SERVICE TAX ACT, 1994

Introduction

Service Tax in India was introduced in the year 1994. There is no independent statute for levying Service Tax.

Scope

Service Tax Act covers the tax on service which means the following:

1. Any activity for consideration
2. Carried out by a person for another and
3. Includes a declared service.

Levy of Service Tax

Levy of service tax extends whole of India except Jammu & Kashmir

Analysis of service

1. Activity without consideration is not taxable and consideration without activity is also not taxable.
2. Activity must be carried out by a person for another. The words “carried out by a person to another” signify that there must be two distinct entities – service provider and service receiver.
3. Service includes a declared service which means any activity carried out by a person for another person for consideration and declare as such under section 66E(section 65E).

Charge of Service Tax (section 66B)

Section 66B is the charging section of the Act. The effective rate of service tax is 12%: plus Education cess of 2% and secondary & higher education cess of 1%

Negative list of services

Section 66D of the Act has specified the list of services consisting of 17 heads of services which is termed as “Negative List”. A few examples of the “Negative List” can be stated as follows:

a)Services by the Reserve Bank of India, b) Service by a foreign diplomatic mission located in India, c) Trading of goods, d) Service by way of access to a road or a bridge on payment of toll charges, e) Betting, gambling or lottery etc. etc.

Administration

The responsibility of administration and collection of service tax has been vested upon the CBEC (“Board”). The Board administers service tax matter through the Central Excise Zones.

SERVICE TAX

FAQ

1. What is Service Tax and who pays this tax?

Service tax is, as the name suggests, a tax on Services. It is a tax levied on the transaction of certain services specified by the Central Government under the Finance Act, 1994.It is an indirect tax (akin to Excise Duty or Sales Tax) which means that normally, the service provider pays the tax and recovers the amount from the recipient of taxable service.

2. Who is liable to pay service tax?

Normally, the „person" who provides the taxable service on receipt of service charges is responsible for paying the Service Tax to the Government (Sec.68 (1) of the Act). However, in the following situations, the receiver of the Services is responsible for the payment of Service tax:

(i) Where taxable services are provided by Foreign Service providers with no establishment in India, the recipient of such services in India is liable to pay Service Tax.

(ii) For the services in relation to Insurance Auxiliary Service by an Insurance Agent, the Service Tax is to be paid by the Insurance Company

(iii) For the taxable services provided by a Goods Transport Agency for transport of goods by road, the person who pays or is liable to pay freight is liable to pay Service Tax , if the consignor or consignee falls under any of the seven categories viz. (a) a factory (b) accompany (c) a corporation (d) a society (e) a co-operative society (f) a registered dealer of excisable goods (g) a body corporate or a partnership firm.

(iv) For the taxable services provided by Mutual Fund Distributors in relation to distribution of Mutual Fund the Service Tax is to be paid by the Mutual Fund or the Asset Management Company receiving such service. [Refer: Sec. 68(2) of the Act read with Rule 2(1)(d) of the Service Tax Rules, 1994.]

3. Under what authority service tax is levied?

Vide Entry 97 of Schedule VII of the Constitution of India, the Central Government levies service tax through Chapter V of the Finance Act, 1994. The taxable services are defined in Section 65 of the Finance Act, 1994. Section 66 is the charging section of the said Act.

4. What are the taxable services?

Taxable Services have been specified under Section 65(105) of the Finance Act, 1994. All the taxable services as on 01.05.2011 are listed in Appendix1. The list also shows the relevant Accounting Heads required to be mentioned on the tax payment documents (GAR-7), while depositing the Service Tax and other related dues in the banks.5

5. How to decide whether Service Tax is payable bya person?

A. If you are engaged in providing a service to any person, please check :-(i) whether the service rendered by you is falling under the scope of any of the taxable services listed in the Appendix-1.; and (ii)Whether there is a general or specific exemption available for the category of service provided under any notification issued under section 93 of the Finance Act, 1994.(iii)Whether you are entitled to the value based exemption available for small service providers under notification No.6/2005-ST dated 1.3.05 as amended from time to time. Details are explained in para 8.1 of this Booklet.(iv) Whether the service charges were received for the services provided or to be provided. In case the service provided by a person falls within the scope of the taxable services and if such service is not fully exempted, the service tax is payable on the value of the taxable service received, subject to the eligible abatements, if any (as discussed at para 1.7 of this Booklet).

B. If you are availing the services of the service provider, please check:-

a. Whether the service received by you is falling under the scope of any of the services where the recipient of the service is liable to pay Service Tax in terms of Section 68(2) of the Act read with Rule 2(d) of the Service Tax Rules, 1994 (Please also see Para 1.2 of this Booklet)

b .In case the service received by recipients of such service is falling under the scope of any of the taxable services defined under section 65 of the Finance Act, 1994, the recipients of the service shall pay Service Tax after considering specific exemptions/abatements admissible, if any.

c. Please note that the value based exemption for small scale service providers under Notification No.6/2005 ST dated 01.03.2005 as amended is not admissible to such recipients of taxable services. (For further details, please see para 7.1 of this Booklet).

6. What is the rate of Service Tax?

At present, the effective rate of Service Tax is10.3% on the value of the taxable service. The above effective rate comprises of Service Tax @10% payable on the “gross value of taxable service”, Education Cess @ 2% on the service tax amount, and Secondary and Higher Education Cess @ 1% on the service tax amount.

7. What is meant by —value of taxable service"?

i. The "value of taxable service" means, the gross amount received by the service provider for the taxable service provided or to be provided by him. Taxable value has to be determined as per the provisions of the Section 67of the Finance Act, 1994, read with Service Tax (Determination of Value) Rules, 2006

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ii. For certain services, a specified percentage of abatement is allowed from the gross amount collected for rendering the services (see Appendix –2) subject to the conditions, inter alia, that CENVAT Credit has not been availed by the service provider and the benefit under the Notification No.12/2003-ST dt. 20.6.2003 as amended has also not been availed.6

iii. There is also a composition scheme for works contract service‘, where the person liable to pay service tax in relation to works contract service shall have

the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to 4% of the gross amount charged for the works contract. The gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, paid on transfer of property in goods involved in the execution of the said works contract.

8. Can the Department modify the value determined by the service provider?

(i) The Central Excise Officer is empowered to verify the accuracy of any Information furnished or document presented for valuation.

(ii) If the value adopted by the Service Tax assessee is not acceptable in accordance with the statute, the officer shall issue a show cause notice (SCN) proposing to determine the value as per the law.

(iii) The SCN would be decided after providing reasonable opportunity of being heard to the assesses.(Rule 4 of the Service Tax (Determination of Value) Rules, 2006 read with Section 67 of the Act)

9. What are the statutes governing the taxation relating to Service Tax?

The Statutes governing the levy of Service Tax are as follows:

(i) The Finance Act, 1994-Chapter V-Section 64 to 96 I. (Also referred to as „Act‟ in this book). This chapter extends to the whole of India except the State of Jammu and Kashmir

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(ii) The Finance Act, 2004 Chapter VI-for levy of Education Cess @ 2% on the Service Tax.

(iii) The Finance Act, 2007–for levy of Secondary and Higher Education Cess of 1% on Service tax.

(iv) The Service Tax Rules, 1994. (Also referred to as „Rules‟ or „STR, 1994‟ in this book).

(v) The CENVAT Credit Rules, 2004.

(vi) The Export of Service Rules, 2005.

(vii) The Service Tax (Registration of Special categories of persons) Rules, 2005.

(viii) The Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 (with effect from 19th April, 2006)–Notification No. 11/2006-ST dated19.4.2006 as amended vide Notfn.No.31/2007–ST dated 22.05.2007.

(ix) The Service Tax (Determination of Value) Rules, 2006 (with effect from 19th April,2006) –Notification No. 12/2006-ST dated 19.4.2006 as amended vide Notfn.No.24/2006–ST dated 27.06.2006 and Notfn.No.29/2007-ST, dated

22.05.2007.

(x) Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007-Notification No. 32/2007-Service Tax dated 22nd May, 17ST-3A Return–The assesses who is making provisional assessment under rule 6(4) of the Service Tax Rules, 1994.The Forms are available at any Stationery shop selling Govt. forms. These can also be downloaded from www.cbec.gov.in

10. When to file returns?

ST-3 Return is required to be filed twice in a financial year .–half yearly. Return for half year ending 30th September and 31st March are required to be filed by 25thOctober and 25thApril, respectively.

11. How to file Service Tax Returns?

The details in respect of each month/ Quarter, as the case may be, of the period for which the return is filed, should be furnished in the Form ST-3, separately. The instructions for filing return are mentioned in the Form itself. It should be accompanied by copies of all the GAR-7 Challans for payment of Service Tax during the relevant period.

12. Is there any provision to file a revised return?

Yes, under rule 7B of Service Tax Rules, 1994 an assessee may submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of ninety days from the date of submission of the return under Rule 7. However, where an assesses submits a revised return, the „relevant date‟ for the purpose of recovery of service tax, if any, under section 73 of the Finance Act, 1994, shall be the date of submission of such revised return.

13. What is e filing of Service Tax Returns?

The e-filing is a facility for electronic filing of Service Tax Returns through the Internet.

14 How to file Service Tax return?

With effect from 25th August, 2011 in terms of Notfn. No. 43/2011 all Service Tax returns are to be filed electronically.

15. Is E-filing of Returns mandatory to all assesses?

E-filing of Returns is mandatory for all assesses as provided by Rule 7 amended by [Notification No. 43/2011-ST dated 25/08/2011].

16. What is the procedure for e-filing?

(i) File an application to the jurisdictional Asst./Deputy Commissioner of ServiceTax,specifying -15-digit PAN based registration number (STP Code) - Valid e-mail address -so that the Department can send them their User ID and password to help hem file their Return.

(ii) Log on to the Service Tax e-filing home page by typing the address http://servicetaxefiling.nic.in in the address bar of the browser.

(iii) Upon entering the Service Tax code, user ID and password, you will be permitted to access the e-filing facility.

(iv) Follow the instructions given therein for filing the Returns electronically.

(v) Obtain the acknowledgement.18

17. Is filing of return compulsory even if no taxable service provided or received or no payments received during a period (a particular half year)?

Filing of return within the prescribed time limit is compulsory, even if it may be a nil return, failing which penal action is attracted.

18. Whether a single Return is sufficient when an assessee provides more than one service?

A single return is sufficient because the ST-3 Return is designed to capture details of each service separately within the same return.

19. Is there any penalty for non filing or delayed filing of the Returns?

If a person fails to file the ST-3 Return by the due date [25th October and 25th April every year], he shall be liable to penalty which may extend to Rs.Ten thousand rupees (Section 77 of the Act) Mandatory Penalty for Late filing of ST-3 Return under Rule 7C of Service Tax Rules, 1994 (Section 70 of the Act) Sr .No. Period of Delay from the prescribed date Penalty115 days Rs.500/-2 Beyond 15 days but not later than 30 days Rs.1000/-3 Beyond 30 days Rs.1000/ -plus Rs. 100/-for every day from the thirty first day till the date of furnishing the said return (not exceeding Rs.20000)

20. Are there any statutory documents prescribed by the Government such as specified invoice proforma, specified registers etc. for use by the service providers?

There are no specific statutory records which have to be maintained by a Service Tax assessee. The records including computerized data, if any, which are being maintained by an assessee on his own or as required under any other law in force, such as Income Tax, Sales Tax etc. are acceptable for the purpose of Service Tax -(Rule 5(1) of the Service Tax Rules, 1994).However, under the revised rule 5(2) of the STR, 1994(with effect from 28th December, 2007), the assessee is required to provide to the jurisdictional Superintendent of Central Excise/Service Tax a list, in duplicate, of all the records prepared or maintained by the assessee for accounting of transactions in regard to (a) providing of any service, whether taxable or exempted; (b) receipt or procurement of input services and payment for such input services; (c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods; (d) other activities, such as manufacture and sale of goods, if any and all other financial records maintained by him in the normal course of business,

21. Where from the Service Tax assessee can get the Forms such as ST-1, ST-3 etc?

The Forms are available on the CBEC website and also at the Central Excise Range/Division/Commissionerate Hqrs. offices. The forms are also available in the market and are sold by private publishers.19

22. Can the Department ask for more information than what assessee is submitting to it in the Form ST-1 and ST-3?

Yes. If it is felt necessary, the Department can call for additional information/ documents for scrutiny, as per Rule 6(6) of the Service Tax Rules, 1994 and Sec. 14 of the Central Excise Act, 1944 which is made applicable to Service Tax matters, as per Sec. 83 of the Finance Act, 1994. Rule 5A of Service Tax Rules, 1994 provides that every assessee, on demand, is required to make available to the Central Excise/Service Tax officer authorized by the Commissioner or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, within a reasonable time not exceeding fifteen working days from the day when such demand is made, or within such further period as may be allowed by such officer or the audit party, the following records/documents for the scrutiny of the officer or audit party:

i. the records as mentioned in Rule 5(2) of STR, 1994;

ii. Trial balance or its equivalent; and

iii. the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961).In the event of failure to make available the records/documents, a penalty of Rs. 10000 or Rs.200 for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance, is imposable on the assessee under amended section 77 of the Finance Act, 1994.

23. Can a Service Tax officer access an assessee‘s registered premises?

As provided under Rule 5A of STR, 1994, an officer authorized by the Commissioner can have access to an assessee‟s registered premises for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

24. Whether issue of Invoice/Bill/Challan is mandatory? When should the same be issued?

Issue of Invoice/Bill/Challan by a Service Tax assessee is mandatory as per Rule 4A of the STR, 1994. The same should be issued within 14 days from the date of completion of taxable service or receipt of payment towards the service, whichever is earlier. However, if the service is provided continuously for successive periods of time and the value of such taxable service is determined or payable periodically, the Invoice/Bill/Challan shall be issued within 14 days days of the date when each such event specified in the contract, which requires the service receiver to make any payment to service provider, is completed. (Rule 4A (1) of the STR 1994).

25. Is there any prescribed format for the Invoice/Bill?

There is no prescribed format for issue of Invoice. However, the invoice/bill/challan should contain the following information (Rule 4A of the STR, 1994)
:

i. Serial number.

ii. Name, address and registration no.of the service provider.

iii. Name and address of the service receiver.20

iv. Description, classification and value of taxable service being provided or to be provided.

v. The amount of Service Tax payable (Service Tax and Education cess should be shown separately)Note: If the service provider is a Banking company, the details at Sl. No (i) and (iii) are not necessary. In respect of the taxable services relating to the transport of goods by road, provided by the Goods Transport Agency, the service provider should issue a consignment note containing the following information (Rule 4B of the STR, 1994): -

i. Serial Number
ii.Name of the consignor and consignee
iii. Registration no. of the vehicle
iv. Details of the goods transported
v. Details of the place of origin & destination
vi. Person liable for payment of Service Tax (consignor /consignee / GTA)

26. Is the amount of Service Tax charged from the client compulsorily to be indicated separately in the Bills / Invoices / Challans raised on him?

Yes. It is mandatory to separately indicate the amount of Service Tax charged in the Bills/Invoices/Challans raised on the clients, as per Section 12A of the Central Excise Act, 1944 which is made applicable to Service Tax, under Sec.83 of the Finance Act, 1994. Such mention of the Service Tax amount in the Invoice / Bill / Challans, would also facilitate the service receiver to avail the CENVAT credit of the Service Tax paid on the input services.

27. .What is the preservation period for service tax records and documents?

All records and documents concerning any taxable service, CENVAT transactions etc. must be preserved for a minimum period of 5 years immediately after the financial year to which such records pertain (Rule 5(3) of Service Tax Rules 1994.)6. Refunds

28. Can any adjustment of tax liability be made by an assessee on his own, in cases when Service Tax has been paid in excess?

i. Yes. Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason (or when the invoice amount is renegotiated due to deficient provision of service, or any terms contained in a contract) the

assessee may take the credit of such excess service tax paid by him, if the assesse has refunded the payment or part received fr the service provided or has issued a credit note for the value of the service not so provided to the person to whom an invoice had been issued. (Rule 6(3) of the STR, 1994).

ii. Further, assesses having centralized registration who paid excess amount of Service Tax, on account of non-receipt of details regarding the receipt of gross amount for the services at his other premises or offices, may adjust such excess amount against the Service Tax liability for the subsequent period and furnish the details of such adjustment to the Jurisdictional Superintendent of Central 21Excise/Service Tax within 15 days from the date of such adjustment (Rule 6(4A) of the STR, 1994).

iii. In all other cases of excess payment, refund claims have to be filed with the Department. The refund claims would be dealt as per the provisions of Section 11B of the Central Excise Act, 1944, which is made applicable to Service Tax vide Section 83 of the Finance Act1994.

iv. It is important to note that any amount of Service Tax paid in excess of the actual liability, is refundable, only if it is proved that the claimant of refund had already refunded such amount to the person from whom it was received or had not collected at all (Section 11 B of the Central Excise Act, 1944 which is applicable to Service Tax matters under Section 83 of the Act).

29. What is the procedure for claiming refund?

i. Application in the prescribed form (Form -R) is to be filed in triplicate with the jurisdictional Asst./Deputy Commissioner of Central Excise/Service Tax.

ii. The application should be filed within one year from the relevant date as prescribed in Section 11B of the Central Excise Act, 1944 which has been made applicable to Service Tax refund matters also.

iii. Application should be accompanied by documentary evidence to the effect that the amount claimed as refund is the amount actually paid by him in excess of the Service Tax due and the incidence of such tax claimed as refund has not been passed on to any other person.

30. What is relevant date for calculation of limitation period in respect of filing refund claims relating to Service Tax?

The “relevant date” for the purpose of refund as per section 11B of the Central Excise Act, 1944 which is applicable to Service Tax also, is the date of payment of Service Tax. Thus, the limitation period of one year is to be calculated from the date of payment of the Service Tax.

31. Is there any provision for interest for delayed payment of refunds?

If any duty/tax ordered to be refunded under section 11B(2) of Central Excise Act, 1944, toany applicant is not refunded within three months from the date of receipt of application, interest at the applicable rate shall be paid, subject to conditions laid down under section 11BB of the Central Excise Act, 1944.Also where an amount deposited by an appellant in pursuance of an order passed by the Commissioner

(Appeals) or the Appellate Tribunal, under the first proviso to section 35Fof the Central Excise Act, 1944, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority unless the operation of the order of appellate authority is stayed by a superior court or tribunal, interest shall be paid at the applicable rate after the expiry of three months, under the provisions made in section 35FF of the Central Excise Act, 1944.Provisions of Sections 11B, 11BB, 35F and 35FF of the Central Excise Act, 1944 are made applicable to Service Tax vide section 83 of the Finance Act, 1994.

32. To claim the refund arising out of service tax paid under section 66A, no proforma is prescribed in the notification; how to claim it?

22 In the notification, there is no difference in treatment of service tax paid under section 66 and section 66A of Finance Act, 1994. Where refund arises, Table –A, in Form A-2 can be used for making a refund claim.

33. Meaning of the expression who does not own or carry on any business other than the operations in the SEZ' appearing in paragraph 2(a)(iii) of the notification, which creates a difference between standalone' and non-standalone' SEZ Unit/Developer, may be clarified?

The expression refers to an entity which is carrying out business operations in SEZ and also DTA. Merely having an office in the DTA for purpose of liaison/business promotion, does not restrict a SEZ Unit from availing benefit extended to a standalone unit.

34. Whether Approval by UAC is necessary, to claim benefit under the Notification?

Yes. Unit Approval Committee (UAC) of the SEZ determines goods and services required for the authorized operations of a Unit/Developer, under the SEZ law. Hence approval of the UAC is necessary for availing the notification benefit, on the taxable services

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35. i) Does condition (c) prescribed in paragraph 2 of the notification, 17/2011-ST dated 01. 03. 2011, restrict the non-standalone Units/Developers, from availing upfront exemption for wholly consumed services, which fall under category (i) and (ii) of Para 2(a) of the notification?

(ii) For whom and for what purpose, Declaration in A-1 is required?

In respect of category (i) and (ii) services listed in paragraph 2(a), upfront exemption is made available to all SEZ Units/Developers, who fulfill the conditions of notification; only in the case of category (iii), difference is created between standalone and non-sandal one SEZ Units/Developers. Declaration in Form A-1 is required to be produced, to a service provider, to claim upfront exemption (after striking out the inapplicable portion). This is a one-time Declaration. Original Declaration can be retained with the SEZ Unit/Developer for business record or for production to the jurisdictional Central Excise/Service Tax authorities, if need be, for any verification; a copy has to be retained by SEZ Specified Officer; self-attested photocopies of the Declaration can be submitted to service provider to avail upfront exemption, subject to fulfillment of other conditions mentioned in the notification.

36. Meaning of the expression —total turnover‖ found in paragraph 2(d) of the notification 17/2011is not clear: whether it refers to turnover of SEZ Unit or the entity (including DTA and SEZ Unit). This may be clarified?

Total turnover includes turnover of DTA Unit and also export turnover of SEZ Unit. This is the way to calculate proportionate refund. Table-C in Form A-2, illustrates this aspect

37. A Developer may not have export turnover; therefore, he cannot get refund of service tax based on the formula provided for shared services in paragraph 2(d) of the notification 17/2011: therefore, it may be explained how a Developer can claim exemption under this notification?

Generally, SEZ Developers will be using category (i) services listed in paragraph 2(a), relating to immovable property located within SEZ; upfront exemption is available for these services, and category (ii) services, irrespective of whether the Developer is standalone or not. As another option, refund route is also available. In the case of category (iii) services if Developer is standalone, upfront exemption is available. If Developer is not 23 standalone, on service tax paid on category (iii) services, which are exclusively used for the authorized operations in SEZ, he can avail exemption through refund route. „

38. Whether proportionate amount of service tax paid on shared services that have not been refunded after applying the formula, shall be available to the DTA Units of the entity as cenvat credit?

Yes. Available

39. Whether consolidated refund claim under 17/2011-ST can be filed by an entity having more than one SEZ unit and a centralized service tax registration?

If an entity is having multiple SEZ Units with a centralized service tax registration, consolidated refund claim can be filed, provided separate accounts are maintained for receipt and use of services for the authorized operations in SEZ Unit.

40. Whether certified copies of invoices can be used for claiming refund, if originals are needed for other statutory purpose; whether on the basis of single invoice, one can claim proportionate refund for SEZ Unit and balance as cenvat credit?

In terms of the notification, original invoices are needed for claiming refund; after receiving the refund, originals can be taken back on submission of copies certified by Chartered Accountant. On a single invoice, if proportionate refund (by SEZ Unit) and cenvat credit (by DTA Unit) needs to be obtained, then also similar system shall be followed.

41. Is the Service Tax payable by the assessee even in cases where his clients[recipient of service] do not pay for the service(s) rendered or when the client pays only a part of the bill raised in this regard?

Though the burden of Service Tax ultimately rests on the service recipient the law requires the service provider to collect the tax from the service recipient on the services provided and deposit to the Government Account. Therefore whether the service provider receives the payment from his client (service recipient) or not, he is legally bound to pay the service Tax liability in respect of the services rendered by him. The Service Tax has to be paid when the Invoice is issued or the completion of service provided or certain advance/payment is received for the services provided.

Therefore Service Tax is payable when payment for the part of the bill is paid by the service recipient. However the tax liability will be to the full extent on the total amount to be received by the service provider.

42. What is meant by "completion of service" as in many situations it is not possible to issue invoices within 14 days of the completion of the service since the exact date of completion of service is difficult to identify?

The Service Tax Rules, 1994 requires that invoice should be issued within a period of 14 days from the completion of the taxable service. The invoice needs to indicate inter alia the value of service so complete. Thus the term "completion of service" referred above would include not only the physical part of providing the service but also the completion of all other auxiliary activities like measurement, quality testing etc. but excluding any flimsy or Irrelevant grounds. Thus the test for determination if a service has been 24completed would be the completion of all the related activities that place the service provider in a situation to be able to issue an invoice

43. How does one work out the Service Tax liability and pay the same to the Government, in case the customer or a client pays only the value of the service amount, but not the Service Tax amount mentioned in the bill?

Service Tax is payable on amount realized. In given situation, the amount so realized from the client would be treated as gross amount inclusive of Service Tax and accordingly the value of taxable service and the Service Tax liability are worked out as follows:

For example :Value of taxable service (AV) = Rs. 1000Amount Billed = Rs.1000 + Service Tax Rs.103.00 = Rs.1103.00Amount paid = Rs.1000. Treat Rs.1000 as gross amount inclusive of service tax.In case the gross amount, including service tax, received is, say, Rs 1000. In such cases the service tax liability may be arrived at by reverse calculation in the following manner.1000AV= ----------X 100 = Rs. 906.62 (Rs.907) 110.3Amount of Service Tax + Education Cess Payable = Rs.93Note: If the recipient of service pays full billed amount later, the ifferential service tax must be paid forthwith.

44. What are the conditions of exemption to small scale service providers?

Taxable services provided by the small scale service provider were exempted from whole of service tax livable there-on up to the aggregate taxable value Rs.4 lakhs in any financial year of vide Notification No.06/2005ST dated 01.03.2005 (effective from 01.04.2005). The exemption limit of aggregate taxable was enhanced to Rs.8 lakhs vide Notification No.4/2007ST dated 01.03.2007 (effective from 01.04.2007) and the same has been further enhanced to Rs.10 lakhs vide Notification No.8/ 2008 ST dated 01.03.2008 (effective from 01.04.2008).

(i) Above exemption is not admissible to :-(a) taxable service provided by a person under a brand name or trade name, whether registered or not, of another person or (b) such value of taxable services in respect of which service tax shall be paid by recipient of service under section 68 (2) of Finance Act read with Service Tax Rules, 1994.

(ii) Above exemption is admissible subject to following conditions:
   (a) taxable service provider has the option not to avail the said exemption and pay service tax on the taxable service and such option are

exercised in a financial year shall not be withdrawn during the remaining part of such financial year ;

(b) the provider of taxable service shall not avail Cenvat credit of service tax paid on any input used for providing taxable service on which exemption of small scale is availed. 31The penal provisions under Service Tax are provided under Sections 76, 77 and 78 of Finance Act, 1994. Although the penalty is liable to be imposed for the circumstances covered under the said provisions, the Section 80 of the Finance Act, 1994, provides provisions not to impose penalty, for any failure referred to in the said provisions, if the Service Tax assessee proves that there was sufficient cause for such failure.

45. Why does Department issue show cause notice?

When any amount is demanded as Service Tax or other dues from any person under the Finance Act, 1994 and rules made there under towards recovery of service tax or other dues which is not levied or paid or short levied or short paid by any person, or erroneously refunded to any person, and/or any person is liable to penalty under the said Act/Rules, notices are issued in the interest of natural justice to enable such person to understand the charges and defend his case before an adjudicating officer.

46 . Can show cause notice be waived?

Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise/Service Tax Officer before service of notice on him and inform the Central Excise/Service Tax Officer of such payment in writing, in such a case show cause notice will not be issued. [Refer Section 73(3) of Finance Act, 1994]. However, sub-section (3) of Section 73 of Finance Act, 1994, is not applicable to the cases involving fraud or collusion or willful mis-statement or suppression of facts or contraventions of any of the provisions of Chapter V of the Finance Act, 1994 and the rules made there under with intent to evade payment of Service Tax [Refer sub-section (4) of Section 73 of Finance Act, 1994].

47 . What is meant by adjudication?

When show cause notices are issued under provisions of the Finance Act, 1994 charging any person for contravention of any provisions of the said Act and rules and/or notifications issued thereunder and penal action is proposed, the competent officers of the Department adjudge the case and issue orders. This process is called adjudication.

48. What is CENVAT Credit Scheme with reference to Service Tax assessees?

The CENVAT Credit Rules, 2004, introduced with effect from 10.9.2004, provides for availment of the credit of the Service Tax paid on the input services/Central Excise duties paid on inputs/capital goods/Additional Customs duty leviable under section 3 of the Customs Tariff Act, equivalent to the duties of excise. Such credit amount can be utilized towards payment of Service Tax by an assessee on their output services. (Refer to Rule 3 of CENVAT Credit Rules, 2004). Such credit availed by a manufacturer can also be utilized for discharging their liability towards Service Tax

and / or Central Excise duties [Refer Rule 3 of CENVAT Credit Rules, 2004 read with Notfn,.No.27/2007-CE(NT) dated 12.05.2007].

49. What are the duties / taxes that can be availed as credit?

As mentioned at para 12.1, Duties paid on the inputs and capital goods, and \the Service Tax paid on the „input‟ services can be taken as credit. Education Cess paid on the Excise duty and Service Tax can also be taken as credit. However, the credit of such Education Cess availed can be utilized only for payment of Education Cess relating to output service. The interest and penalty amounts cannot be taken as credit.

50. What is meant by input‘, input service‘and capital goods‘for a service provider?

These terms have been defined in the CENVAT Credit Rules, 2004. (Refer Rule2)34

51. Is it compulsory that the inputs / capital goods are to be purchased only from the manufacturers for the purpose of availment of credit?

No. The inputs/capital goods can be procured from the First stage and Second stage dealers also. Those dealers should have registered themselves with the Central Excise Department. The invoices issued by them should contain proper details about the payment of duty on those goods. (Refer Rule 9 of CENVAT Credit Rules, 2004.)

52 What are the documents prescribed for availment of the CENVAT Credit?

The documents on which CENVAT credit can be availed are as follows:-

i. Invoice issued by the manufacturers and his depot/ consignment agents

ii. Invoice issued by the Importer and his depot/consignment agents

iii. First stage and Second stage dealer registered with the Central Excise Department

iv. Bill of Entry

v .Invoice/Bill/Challan issued by the provider of input Services

vi. Invoice/Bill/Challan issued by the Input Service distributor.

Vii .Certificate issued by the Appraiser of Customs in respect of the goods Imported through Foreign Post Office.

viii. A Challan evidencing payment of service tax by a person liable to pay service tax in the service category of auxiliary insurance, goods transport, recipient of service from a foreign country and sponsorship.

53 Whether it is necessary to avail credit only after receipt of the bill /invoice/challan in respect of input services?

Yes. Cenvat credit can be availed only on or after the day on which the invoice/bill or challan as per Rule 9 of CENVAT Credit Rules 2004 is received. However in case of service tax paid on reverse charge by the recipient of the service, the CENVAT credit in respect of such input service shall be allowed on or after the day on which payment is made of the value of the service tax paid or payable as indicated in invoice, bill or challan.

54. Who is a —Input Service Distributor?

An office of the manufacturer or provider of output service who receives invoices for the procurement of input services and issues invoices for the purpose of distributing the credit of Service Tax paid to such manufacturer or provider of output service is an "Input Service Distributor". [Refer Rule 2(m) of CENVAT Credit 2004]. The credit of the tax amount so distributed to various places shall not exceed the total Service Tax amount contained in the original invoice / bill. [Refer rule 7(a) of CENVAT Credit Rules, 2004].

55 What is the format of the invoice / bill / challan to be issued by the input service distributor?

No specific format has been prescribed. However, the same should contain the following information:-

(i) Name, address and Registration No. of the service provider.35

(ii) Sl. No and date

.

(iii) Name and address of the input service distributor.

(iv) The name and address of the recipient to whom the Service Tax credit is distributed.

(v) The amount of credit being distributed.

56. Whether the input service distributors should get themselves registered with the Department? Whether they have to file any returns with the Department?

Yes. They have to register themselves as per the provisions under Service Tax (Registration of Special Category of Persons) Rules, 2005. They have to file half yearly returns by the end of the month following the half year. [Refer Rule 3 of Service Tax (Registration of Special Category of Persons) Rules, 2005].

57. What are the records to be maintained by the persons availing credit?

The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, Cenvat Credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility

of the Cenvat Credit shall lie upon the manufacturer or provider of output service taking such credit.(Refer Rule 9(5) of CENVAT credit Rules 2004)

58. **What should be done, if an assessee is rendering both taxable services as well as exempted services, but the inputs and input services are common?**

Separate accounts are to be maintained for the receipt, consumption and inventory of input and input service meant for providing taxable output service and for use in the exempted services. Credit should be taken only on that quantity of input /input services which are used for the service on which Service Tax is payable. (Ref. Rule 6 of Cenvat Credit Rules, 2004). If separate accounts are not maintained, the provider of output service shall pay anamount equal to 5% percent of value of exempted goods and exempted services; or pay an amount as determined under sub-rule (3A); or in relation to provision of exempted services; subject to the conditions specified in sub-rule (3A) ibid. (Ref. Rule 6(3 & 3A) of Cenvat Credit Rules, 2004 read with Not.No.3/2011 CE (NT) dt.1.03.2011).

59 Whether Cenvat credit is admissible on capital goods which are exclusively used in providing exempted goods?

No.

60. Is unutilized CENVAT credit refundable?

Refund of accumulated credit is admissible only in case of exports of finished Goods or output service. Where any input or input service is used in providing output service or manufacture of goods which are exported, the CENVAT credit in respect of the input or input service so used shall be allowed to be utilized towards payment of service tax on any other output service or excise duty on other excisable goods. If such adjustment is not possible due to any reason, it will be allowed as refund subject to the safeguards, conditions and limitations specified by the Central Government.

61 What constitutes export of services?

The Export of Services, Rules, 2005 specifies 3 categories of cross border transaction of services and conditions that will be construed as export of Services in cases of: unspecified services which are provided in relation to immovable properties situated outside India [See list of services in Appendix-4] (Refer Rule 3(1)

(i) of Export of Service Rules, 2005).

ii. Specified services which are partly performed outside India –[See list of services in Appendix –4] (Ref. Rule 3(1)(ii) of Export of Service Rules,2005).

iii. The remaining taxable services, barring a few exceptions, when provided in relation to business or commerce, to a recipient located outside India, and when such services are provided not in relation to business or commerce, it

should be provided to a recipient located outside India at the time of provision of such service. However, where such recipient has commercial establishment or any office relating thereto, in India, such taxable services provided shall be treated as export of service only when order for provision of such service is made from any of his commercial establishment or office located outside India. [See list of services in Appendix –4] (Ref. Rule 3(I)(iii) of Export of Service Rules,2005). Further condition to be met for treating the provision of any taxable service as export of service -payment for such service is received by the service provider in convertible foreign exchange.[Ref. Rule 3(2) of the Export of Service Rules, 2005].Thus, each transaction has to be seen individually to ascertain if it constitutes export of services, fulfilling the requisite parameters.