentioned in the negative list, all services will be taxable which fall within the definition of 'services'.
- This is in contrast to present method of taxation which has list of taxable services. (Selective Taxation or Positive list).

Definition of service

Section 65B(44) of Finance Act, 1994

- "service" means any activity carried out by a person for another for consideration, and includes a declared service, **but shall not include-**
 - (a) an activity which constitutes merely,-
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - (ii) such transfer, delivery or supply of any goods which is deemed to be sale within the meaning of clause (29A) of article 366 of the Constitution; or
 - (iii) a transaction in money or actionable claim;

Definition of service

- (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
- (c) fees taken in any Court or tribunal established under any law for the time being in force.

Definition of service

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

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

Definition of service

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

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

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

Definition of service

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

'Deemed sales' defined in article

366(29A)

- transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration
- transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract
- delivery of goods on hire-purchase or any system of payment by installments
- transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration

'Deemed sales' defined in article

366(29A)

- supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration
- supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration.

Declared services

Section 66E

DECLARED SERVICES – SECTION 66E

- (a) renting of immovable property;
- (41) "renting" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property;
- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion certificate by the competent authority.

DECLARED SERVICES

- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

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

- **(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;**

DECLARED SERVICES

- (f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;
- (g) activities in relation to delivery of goods on hire purchase or any system of payment by instalments;
- **(h) service portion in the execution of a works contract;**
- (i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.

Works contract

- (54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

NEGATIVE LIST

SECTION 66D

NEGATIVE LIST – SECTION 66D

- (a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere-
- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
 - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - (iii) transport of goods or passengers; or
 - (iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities;

NEGATIVE LIST

- (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 seed testing;
 - (ii) supply of farm labour;

Negative list - Agriculture

- (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;

Negative list

- (e) trading of goods;
 - (f) any process amounting to manufacture or production of goods;
- (40) "process amounting to manufacture or production of goods" means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force; **(1 of 1944.)**

Negative list

- (g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television;
- (2) "advertisement" means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person;

Negative list

- (h) service by way of access to a road or a bridge on payment of toll charges;
- (i) betting, gambling or lottery;
(15) "betting or gambling" means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring;

Negative list

- (j) admission to entertainment events or access to amusement facilities;
- (g) "amusement facility" means a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided;

Negative list

- (k) transmission or distribution of electricity by an electricity transmission or distribution utility;
- (23) "electricity transmission or distribution utility" means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003; or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government;
- (19) "Central Transmission Utility" shall have the meaning assigned to it in section 2 (10) of the Electricity Act, 2003;
- (48) "State Transmission Utility" shall have the meaning assigned to it in section 2 (67) of the Electricity Act, 2003;

Negative list - education

(1) services by way of-

- (i) pre-school education and education up to higher secondary school or equivalent;
- (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
- (iii) education as a part of an approved vocational education course;

Negative list

- (m) services by way of renting of residential dwelling for use as residence;
(41) "renting" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property;

Negative list

- (o) service of transportation of passengers, with or without accompanied belongings, by-
 - (i) a stage carriage;
 - (ii) railways in a class other than-
 - (A) first class; or
 - (B) an airconditioned coach;
 - (iii) metro, monorail or tramway;
 - (iv) inland waterways;
 - (v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
 - (vi) metered cabs, radio taxis or auto rickshaws;

Negative list

(p) services by way of transportation of goods-

(i) by road except the services of-

- (A) a goods transportation agency; or
- (B) a courier agency;

(ii) by an aircraft or a vessel from a place outside India to the first customs station of landing in India; or

(iii) by inland waterways;

Negative list

- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.



EXEMPTIONS & ABATEMENTS

Mega Exemptions

- **Exemptions under Mega Notification: Notification No.25/2012-ST dated 20.06.2012 substituted Notification 12/2012-ST dated 17.03.2012:**
- This notification shall come into force from 1.7.2012
- This Notification contains major exemptions
- Notification No.34/2012-ST rescinds 81 notifications issued under earlier regime.

Health care

| Service provider | Nature of services |
|---|---|
| 2. by clinical establishment, an authorised medical practitioner or para-medics | Service provided; Health care services. |
| 3. Services by a veterinary clinic | In relation to health care of animals or birds; |

(t) “health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, **but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;**

Religious Nature

| Sl No. | Nature of services |
|--------|--|
| 5. | <p data-bbox="289 342 1333 421">Services by a person by way of</p> <p data-bbox="289 456 1787 614">(a) renting of precincts of a religious place meant for general public; or</p> <p data-bbox="289 649 1458 721">(b) conduct of any religious ceremony;</p> <p data-bbox="289 756 1845 1006"><i>“religious place” means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality;</i></p> |

6. Legal Services

| Service provider | Service recipient |
|--|---|
| An arbitral tribunals; | (i) To any person other than a business entity or (ii) To business entity with \leq Rs.10.00 lacs turnover in P.F.Y. |
| Individual advocate or partnership firm of advocates | Legal services provided to: (i) an advocate or partnership firm of advocates providing legal services ; (ii) any person other than a business entity; or (iii) To business entity with \leq Rs.10.00 lacs turnover in P.Y. |
| Person represented on Arbitral tribunal | To an arbitral tribunal |

Legal Service

- (w) “legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority;
- S.65B(17) “business entity” means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession;

12. Construction etc services to Govt.

| Services | Service recipient |
|---|--|
| <p>Construction, erection, commissioning, completion, fitting out, repair, maintenance, renovation or alteration of:</p> <p>(a) a civil structure or original works predominantly for a non-industrial or non-commercial use;</p> <p>(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity etc.;</p> <p>(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;</p> <p>(d) canal, dam or other irrigation works;</p> | <p>to the Government or a local authority or governmental authority</p> |

12. Construction etc services to Govt.

| Services | Service Recipient |
|--|--|
| <p>Erection, construction, maintenance, repair, alteration, renovation or restoration of :</p> <p>(e) pipeline, conduit or plant for (i) drinking water supply (ii) water treatment (iii) sewerage treatment or disposal; or</p> <p>(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Finance Act;</p> | <p>to the Government or a local authority or governmental authority</p> |
| <p>“residential complex” means any complex comprising of a building or buildings, having more than one single residential unit, “single residential unit” means an independent residential unit with specific facilities for living, cooking and sanitary requirements,</p> | |

12. Construction etc services to Govt.

- Governmental Authority: “governmental authority” means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution

13. Construction & maintenance

Nature of services

Erection, construction, maintenance, repair, alteration, renovation or restoration of

a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

c) a building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;

d) a pollution control or effluent treatment plant, except located as a part of a factory; or

e) a structure meant for funeral, burial or cremation of deceased;

14. Construction – original work

Nature of services

Erection or construction of original works pertaining to:

- a) an airport, port or railways, including monorail or metro;
- b) a single residential unit otherwise than as a part of a residential complex;
- c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the ‘Scheme of Affordable Housing in Partnership’ framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
- d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
- e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

Definition

- Original Work – as per Rule 2A of ST Valuation Rules, 2006
- *Explanation 1.*- For the purposes of this rule,-
 - (a) “original works” means-
 - (i) all new constructions;
 - (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
 - (iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

19. Serving of food by Restaurant

- Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having
 - (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and
 - (ii) a licence to serve alcoholic beverages;

24. Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;

| Services | Service Recipient |
|---|---|
| 25. Services to Government: (a)carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or (b)repair or maintenance of a vessel or an aircraft; | to the Government or a local authority or a governmental authority |

New Exemptions

38. Public Bathroom / toilets - Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets
39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

Abatement under Negative List

- **New abatements under Negative List of taxation: Notification No.13/2012-ST dated 17.03.2012.**
- Certain changes are proposed to be introduced in the abatements along with negative list. It is expected that, though the taxable portion of services may appear a little higher, but the availability of credits will lead to reduction in costs and hence prices for the consumers.

The existing and new abatements shall be as follows:

| Service | Existing taxable portion | Proposed taxable portion | Cenvat credits |
|---|---------------------------------|---------------------------------|---|
| Convention center or mandap with catering | 60% | 70% | All credits, except on inputs, of chapter 1 to 22, will now be available. |
| Pandal or Shamiana with catering. | 70% | 70% | |
| Coastal shipping | 75% | 50% | No credits |
| Accommodation in hotel etc. | 50% | 60% | Credits on input services allowed |
| Railways: goods | 30% | 30% | All credits will be allowed |
| Railways: passengers | New levy | 30 | -do- |

Abatements:

| Service | Abatement | Cenvat credits |
|--|-------------------|---|
| Financial Leasing | 90% | All credits, except on inputs, of chapter 1 to 22, will now be available. |
| Air Travel | 60% | |
| GTA | 75% | No credits |
| Chit fund services | 30% | No credits |
| Renting of motor vehicles | 60% | No credits |
| Transport from one port to another | 50% | No credits |
| Package Tours Solely booking accommodation Other services | 75% 90% 60% | No credits |
| Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, etc. | 75% | Credit allowed on input service & CG Land value is included |

REVERSE CHARGE / JOINT CHARGE MECHANISM

Statutory Provision for Reverse Charge:

- Section 68(2) empowers Central Government to notify 'taxable services' wherein 'prescribed person' will be deemed to be the "Person liable for paying service tax":
- **SECTION [68. Payment of service tax. — (1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed.**
- **(2) Notwithstanding anything contained in sub-section (1), in respect of [*such taxable services as may be notified*] by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.]**

Statutory provisions for Joint Charge

Finance Act, 2012 – w.e.f. 28.5.2012

Proviso to Section 68 (2):

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

Reverse Charge w.e.f. 1.7.2012

Notification No.30/2012-ST dated 20.6.2012

Insurance Agent & Goods Transportation Agency (GTA)

| Nature of service | Provider | Recipient | Person liable |
|--------------------------------------|-----------------|---|-----------------------|
| (i) Insurance agency | Insurance agent | Insurance company | Recipient |
| (ii) Transportation of goods by road | GTA | Specified person-located in taxable territory | Such specified person |
| | | Others | GTA |
| | Other than GTA | Not liable (see negative list) | |

Definition of 'GTA':

• Goods Transportation Agency:

- *Section 65B (26): "Goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;*
- *Explanation to Rule 4B: For the purposes of this rule and the second proviso to rule 4A, "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the names of the consignor and consignee, **registration number of the goods carriage in which the goods are transported**, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.*

GTA – specified persons

In respect of transportation of goods by road, where the person liable to pay freight is,—

- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (c) any co-operative society established by or under any law;
- (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules;
- (e) any body corporate established, by or under any law; or
- (f) any partnership firm whether registered or not under any law including association of persons;

GTA – Place of Provision of Service

- What is the effect of substitution of “Person liable to pay freight is” in place of “Consignor or consignee of goods is”
- As per Rule 10 of POPS Rules, 2012, in case of “services of transportation of goods” (other than mail or courier), the place of provision of service shall be the place of destination of goods.
- However, in case of GTA, the place of provision of service **shall be the location of the person liable to pay tax.**

(iii) Sponsorship Services

- In case of sponsorship service, reverse charge will apply only when the 'recipient of service' is any:
 - 'body corporate' or
 - 'partnership firm'
- located in the taxable territory.
- If sponsorship service provided to any person other than above, the service provider will be liable to pay service tax.

Body Corporate

Companies Act, 1956: Section 2(7) *"body corporate" or "corporation" includes a company incorporated outside India but does not include -*

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

In Board of Trustees Ayurvedic and Unani Tibia College, Delhi v. State of Delhi, AIR 1962 SC 458, Supreme Court held that a society registered under Societies Registration Act does not come within the term ' body corporate'.

Hence, incorporation either in India or abroad is a necessary'.

(iv) Legal Services:

| Nature of service | Provider | Recipient | Person liable |
|-------------------|--|--|---------------|
| Arbitral tribunal | Arbitral tribunal | Business entity | Recipient |
| | | Others | Exempt |
| Legal services | Individual advocate or Firm of advocates | Business entity | Recipient |
| | | Others including other advocate or firm of advocates | Exempt |

Legal services provided to 'Business Entity' with a turnover up to Rs.10 lakhs will be exempt under Notification No.25/2012-ST

Business Entity & Person

(17) "business entity" means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession;

(37) Person includes:

- (i) an individual,**
- (ii) a H U F,**
- (iii) a company,**
- (iv) a society,**
- (v) a LLP,**
- (vi) a firm,**
- (vii) an association of persons or body of individuals, whether incorporated or not,**
- (viii) Government,**
- (ix) a local authority, or**
- (x) every artificial juridical person, not falling within any of the preceding sub-clauses;**

Support services by Government / local authority

| Nature of service | Provider | Recipient | Person liable |
|---|-------------------------------------|--------------------|---|
| Renting of immov property Speed Post, express cargo etc by Dept of Post, Service relating to aircraft or vessel & transport of goods or passengers | Government or local authority | Any Person | Provider – Government or Local Authority |
| Support Services other than above | Government or local authority | Business entity | Recipient of service |

S. 65B (49) "support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis;

(iva) Director of a Company

- Clause (iva) inserted by Notification No.45/2012-ST dated 7.8.2012:
- “(iva) provided or agreed to be provided by a **director of a company to the said company;**”

| Nature of service | Provider | Recipient | Person liable |
|--|----------|-----------|----------------------|
| Services provided by Director of a Company | Director | Company | Recipient of service |

JOINT CHARGE

W.e.f. 1.7.2012

Notification No.30/2012-ST dated 20.06.2012

(v) Joint Charge

| Nature of service | Provider | Recipient | Person liable |
|--|-----------------------------|---|--|
| Renting of motor vehicles designed to carry passengers | Individual Partnership, AOP | Body corporate other than one which is engaged in such activity | Proportionate bases by Recipient and provider if both are located in taxable territory |
| Supply of Manpower or Security Services | | Business entity registered as a Body corporate | |
| Works contract | | -- do -- | |

‘Security Services’ was inserted w.e.f. 7.8.2012 vide Notification No.45/2012-ST.

Definitions

Service Tax Rules, 1994:

Manpower Supply: Rule 2(1) (g) “supply of manpower” means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control.’

Security Service : Rule 2(1) “(fa) “security services” means services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity;”

Definition

- **Section 65B (54): "works contract"** means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;
- Business entity registered as a Body Corporate – Section 2(7) of Companies Act, 1956.
- Hence, Society which is deemed to be a body corporate as per Societies Registration Act, cannot be termed as 'body corporate' for reverse unless the same is registered as such.

Joint charge – Percentage of ST payable

| Nature of service | Provider | Recipient |
|--|----------|-----------|
| Renting of motor vehicles designed to carry passengers – if abatement claimed - Where abatement is not claimed | | |
| | NIL | 100% |
| | 60% | 40% |
| Supply of Manpower or Security Services | 25% | 75% |
| Works contract | 50% | 50% |

Whether the 'recipient of service' can challenge the classification of service made by the service provider ?

Import of Service – reverse charge

| Nature of service | Provider | Recipient | Person liable |
|--------------------------|---|------------------------------|----------------------|
| Any taxable service | Located in non taxable territory | Located in taxable territory | Recipient |
| | Refer Sl No. 34 of Mega exemption notification for exemption on import of service | | |

Service Tax Procedure

REVERSE CHARGE

Threshold Exemption – Not applicable

- Threshold Exemption up to Rs. 10 lakhs is not applicable where service tax is payable under 'Reverse Charge' basis under sub-section (2) of section 68 of Finance Act, 1994. [Notification No.33/2012-ST dated 20.06.2012]
- (ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules,1994.*
- What is the position of 'service provider' liable to pay 'partial reverse charge' under 'Joint Charge Mechanism' is also introduced vide Notification No.30/2012-ST?

INVOICE / BILL / CHALLAN

- Invoice / bill / challan shall be issued with in:
 - 30 days from (for banking Company etc.-45days)
 - Completion of service
 - Receipt of payment towards value of service
 - Which ever is earlier
 - Contents of Invoice:
 - Serially numbered
 - Name, address and RC number of service provider
 - Name and address of receiver of service
 - Description and value of service
 - Service tax
- Taxable value Up to Rs.1000 received in excess of the bill/ invoice- no need to issue invoice

Point of Taxation

- General Rule - Rule 3: Earliest of following events would be the point of taxation
 - Date of invoice
 - Date of completion of service (if invoice is not issued within 30 days of completion of service)
 - Date of receipt of advance (to the extent of advance)
- In case of REVERSE CHARGE / JOINT CHARGE
Rule 7:
 - Date of payment to service provider is relevant
 - If payment is not made within 6 months – point of taxation shall be determined as if this rule does not exist.

Cenvat Credit: Reverse / Joint charge

- Rule 4(7) of CCR, 2004 was amended w.e.f., 1.4.2011 to provide for availing Cenvat credit on ‘input services’ immediately **“on or after the receipt”** of invoice / bill etc.
- In case of input service where service tax is paid on ‘reverse charge’ by the recipient of service, Cenvat credit can be availed **“on or after the day on which payment is made of**
 - The value of input service and
 - The service tax paid or payable as indicated in invoice

What is the position in case of partial payment?

Works Contract

VALUATION

Valuation rules- Specific Services-2A

- Works contract services
- Value of Service = Gross amount charged minus Value of Goods
- Gross amount charged excludes
 - VAT
 - Sales Tax

Valuation rules- Specific Services

- Gross amount includes

Labour charges for execution of the works;

Amount paid to a sub-contractor for labour and services

Charges for planning, designing and architect's fees

charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract

cost of consumables such as water, electricity, fuel, used in the execution of the works contract

cost of establishment of the contractor relating to supply of labour and services

other similar expenses relating to supply of labour and services; and

profit earned by the service provider relating to supply of labour and ser

Valuation rules- Specific Services

- Where VAT/Sales Tax is paid on actual value of goods transferred:
 - Such value shall be treated as value for deducting the value of goods

Works Contract

- If VAT is not paid on actual value then

| Nature of works | Valuation |
|---|---------------------------------|
| Original works | 40% of the total amount charged |
| Maintenance, repair, reconditioning etc of goods | 70% of the total amount charged |
| Other works including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property | 60% of the total amount charged |

Condition: No Credit of inputs shall be availed

Works Contract

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

Works Contract

(d) “total amount”

- sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-
- (i) the amount charged for such goods or services, if any; and
- (ii) the value added tax or sales tax, if any, levied thereon:

Point of Taxation



Effective Date

- Rules were made applicable from 1.4.2011
- Option was given to assessee to adopt from 1.7.2011
- From **1.7.2011** it is mandatory
- Are they constitutionally valid?

| Nature of event | Change |
|-------------------------------|--|
| Normal circumstance | 'Date of entry in books of accounts or credited to bank – whichever earlier |
| Change in the rate / new levy | Date of credit in bank account if : a) The change is rate or new levy would come into effect between the date of accounting and date of credit in books and b) Credit is bank account is made after 4 working days after rate change or new levy c) Payment is made by way of instrument |

Point of Taxation in general

- Rule 3
- Earliest of following events would be the point of taxation
 - Date of invoice
 - Date of completion of service (if invoice is not issued within 30 days of completion of service)
 - Date of receipt of advance (to the extent of advance)

Rule -3: illustration

| Event | Situation 1 | Situation 2 | Situation 3 |
|--------------------------------------|------------------|----------------------------|--------------------------------------|
| Completion of service | 30.10.11 | 31.01.12 | 30.04.11 |
| Issue of invoice | 01.11.11 | 12.12.11 | 16.06.11 |
| Receipt of amount | 31.12.11 | 30.11.11 | 30.06.11 |
| Date on which the service is Taxable | 1.11.11 | 30.11.11 | 30.04.11 |
| Reasoning | Date of invoice. | Amount received in advance | Invoice is not issued within 30 days |

Proviso to R. 3: continuous supply of services

- Meaning:
 - services are to be provided on continuous basis or recurrent basis under a contract for a period exceeding 3 months period with obligation for payment on periodical basis or from time to time
 - OR
 - Notified by Government
- Service Notified by Government
 - Telecommunication services
 - Service portion in works contract

Rule 3 –continuous supply of services

- Where contract provides for determination of value of service on periodical basis on completion of an event
 - Date of completion of such specified event
- Where no such event is specified
 - General provisions under Rule 3 would apply

Rule 4 –Change in effective rate of tax

- Meaning:
- Change in the rate of tax
- shall include
 - a change in the portion of value on which tax is payable in terms of a notification issued in the Official Gazette under the provisions of the Act, or rules made thereunder
 - i.e. change in the abatements, composition rates etc.

Change in Effective Rate

| Provision of service | Invoice &/or payment | Rate applicable | Point of Taxation |
|----------------------|--|-----------------|---|
| Before rate change | Either invoice is issued or payment is received before rate change | OLD RATE | Date of invoice or payment whichever is earlier |
| After rate change | If both invoice as well as payment is received before rate change | OLD RATE | |
| In all other cases | | NEW RATE | Date of invoice or payment whichever is later |

Rule 5 new services:

| Situation | Taxability |
|---|---|
| Where invoice has been issued and the payment received against such invoice before service became taxable | No tax shall be payable to the extent of the invoice raised and payment received. |
| Invoice issued before service became taxable but consideration received after the same became taxable | Liable to the extent received |
| Where the payment has been received before the service becomes taxable and invoice has been issued within 30 days as specified in rule 4A of the Service Tax Rules, 1994. | No tax shall be payable |
| Where invoice is not issued within 30 days | Taxable |

Rule 7: Services on payment basis

- Services where person other than provider of service is liable to pay tax [68(2)]
 - GTA, import of service, Sponsorship etc.
- If payment is not made within 6 months from date of invoice- then Rule 3 would be applicable

Point of Taxation Rules, 2011

- Rule 8 – copyrights, etc.

| Applicability to | When Applicable | Point when taxable |
|--|---|--|
| <p>Payment of Royalties and other payments pertaining to:</p> <ul style="list-style-type: none"> - copyrights, - trademarks, - designs or patents | <p>Where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and use or the benefit of these services by recipient of service or other person (a person other than the provider) gives rise to any payment of consideration subsequently.</p> | <ul style="list-style-type: none"> - Each time when the payment in respect of such use or the benefit is received Or - Date on which invoice is issued by the provider <p>Whichever is earlier.</p> |

8A. Point of taxation in certain cases

- Where point of taxation cannot be determined as per these rules as the date of invoice or the date of payment or both are not available
- Central Excise Officer may determine POT based on the materials available / provided by assessee.

Clarifications -6th July 2012

- Due to introduction of Negative list w.e.f 1.7.2012 following things shall be noted:
 - A. Point of taxation of new services have to be determined on the basis of Rule 5
 - B. there is a change in composition rates for works contract due to amendment to Rule 2A of valuation Rules- Point of taxation in such cases to be determined as per Rule 4

Clarifications -6th July 2012

- In certain cases only the manner of expression is changed (for example, earlier 4.8% as prescribed as rate of tax. Now it is prescribed as tax @12% on 40% of the value of taxable service) Net impact being the same, it cannot be termed as **change in the effective rate of tax**



Thank you

C.R.RAGHAVENDRA B Com, FCA, LLB

Email id : raghavendra@rceglobal.com