

SERVICE TAX IN INDIA

*A dissertation submitted in partial fulfillment of the
requirements for the Degree of Master of Laws*

Prepared under the guidance of

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CERTIFICATE

This is to certify that this dissertation "Service Tax in India" submitted by Miss. M. Brunda Rao for the degree of Master of Laws in National Law School of India University is the product of bonafide research carried out under my guidance and supervision. This dissertation or any part thereof has not been submitted elsewhere for any other degree.

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Dedicated to:

My parents and Harsha

Declaration

I, M. Brunda Rao, do hereby declare that this dissertation entitled "Service Tax in India" is the outcome of the research conducted by me under the guidance and supervision of Prof. K. C. Gopalakrishnan at National Law School of India University, Bangalore for the partial fulfillment of the requirement for the award of the Degree of Master of Laws.

I also declare that this work is original except for such help taken from such authorities as has been referred to at the appropriate places for which necessary acknowledgments have been made.

I further declare that this work has not been submitted either in part or in whole for any degree at any other university.

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RESEARCH METHODOLOGY

AIMS AND OBJECTIVES:

The researcher has attempted to gain an understanding of the functioning of service tax, its practical difficulties and the law governing service tax.

SCOPE AND LIMITATION:

The scope encompasses within itself the basic understanding of the working of service tax and its administration.

METHOD OF ANALYSIS:

The methodology sought to be adopted for the purpose of this paper is largely doctrinal and analytical.

SOURCES OF DATA:

The researcher has relied on both primary and secondary sources of data. The library and online database materials are extensively used to bring out this paper.

FIELD WORK :

The researcher administered a questionnaire to Mr. Mehboob, Superintendent (Service Tax), Belgaum Central Excise Commissionerate, Belgaum Zone. The questionnaire contained open ended questions and the same has been appended as Annexure VI.

RESEARCH QUESTIONS:

The main research objective is to critically examine the functioning of service tax regime and its constitutional validity. The sub research questions have been highlighted in the respective chapters.

MODE OF CITATION:

A uniform mode of citation has been conformed to throughout the course of the research paper.

INTRODUCTION

1. INTRODUCTION

'Services' constitute a very heterogeneous spectrum of economic activities. Over a period of time, the definition of 'service' has also undergone change. 'Service' means anything done to help or benefit the other or a system that performs work for customers or supplies public needs¹. Service tax therefore simply means tax paid on services rendered. Taken in this sense a cobbler mending our shoes also renders a service. Does this imply that if a cobbler charges Re. 1/- to repair, he has to pay a service tax of eight paise² to the Government. This question will be answered in the later chapters.

In olden days, it was difficult to separate 'services' from the service provider and recipient. People were crucial to the definition of service. Today services cover wide range of activities such as management, banking, insurance, hospitality, administration, communication, entertainment, wholesale distribution and retailing including Research & Development activities. Service sector is now occupying the center stage of the economy so much so that in the contemporary world, development of service sector has become synonymous with the advancement of the economy.

Service sector has been growing phenomenally all over the world, though it varies in degree and magnitude among the various countries. The growing importance of this sector can be gauged from the ever-increasing contribution of traditional contributors, like agriculture and manufacturing sectors. India is not an exception to this changed phenomenon and service sector is intertwined with the day-to-day activities of persons - both natural and legal persons. In today's context, the growth of an economy is evaluated in terms of the growth and spread of the service sector. As such it is very necessary that proper attention be given to this sector from the Government's side³.

The share of services sector in the real GDP in India has surpassed that of agriculture and industry at a relatively faster pace as compared to other

¹ Oxford English Minidictionary

² The present service tax rate is 8%.

³ T. N. Pandey, "Budget 2003-04 and Service Tax : Enhanced rate of tax and new services brought within tax net", Taxman, March 2-March 28, 2003 at pg. 249

industrialized nations. Service sector has become the main contributor to the GDP not merely in developed economies like U.S.A., Japan & U.K. but also in developing economies like China, Indonesia, Pakistan & Brazil⁴. This development also hints at the expansion of and growth of service tax regime in India in future. It is now being increasingly believed in India that recent dynamism and growth is a contribution of services rather than of the manufacturing or any other sector. This is likely to grow up with new economy and knowledge economy deepening the roots in the economy⁵.

In any Welfare State, it is the prime responsibility of the Government to fulfill the increasing developmental needs of the country and its people by way of public expenditure. India being a developing economy is striving to fulfill the obligations of a Welfare State within its limited resources. The Government's primary sources of revenue are direct and indirect taxes. Central Excise Duty on the goods manufactured/produced in India and Customs Duties on imported goods constitute the two major sources of indirect taxes in India. But revenue receipts from Customs & Excise is on the decline due to WTO commitments and rationalization of commodity duties.

It is also well known that services constitute a larger proportion of the consumption of the rich rather than of the poor as the demand for services is income-elastic.

Depending on the socio-economic compulsions, each country evolved a taxation system on services adopting either a comprehensive approach or a selective approach. While most of the developed countries tax all the services with very few and limited exemptions, some of the developing countries tax select services only. Hitherto, India has adopted a selective approach to taxation of services.

In developed countries, service tax constitutes a major portion of the GDP. India a developing country was somewhat slow in discovering the potential of this species of indirect taxation for enhancement of revenue collection.

Service tax, though introduced in India only recently for the first time, is not altogether new. It has been levied in different forms ever since independence in

⁴ www.servicetax.gov.in/servicetax/overview/ovw_pt-1.htm

the shape of luxury tax, business tax, billing and gambling tax, and more recently expenditure tax and interest tax. These are nothing but different forms and manifestations of service tax. Service tax as such was unknown to the Indian masses until February 28, 1994, when Dr. Manmohan Singh, the then Finance minister, in his 1994-95 Budget speech introduced the concept, justifying the levy on the ground that while 40 percent of the GDP (current above 50 per cent) comprises of the service sector, there is no reason for exempting services in India from taxation.

The need for adopting an exercise initiated by the Government as early as 1978 is to explore for alternative sources of revenue. Alternative sources of revenue became a compulsion owing to the commitment of the Government's policy of Welfare State⁶. Thus a humble beginning was made by making provisions in sections 64 to 95 in Chapter V of the Finance Act, 1994. Originally, only three services were covered, viz., telephones, general insurance and stock broking. But gradually, the net of service tax was spread far and wide and now more than 50 categories⁷ of services fall within its ambit⁸.

Service Tax had been levied on the recommendations made in early 1990's by the Tax Reforms Committee headed by Dr. Raja Chelliah. The Committee pointed out that the indirect taxes at the Central level should be broadly neutral in relation to production and consumption of goods and should, in course of time cover commodities and services. The Committee felt that we should move towards full-fledged Value Added Tax (VAT) system covering services and commodities. Service Tax must be a part of VAT at the central level. It was envisaged that as the central excise duties on goods would get gradually transformed into a value added tax at the manufacturing level, service Tax would get woven into that system. Therefore, a tax could be levied on services that enter into the productive process. The Committee emphasized the importance of moving towards VAT, for making the system of indirect taxation broadly revenue neutral in relation to production and consumption and

⁵ C. Parthasarathy and Sanjiv Agarwal "Service Tax, Law, Practice & Procedures", 17th edition, 2004, Snow white Publications, Mumbai at pg. 80

⁶ Ibid at pg. 81

⁷ As of now there are 61 categories of services taxed.

⁸ "Service Tax - A new species of indirect taxation", M. Govind Joshi, Taxman Vol. 125, November 30 - December 6, 2002 at pg. 158

widening the tax base by covering exempted commodities. It is felt that VAT mechanism would mitigate the burden of service tax and take care of the cascading effect on the ultimate customers. The Committee also recommended charging of tax on services such as advertising, insurance, share broking and telecom etc. to begin with on the pattern of advanced economies. The basic objective of service tax is broadening the tax base, augmentation of revenue and larger participation of citizens in the economic development of the nation.

However, the main drawback of introducing VAT as far as service tax is concerned is that only those services forming part of the manufacturing process will be absorbed into the system. The Government would be losing revenue and the very objective of service tax of broadening the tax base will be defeated. It is suggested to have a well manned service tax department to continue levying service tax on the other services not forming a part of the manufacturing process in the event of VAT being introduced.

*CONSTITUTIONAL
BACKGROUND*

2. CONSTITUTIONAL BACKGROUND

Article 246(1)⁹ of the Constitution specifies that Parliament has exclusive powers to make laws with respect of any of the matters enumerated in List I in the Seventh Schedule to Constitution. As per Article 246(3)¹⁰ State Government has exclusive powers to make laws with respect to matters enumerated in List II (State List). In respect of matters enumerated in List III, (termed as 'Concurrent List'), both Parliament and State Government have power to make laws. Entry 97 of List I (Union List) of Seventh Schedule to Constitution reads "Any other matter not enumerated in List II or List III including any tax not mentioned in either of those lists". Thus, power to levy service tax is derived by Parliament from Entry 97¹¹.

The Hon'ble Finance Minister Shri. Jaswant Singh in his budget speech, on 28th February 2003, said, " *To enable levy of tax on services as a specific and important source of revenue, an amendment to the Constitution is proposed. This Constitutional amendment, and the consequent legislation would give the Central Government the power to levy the tax and both the Central and the State Governments sufficient powers to collect the proceeds.*"

The 'service' sector accounted for 48.5% of the country's gross domestic product in the financial year 2000-01. The role of this sector in the economy is quite significant. Expert committees set up by the Central Government have repeatedly recommended taxation of services. On the basis of the deliberations

⁹ Subject-matter of laws made by Parliament and by the Legislatures of States -

- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List")
- (2) Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
- (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').
- (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State list.

¹⁰ Ibid

¹¹ <http://dateyvs.com/service01.htm>.

between the State Governments and the Central Government and in view of the recommendations of various Expert Committees, it was proposed to suitably amend the Constitution to provide, (i) tax on services as a specific entry in the Union List, (ii) insertion of a new Article, namely, Article 268A, and (iii) consequential amendment to Article 270, to enable Parliament to formulate by law principles for determining the modalities of levying the said tax by the Central Government and collection of the proceeds thereof by the Central Government and the States.

As promised by the Hon'ble Finance Minister in his budget speech, the Constitution (95th amendment) Bill, 2003 was introduced in the Parliament, which has also been passed by the Parliament. Now, it has to be cleared/rectified by the mandatory number of states. As per the aforesaid amendment an Article 268A has been inserted in the Constitution, namely¹²:-

88 Amendment
AIR 2004
Part 15.

"268A (1) Taxes on services shall be levied by the Government of India and such tax shall be collected and appropriated by the Government of India and the States in the manner provided in clause (2)

(2) The proceeds in any financial year of any such tax levied in accordance with the provisions of clause (1) shall be -

(a) collected by the Government of India and the States;

(b) appropriated by the Government of India and the States, in accordance with such principles of collection and appropriation as may be formulated by the Parliament by law."

The statement of object and reasons appended to the Bill stated that "At present, the item relating to 'taxes on services' is not specifically mentioned in any entry either in the Union List or in the State list of the Seventh Schedule of the Constitution. Parliament has the exclusive power to make laws with respect for entry 97 of the Union List for any other matters not enumerated in List II or List III including any tax not mentioned in either of those lists.

The Constitutional amendment would empower the centre to levy tax on service as specific items of taxation by virtue of a new entry in the union list of the

¹² J. K. Mittal "Law, Practice & Procedure of Service Tax", , Seventh Edition, 2004, Bharat Law House, New Delhi at pg. 2

seventh schedule of Indian Constitution. It enables collection and appropriation of the proceeds of the service tax by the Union Government as well as the State Government. This would be done without the revenue from tax on services becoming a part of divisible pool under Article 270, sharing of which is governed by the Finance Commission recommendations¹³. A separate service tax legislation will be enacted which will also pave the way for inclusion of services within the purview of VAT.

The States had taken a unanimous decision to replace their existing sales-tax system with the system of value added tax (VAT) from the 1st April, 2003¹⁴, in this context, with a view to widening their tax base, the States have suggested that they should be enabled to collect and appropriate tax on services.

One doubt that arises is that, the introduction of separate constitutional amendment through legislation by the Government is a clear recognition and admission of the fact that there had been no express powers vested in the Union of India to levy or collect tax on services and that is why, a new legislative entry in the Union List is being introduced and express powers are sought to be conferred on the Union of India to levy and collect service tax under Article 268A being enacted for the purpose. The legislation is also clearly intended to take away the powers which the States have hitherto enjoyed for the levy of tax on services falling under list II of the Seventh Schedule in relation to many matters such as entertainment tax, tax on betting and gambling, tax on professions, trade, callings and employment, luxury tax and the like for which exclusive powers have been conferred on the States under Entries 60 and 62 of the State List in the Seventh Schedule.

List II
not
mentioned

The powers of the State Legislatures to levy tax on sale of goods have also been widened to include the taxes on services which are linked with the sale of goods and thereby the powers of the State to levy sales-tax/purchase tax or entry tax or octroi on such services as forming part of the price of the goods or the value thereof would also be taken away to that extent by the Union of India. There

¹³ C. Parthasarathy and Sanjiv Agarwal, "A handbook of Service Tax, Law, Practice and Procedures", 17th Edition, 2004, Snow white Publications, Mumbai at pg. 89

¹⁴ Though it has not been introduced till date.

are many cases in which lot of services are rendered which become integral part of the sale of goods and such services are rendered, both before and after the goods are sold and, therefore, the levy of excise duty on such goods at the value thereof by including the value of services therein would also follow.

The question whether any particular services forming part of the sale of goods manufactured would attract liability to excise duty as part of the goods sold or would attract liability to service tax as part of the services rendered would still remain a highly-vexed problem for which answers would not be easy to get. The states have not apparently responded to the demarcation of services exclusively for levy of tax by the Union of India possibly because many States have not gone through the scope and amplitude of the new Constitutional provisions and detailed deliberations at the level of the States and the Union in the respective legislatures and also at the executive levels do not appear to have fructified. Consequently overlapping between the powers of the Union and those of the states will still continue in matters of service tax.

Problems:

The new constitutional provisions do not amend, alter, omit or override the powers of the States to levy taxes on services by various names and under various legislative entries. Therefore, the same service would be subjected to tax both by the States and by the Union for which taxpayers do not have easy remedy to get relief in assessment, appeal or other proceedings. Being matters of policy, the taxpayers would also find difficulties in successfully agitating the unconstitutional nature of the levy imposed by the Union or the States, as the case may be. However, being a Constitutional issue involving legislative powers of the Union and the States, the High Courts and the Supreme Court would be faced with writ petitions or special leave petitions to decide the constitutionality of the levy of service tax.

Even before the new provisions in the Constitution being enacted specifically for the purpose, the different High Courts have upheld as constitutionally valid the levy of service tax by the Union of India on a variety of taxable services and appeals against the various judgments appear to be pending in the supreme court. It may be possible for the aggrieved petitioners to agitate before the

Supreme Court that the new constitutional provisions, assuming to be valid would come into force only when the Constitution gets amended and that too, prospectively and no power to legislate for the levy of tax under the Constitution could be exercised retrospectively as the Constitution (Ninety Fifth amendment) Bill is not a validating legislation nor does it provide for exercise of the power to levy service tax retrospectively by the Parliament.

The absence of such legislative power, on the one hand coupled with the creation of a new power on and from the time of the new Constitutional amendment being brought about would clearly show that the levy in the past of service tax by the Union was clearly without the authority of law and had also encroached the powers of the States in regard to different services already subjected to tax by them. The decisions already rendered by the High Courts had proceeded on the assumption that the Union of India has legislative powers to levy taxes on services by virtue of Entry 92A of List I of the Seventh Schedule and this assumption would be found to be wrong in view of the new legislative Entry 92-C for taxes on services being inserted in List I of the Seventh Schedule.

Entry 92A
List I ?

Consequently the various decisions already rendered by the Courts in regard to the Constitutional validity of service tax imposed by the Union of India would require reconsideration and reversal in view of there being no explicit power to levy service tax on the Union of India conferred by the Constitution prior to the amendment. The service tax levied on different services from 1994 till date, would, therefore be regarded as invalid due to want of legislative competence and, hence, all such levies, collections and recoveries of service tax must be refunded forthwith. The Union of India is also enacting a separate Service Tax Act which would soon replace the Finance Act, 1994 as amended from time to time for the levy of service tax¹⁵.

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¹⁵ R. Santhanam, "Constitutional Amendment for Service tax", (2003) 182 CTR (Articles) 217.

The Parliament also had powers to impose service tax by virtue of Article 248¹⁶. The reason for introducing Article 268 was solely for providing sharing of the revenue between the Centre and the States and not for validating the imposing of service tax by the Centre.

¹⁶ **Residuary powers of legislation** - (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List. (2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

*ADMINISTRATION
OF
SERVICE TAX*

3. ADMINISTRATION OF SERVICE TAX

Service tax is administered by the Central Excise Commissionerates working under the Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, Government of India.

The number of assesses in the country under the service tax increased from 2.25 lakh from the previous financial year to 2.5 lakh by July end this year. However, the actual number of assesses could be more than 10 lakh. Most of the service providers falling under the service tax are not coming forward to register themselves with the Customs and Excise Department simply as the department is banking on voluntary compliance of the scheme.

The Central Government is concentrating on expanding the tax base and not on its collections. Mr S.K. Misra, member, Anti-Smuggling and Service Tax, CBEC, admits that net service tax collections have increased by about 10 times from Rs 400 crore in 1994-95 to Rs 4,125 crore by 2002-03, but the telecom and insurance sector continues to be a major contributor to the service tax.

Mr Misra said to encourage potential service tax assesses, the department had launched a mass awareness campaign. However, due to lack of limited punitive measures, the department was not in a position to take stringent action against the tax evaders.

Mr Misra said the department had fixed a target of collecting Rs 10,000 crore under the service tax this year. However, he said, if all eligible tax payers paid tax honestly the actual collections could surpass the target. He said the Centre was also planning to introduce a separate legislation on service tax which would take care of the limitations of the present system.

He said the share of the services sector in the total GDP of the country was around 52 per cent whereas in advanced and developed countries, the share was as high as 71 per cent in the USA, 60 per cent in Japan and 67 per cent in the UK. However, the share of service tax in total indirect taxes, amounting to Rs 1,20,000 crore, was negligible.

He said during the first four months this year, the total service tax collections in the country had crossed Rs 1,800 crore. Out of 35 zones, service tax

collections from Chandigarh, comprising Chandigarh, Punjab, Himachal Pradesh and Jammu and Kashmir, the collections had gone up from Rs 125 crore in 2001-02 to Rs 200 crore in 2002-03.

Mr Misra said the government would soon come out with a provision to integrate tax on services and goods. This will enable the Indian industry to be more competitive as they will be able to take credit for service tax against duty levied on goods¹⁷.

To enable parliament to formulate by law principles for determining the modalities of levying the Service Tax by the Central Govt. & collection of the proceeds there of by the Central Govt. & the State, the amendment vide constitution (95th amendment) Act, 2003 has been made. Consequently, new article 268 A has been inserted for Service Tax levy by Union Govt., collected and appropriated by the Union Govt., and amendment of seventh schedule to the constitution, in list I-Union list after entry 92B, entry 92C has been inserted for taxes on services as well as in article 270 of the constitution the clause (1) article 268A has been included.

Service Tax is administered by the Central Excise Commissionerates working under the Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, Government of India. The unique feature of Service Tax is reliance on collection of tax, primarily through voluntary compliance.

Government has from the very beginning adopted a flexible approach concerning Service Tax administration so that the assesseees and the general public gain faith and trust in the tax measure so that voluntary tax compliance, one of the avowed objectives of the Citizens Charter, is achieved.

3.1. FORMATION AND FUNCTIONS OF DGST:

Considering the increasing workload due to the expanding coverage of service tax, it has been decided to centralise all the work and entrust the same to a separate unit supervised by a very senior official. Accordingly, the office of Director General (Service Tax) has been formed in the year 1997. It is headed by the Director General (Service Tax). The functions and powers of Director General (Service Tax) are:

¹⁷ <http://www.tribuneindia.com/003/20030827/world.htm>

- i) To ensure that proper establishment and infrastructure has been created under different central excise Commissionerate to monitor the collection and assessment of service tax.
- ii) To study the staff requirement at field level for proper and effective implementation of service tax.
- iii) To study as to how the various service taxes are being implemented in the field and to suggest measures as may be necessary to increase revenue collection or to streamline procedures :
- iv) To undertake study of law and procedures in relation to service tax with a view to simplify the service tax collection and assessment and make suggestions thereon:
- v) To form a data base regarding the collection of service tax from the date of its inception in 1994 and to monitor the revenue collection from service tax:
- vi) To inspect the service tax cells in the Commissionerate to ensure that they are functioning effectively :
- vii) To undertake any other functions as assigned by the Board from time to time.

In addition to the above it also shoulders the following responsibilities:

- i) The Directorate of Service Tax has been co-ordinating between the Board and Central Excise Commissionerates. It also monitors the collection and the assessment of Service Tax. The Service Tax Revenue Reports, received from various Central Excise Commissionerates, are compiled at the Directorate and the performance of the Commissionerates/Zones in Service Tax collection are being monitored for corrective actions.
- ii) During the course of Inspection of the Central Excise Commissionerates, the Inspection team of this Directorate has in variably pointed out the requirement of the staff in field level for proper and effective implementation of Service Tax. The Directorate has also suggested

necessary measures to be adopted to increase service Tax revenue collection. The grey areas and evasion prone services have been brought to the notice of the Commissionerate for conducting effective Surveys/Audit.

- iii) The Directorate of Service Tax has drafted a separate act for Service Tax and the Rules therefor and has forwarded the same to the Ministry for approval¹⁸. The Service Tax manual has also been prepared and forwarded to Board for approval and issue during year 2001. The correspondences received from field formations and service providers are scrutinized from law and the clarifications sought for are replied to wherever possible. In cases where the doubts/clarification sought involved policy matter, the Board has been apprised for issuing clarification/instruction.
- iv) This Directorate has taken up the issue of forming a database regarding register of the assessee and collection of Service Tax in co-ordination with the Directorate of Systems.
- v) The Directorate has also recommended electronic administration in implementation of Service Tax to bring transparency in tax administration and avoid interfacing between Service providers and tax authorities. The Board has also instructed the Commissionerate to feed the figures of service tax revenue collection in the system on line before 7th of every month. The Directorate of Service Tax has advised all the Central Excise Commissionerates to reconcile service tax collection.
- vi) The Directorate of Service Tax has been conducting inspection of Central Excise Commissionerates. During the course of inspection, verification of Service Tax records, maintained by the Commissionerate, is done. Staff of Service Tax Cell are also guided suitably in proper implementation of Service Tax and maintenance of records. A meeting with the Service Tax officers is always conducted in the Commissionerate during inspection. Open-house meeting is also arranged in the Commissionerate wherever it was felt necessary. Problems faced by the assesseees in Service Tax compliance are sorted out in the open-house meeting with the members of

¹⁸ vide letter F.No.V/DGST/30-Misc-56/2000 dtd. 19/02/2001

various service providers associations.

There were 61 Central Excise Commissionerates prior to the reorganization in November 2002. Out of this, inspection of 57 Commissionerates have been completed. After re-organisation, the number of Commissionerates has increased to 92. The Directorate of Service Tax is in the process of inspecting the newly formed Commissionerates also for giving proper guidance in service tax implementation.

3.2. CHALLENGES BEFORE THE SERVICE TAX ADMINISTRATION IN INDIA.

Service tax administration in India has before it multi-dimensional challenges. Few of them are related to the very nature and growth of service sector in the economy and others relate to procedural aspects of the service tax collection.

The growth of service sector at higher rate offers opportunities as well as challenges to bring under the tax net hitherto uncovered services. This offers tremendous revenue potential to the Government. It is expected that in due course Service Tax would reduce the tax burden on international trade (Customs duty) and domestic manufacturing sector (Excise duty). So a planned growth of service tax would be commensurate with the goals of economic liberalization and globalization. This process requires levy of taxes on new services without substantial rise in the rate or cost of collection.

The administration of service tax requires a separate comprehensive legislation along with distinct administrative machinery exclusively devoted to the collection of service tax. That alone would bring in greater clarity, streamlined procedures, greater taxpayer assistance and a new tax culture of voluntary compliance. . The twin goal of revenue maximization introduction of the culture of voluntary tax compliance also throw up major challenge before the service tax administration in the country.

There is a shortage of staff in the department all over the country. In Belgaum Central Excise and Customs Commissionerate there were only two inspectors and one superintendent. They found it very difficult to practically go to all the service providers and asking them to register themselves. In addition the

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service tax staff also had to handle excise and customs matters. The service tax department officials are not given enough powers to see that the service providers comply with the payment because the penalty and punishments are very mild since the service tax is based on voluntary compliance¹⁹.

3.3. ELECTRONIC TAX ADMINISTRATION

The Directorate has formulated a proposal for online web-based Electronic Tax Administration system for service tax. This system envisages the facility for online registration, payment of tax, filing of returns, assessment etc. for better tax administration and reducing the officer-assessee interface. M/s. CMC Ltd conducted a system feasibility study for implementation of this proposal. Their report indicates that such a system is not only feasible but could also be implemented at a relatively low cost. A detailed proposal is under preparation. It is anticipated that with the implementation of this system, service tax could be administered as the first e-tax in the country, which could work as a model for other tax administrations.

Directorate of Systems has worked out the framework for computerization of service tax administration, with the help of NIC. They have introduced software programmes for Allotment of Service Tax Payer Code Number (SAPS) and Service Tax Revenue Monitoring System (STREMS) which are used for registration of assesses and filing of ST-3 returns.

Consequent to the above, the Central Board of Excise and Customs²⁰ has allowed E-filing of Service tax Returns-ST-3 from the month of April 2003. At present only Service Tax return 'ST 3' can be filed electronically. E-filing is a facility for the electronic filing of service tax returns by the assessee from his office, residence or any other place of choice, through the Internet, by using a computer. Assessee having a 15 digit STP code and falling under the following categories can avail of the facility of electronic filing their 'Return' for the following services: Initially, this facility has been extended to only select class or group of service tax providers for services falling under following categories – viz.

1. Telegraph Services

¹⁹ As answered by Mr. Mehboob, Superintendent (Service Tax), Belgaum Central Excise and Customs Commissionerate.

²⁰ vide Circular No. ST 52/2003 dtd. 1.3.2003 (in F.No. 137/9/2003-CX4

2. Telephone Services
3. Life Insurance Services
4. Insurance Auxiliary Services
5. General Insurance Business
6. Stock Brokers
7. Advertising Agencies
8. Courier Services
9. Banking & Financial
10. Custom House Agent

The Central Excise Commissionerates have accordingly issued Trade Notice to this effect.

The assessee should take care to ensure that he has been indicating his 15 digit STP code in the challans used by him from September 2002. An assessee who has not done this may also opt for e-filing but he will have to submit copies of challans manually to the department after e-filing but he will have to submit copies of challans manually to the department after e-filing his return, evidencing payment of duties, after indicating his 15 digit STP code on each challan. The STP code stands for Service Tax Payer Code. It is used by the computer as a unique identifier for the assessee's records. The department is presently allotting 15 digit STP codes to individual assesseees, irrespective of the number of services the assessee may be offering.

E-filing of returns is not compulsory. It is an assessee facilitation measure of the department in continuation of its modernization and simplification program. It is an alternative to the manual filing of returns. Assesseees who fall under more than one category have to file separate returns for each of the services provided by them. If an assessee files electronic returns for any of the permissible categories of services and receives an electronic acknowledgement of the same, he need not file a manual return for the same service. If the assessee is a provider of more than one service, it is desirable that he pays his challan service wise, so as to take maximum benefit of the procedure. He should however preserve the annual copies of the TR 6 challan for production before the officer, in the rare occasion it is called for, or as stated above, if the

assessee has not been indicating his 15 digit STP code in the challans used by him from September, 2002.

The assessee should file an application to their jurisdictional Assistant commissioner or Deputy commissioner. They should mention a trusted e-mail address in their application so that the department can send them their user word and password to help them file their return. They should log on to the Service Tax E-filing Home Page using the internet. On entering their STP Code, user word and password in the place provided on the Home Page they will be permitted access to the E-filing facility. The Board has instructed²¹ that every Service Tax Payer should be allotted a PAN based code. However since some assesseees are still not having PAN numbers, a provision has also been made in the computer system for issuing a 15 digit temporary STP code. When the assessee gets his PAN number, he should immediately inform the department about the number, and the new STP code will be issued incorporating his PAN number. He need not file any new returns for the past period just because of his new STP code. The PAN number is essential because in 1999, the government of India decided that all business units transacting business with different departments of the government would be given unique identifiers which have the Permanent Account Number assigned by the Income-tax Department as the backbone. This is the concept behind the Service Tax Payer Code where the first 10 digits constitute the PAN, the next two digits ST is to indicate the special purpose of the code and the last three digits of the code is to constitute a running serial number.

The responsibility for filing the returns and all the information contained therein is that of the assessee. He cannot authorize any other person to file the return on his behalf. The assessee should hence keep his user ID and password allotted by the department confidential.

Benefits of E-filing:

The benefits of e-filing to the assessee is that it saves the assessee's precious time from visiting the departmental office to file his returns. He can file the

²¹ Circular No. 35/3/2001-CX.4 dated 27-8-2001

return form his office, house, internet kiosk, or any other place of choice at the time most convenient to him night or day. He instantly gets an electronic acknowledgement of the return filed by him. The e-filing software also helps the assessee by making checks on the mathematical accuracy of the tax paid, it makes available to him the facility of making reports based on the return filed by him. In the next stage his refunds will be automatically credited to his bank account²².

3.4. AUDIT AND INSPECTIONS

Directorate of Service Tax conducts inspections of Service Tax work in Central Excise Commissionerates all over the country. Inspections in the past have prompted the Commissionerates to streamline the service tax administration system and to conduct surveys to register all prospective assesseees under the tax net. Commissionerates have also been directed to conduct the internal audit of assesseees' records as per the instructions of the Board. This audit drive has resulted in the augmentation of revenue. Similarly, CERA has brought on record many instances where assesseees were either suppressing the value of taxable service or not getting registered under the tax net.

A few Commissionerates have taken up this work seriously and shown commendable results. Some Commissionerates have certainly lagged behind in the field of survey work. Many of them being major service tax earning Commissionerates. Survey efforts are adversely affected due to non-deployment of adequate manpower and other resources such as vehicles, etc. It is necessary that all available resources and efforts are mobilized by the field formations to register all assesseees for optimum service tax realization.

The service tax is envisaged to be administered on self-assessment basis. Legal provisions for facilitating such self-assessment have been made in the Finance Act, 2001. This underlines the need for strengthening the audit mechanism to prevent tax evasion/avoidance.

As a path breaking experiment in the field of auditing of services tax assesseees on selective basis, the Board has directed the field formations in the metro

²² J. K. Mittal "Law, Practice & Procedure of Service Tax", 7th Edition, 2004, Bharat Law House, New Delhi at pg. 616

cities of Mumbai, Chennai, Delhi & Kolkata to conduct the audit of service tax records²³ of the leading service providers in the category of advertising, pagers, couriers, CHAs, steamer agents, air travel agents, manpower recruitment agencies, tour operators, credit rating agencies, chartered accountants, real estate agents etc. (16 service categories). Result of these Audits checks are awaited.

Service providers are of varied types involving small, very small, medium and large types of organisations. Service tax is collected by a large number of small service providers. There are very few types of service providers who are fully organised like telephone service providers, insurance companies, pager service providers, credit rating service providers, custom house agents, etc. In case of many services, only a few service providers are organized and a large number of operators are self-employed person, for example in case of stock brokers, courier services, advertising services, consulting engineers, clearing and forwarding services, air travel agent's services, mandap keepers, man power recruitment agencies, tour operators, practising professionals etc. In such a scenario the Income-tax department may a more suitable instrument for dealing with service tax than the Excise Department.

By Comment
Can't tax
start
Startup?

3.5. WIDER NET OF SERVICE TAX AND INCOME-TAX:

The ambit and scope of service tax is being widened from time to time. The Budget 2001 has also added several new services to the taxable category. Some categories of services are of a petty and miscellaneous nature. Many of the services are being carried out by self-employed and unorganized persons. Most of these persons are required to file return of income due to the one-by-six factor, or because they require the income-tax permanent account number for business needs. The ambit of persons required to file the income-tax return is also being enlarged, and the number of income-tax assesses has increased greatly during the last few years and many more persons are likely to be added in the next few years.

Income-tax Department - Better equipped

In view of the large number of assesseees under the Income-tax Act, varied types of assesseees, large number of offices, larger data base, larger information base

Ref.
Central
Board of
Revenue Act
1963.
not
permissible

²³ 1999-2000 onwards only

available in the form of income-tax returns with balance sheets, profits and loss accounts, and information about business and profession, the Income-tax Department is in a much better position to administer service tax in comparison with the Excise Department. With some modification of the income-tax return, and mandatory requirement of furnishing certain information in the profit and loss account, the Income-tax Department can easily and perhaps more efficiently deal with service tax matters.

Easy administration for assesseees:

Service tax administration by the Income-tax department instead of the Excise Department will make administration for assesseees as well as Assessing officers much more convenient and smooth. It will obviate the need to file returns of income and service tax at two places. Instead of that, returns of service tax, and income-tax can be combined and filed at one place. It will also help in cross-checking and monitoring of payment of service tax vis-à-vis advance income tax. Filing of return for service tax and income-tax assessment and appeals all can be combined.

The time factor:

During the past several years, workload of the income-tax department has reduced considerably due to abolition of estate duty and gift-tax and reduction in the number of wealth-tax assesseees. Penalty proceedings have also been reduced. The administration of income-tax matters has matured considerably at the level of assesseees and Assessing Officers, tax rates have been reduced and now there is more reliance on self-discipline on the part of assesseees. It is expected that reduced rates of tax and improving responsiveness of the Income-tax department shall go a long way in better compliance, better collection of tax and reduced litigation.

This will help the Income-tax department to have enough time for dealing with service tax matters. In case of need, officials from the Excise Department to combine knowledge and expertise of officers engaged in service tax administration.

Every assessee under the Income-tax Act may be required to file a profit and loss account and balance sheet giving prescribed information. These statements may be so designed that broad information relating to the nature of income and services is incorporated. Audit may be made compulsory wherever the turnover exceeds the prescribed amount, say, Rs. 50 lakhs. Below the balance sheet, a verification from assessee may be obtained to the effect that he does not own any other asset and that the profit and loss account annexed to the balance sheet truly and fully discloses his receipts from business, occupation and services. With the help of these documents in the prescribed form, the assessment of income-tax and service tax both can be done very conveniently and expeditiously²⁴.

The forms of return and audit report may also be modified to serve purposes of ascertainment, self-assessment, and assessment of income tax and service tax both.

It can be reasonably hoped that if the administration of service tax is entrusted to the Income-tax department, both the taxpayers and the Government will benefit. However, when Mr. Mehboob²⁵ was interviewed he was of the opinion that the income tax is a direct tax and therefore cannot be asked to handle service tax. The Central Excise does not have any problem handling the service tax matters.

3.6. ADVANTAGES ATTRIBUTABLE TO SERVICE TAX:

Service tax being a friendly tax based on voluntary compliance has the following advantages:

1. The government benefits because of the higher revenue realisation on a wider tax base than earlier.
2. A substantial portion of the GDP contribution gets covered by the tax.
3. The taxpayers should not find it difficult, as they are required to pay the tax after nearly 40 days (on an average basis after collecting the service tax from their customers). In the case of individuals, proprietary firms or partnership

²⁴ "Service Tax - A suggestion for its administration by the income tax department" Dev Kumar Kothari, *Taxman*, August 4, Vol. 117, 2001 at pg. 91

²⁵ Superintendent (Service Tax), Central Excise and Customs Commissionerate, Belgaum, Karnataka.

firms, the retention period of the service tax with the taxpayer will be nearly 105 days. This will mean that there will be no additional costs relating to working capital or finance to fulfil the liabilities towards service tax.

4. The taxpayers are not required to maintain any special accounts for the purpose of service tax.
5. No documents are required to be filed along with the return except the details about the transactions.
6. The tax rate is quite low and should not be a burden on any one. 10.2%
7. The procedure prescribed is very simple and the numbers of sections and rules in the Finance Act and the Service Tax Rules are not too many and therefore create less complications.
8. There cannot be many disputes about rates and valuation.

On service tax administration front, there are certain issues which need to be addressed. These include provision for a threshold limit for basic exemption, differential rates for service tax based on turnover, refund and self-adjustment for service tax paid, making it clear and explicit that it is an indirect tax recoverable from client/customer, facility for filing of revised returns, valuation of taxable services to exclude material consumed and out of pocket/reimbursable expenses, consistency on definitions and determination of taxable services, copies of returns required to be filed (presently three), filing of returns on annual basis etc.

It is **suggested** that once the service tax base is sufficiently expanded, a set off or credit system for service tax, similar to MODVAT credit can be introduced. These set offs can be-

- a) set off of duty paid on input services in payment of duty on final services such as service tax on telephone charges paid by a cost accountant;
- b) set off of duty paid on input goods or capital goods in payment of duty on final services, e.g., tax on stationery or office computer paid by a chartered accountant;
- c) set off of duty paid on input services in payment of duty on final product by a manufacturer such as service tax paid on advertising by a manufacturer²⁶.

²⁶ C. Parthasarathy and Sanjiv Agarwal, "Service Tax, Law, Practice & Procedures", 17th edition, 2004, Snow White Publications, Mumbai at pg. 98

3.7. DISADVANTAGES OF SERVICE TAX:

1. There is no basic limit. Therefore it may turn out to be unfair to small service providers. For ex, a beauty parlour in a small town and Shehnaz Hussain's Beauty Parlour in Bombay known for charging not less than thousands have to pay 8% tax. The small beauty parlour will not be in a position to pay even its light and water charges and if it is asked to collect 8% service tax it will lose its customers; on the other hand Shehnaz Hussain's customers will not mind paying an additional 8% tax. It is necessary to give some basic limit. 50,000 p.a. as a basic limit would be ideal because that is the same limit as is provided in Income tax and the assesseees are already comfortable with the same.
2. The officials should be given more powers to see that the service tax payers comply with the payment and registration. Right now they are like tiger without teeth.

*THE FINANCE ACT,
1994*

4. FINANCE ACT, 1994

The provisions of Chapter V of Finance Act, 1994 is amended by the Finance Act of every year, and in the past amended provisions of aforesaid Chapter V were brought into force from that date notified later on, as every year in the Finance Act, in the beginning of the said Chapter V, a line is inserted "with effect from such date as the Central Government may, by notification in the Official Gazette, appoint". In the Finance Act, 2003, this time such line is consciously and deliberately absent and in such situation all the provisions of said Chapter V, unless otherwise stated, come into force from the date of enactment of the Finance Bill, 2003 i.e. w.e.f. 14-5-2003, the date of assent to the Finance Bill by the President.

4.1. CHARGING OF SERVICE TAX – Section 65(95) of Finance Act, 1994 states that 'service tax' means tax leviable under provisions of chapter V of Finance Act, 1994. Section 66 of Finance Act, 1994 is the 'charging section' of Service Tax. Section 66 provides that there shall be levied a tax (service tax) @ 8% of the value of taxable service. It will be collected in a manner that may be prescribed. [The service tax rate was 5% upto 13-5-2003]. Thus, in respect of each type of service, it is necessary to determine two things namely (a) Taxable Service and (b) Value of taxable Service.

In spite of the above legal position that the increase in tax rates has come into force w.e.f. 14-5-2003, it was found that some service providers had charged service tax at the rate of 8%²⁷ (instead of 5%) w.e.f. 1-4-2003 or thereafter and it is reported that even a telephone service provider has sent to their subscribers bill by adding the arrears of service tax (for three per cent). The charging of the service tax at the enhanced rate of 8% prior to the date (i.e. 14-5-2003) of enactment of the Finance Act, 2003 is illegal and not justifiable. However, as per section 83 of the Act, section 11D of the Central Excise Act is also applicable to the Service Tax, and as per provisions of said section, where any person has collected any amount in excess of the applicable tax rate, he

²⁷ J. K. Mittal, "Law, Practice & Procedure of Service Tax" , 7th Edition, 2004, Bharat Law House, New Delhi at pg. 559

shall forthwith pay the amount so collected to the credit of the Central Government. Further, if the service provider fails to deposit the excess tax so collected to the Central Government, the Central Excise Officer may serve him a show cause notice. However, the person from whom such excess tax has been collected is entitled to claim the refund as per provision of section 11B of the Central Excise Act, 1944.

4.2. TAXABLE SERVICE - As per section 66 of Finance Act, 1994, service tax is payable on 'taxable service'. Section 65(105) of Finance Act, 1994 defines what is 'taxable service'. The definition is different for each class of services, e.g. in case of stock broker, any service provided by stock broker to investor in connection with sale or purchase of securities listed on a recognised stock exchange will be 'taxable service'.

Service taxable if provided in India - Service tax is payable only if service is provided in India. Thus, in following cases, there is no service tax liability - (a) Technical consultancy provided by foreign collaborator. Such service is not provided 'in India'. However, if the foreign technicians visit India and provide technical services, tax will be payable (b) If Indian service provider provides services abroad (c) If Indian service provider exports his services, i.e. services are not provided in India.

4.3. VALUE OF TAXABLE SERVICE FOR CHARGING SERVICE TAX - Service tax is payable on 'value of services'. Value of service shall be the gross amount charged by the service provider for such service rendered by him. - Section 67 of Finance Act, 1994, as amended by Finance Act, 2001. {earlier, value of taxable service was defined separately for each type of service}. Provisions in respect of each type of 'service' are discussed in following paragraphs. (*Services are arranged in alphabetical order for convenience*).

Service Provider - Section 65(105) which defines each 'taxable service' states that the term 'service provider' shall be construed accordingly. Thus, service provider is one who provides taxable service as defined u/s 65(105).

4.4. PERSON WHO HAS TO PAY SERVICE TAX - As per section 68(1) of Finance Act, 1994, every person providing taxable service to any person has to pay service tax at the prescribed rates. However, as per section 68(2), Central Government can provide that service tax shall be paid by another

person in the manner as may be prescribed. Rule 2(1)(d) of Service Tax Rules, 1994 lists out the persons liable to pay service tax. The same has been appended as annexure VIII.

4.5. NO BASIC EXEMPTION AND FEW ABATEMENTS - Normally, there is a limit below which tax exemption is granted - e.g. there is no income tax if income is below Rs 50,000. There is no excise if turnover is below Rs 100 lakhs. However, there is no such basic exemption in case of service tax. [Kelkar Committee had made a very sensible recommendation in its report in December 2002 to fix basic exemption limit of Rs 10 lakhs. However, this suggestion has not been accepted. It is clear that persons who draft the provisions sitting in AC rooms in New Delhi have lost touch of ground realities]. It is said that common sense is most uncommon. How true !

Tax is on 'Service' and not on 'reimbursement of expenses' or 'material supplied' - The tax is on 'service'.

4.6. NO TAX ON REIMBURSEMENT OF EXPENSES - In many cases, the service provider makes certain payments on behalf of principal and gets reimbursement from the principal. In principle, no tax is payable for reimbursement of expenses ***incurred on behalf of client***. e.g. advertisement expenses incurred by manpower recruitment agency, octroi paid by Custom House Agent on behalf of principal, supply of material / furniture by interior decorator etc. - - Department has clarified that out of pocket expenses like travelling, boarding and lodging on reimbursable basis are not subject to service tax. Assessee will have to provide documentary evidence substantiating his claim from the gross amount. It is clarified that this is applicable in respect of all the services²⁸ -

4.7. NO TAX ON GOODS AND MATERIAL SUPPLIED BY SERVICE PROVIDER - If the service provider supplies goods and material while providing the service, cost of goods and material will be excluded for purpose of payment of service tax. This exclusion is

²⁸ Pune-I Commissionerate TN 8/98-ST dated 13-10-1998 - parallel Indore TN 5/98-ST dated 14-10-1998.

allowable only if sale of such goods is evidenced and sale value is quantified and shown separately in invoice. There should be documentary proof specifically indicating the value of said goods and materials²⁹. In case of commercial training and coaching institutes, deduction will be available only to the sale value of standard textbooks, which are priced. Any study material or written text provided by the institute will be subjected to service tax, i.e. it will not be allowable as deduction³⁰

Tax is not payable on services provided on sub-contract, if the words used are 'client' or 'customer' - From various notifications and trade notices, it is evident that intention is to cover only final services provided to customer / client and intermediate services are not to be taxed e.g. services provided by one courier to another or by one rent-a-cab operator to another or by one ISP to another ISP are not taxable.

Tax payable only on actual amount received - Rule 6(1) makes it clear that service tax on value of taxable services received is payable by 25th of following month. (by 25th of following quarter in case of assesseees who are individuals, proprietary firm or partnership firm). Thus, service tax is payable only on 'value of taxable service' actually 'received', and not on amount 'billed'. Even in case where value received becomes refundable if service is not provided by him either wholly or partly for any reason, the assessee can adjust the amount payable from service tax liability of service tax payable and pay net amount as service tax. Such adjustment is permissible only if he refunds the value of taxable service along with service tax thereon from whom it was received.

No service tax on export of services -Service tax is destination based consumption tax and is not applicable on export of services. If secondary service provider provides services to primary service provider for export of services, no service tax will be payable on such secondary services as these get consumed/merged with the services that are being exported. However, if

Ratio for being statement?

²⁹ Notification No. 12/2003-ST dated 20-6-2003.

³⁰ CBE&C circular No. 59/8/2003 dated 20-6-2003.

secondary service is consumed in part or toto for providing service in India, service tax would be leviable on the secondary service provider³¹.

Section 65 as mentioned above defines various services taxed. However doubts has been raised often with regard to some specific definitions. Some of them need to be discussed. Consulting Engineer's services were brought under the Service tax net by the Finance Act, 1997. The definition of consulting engineer has been given under clause (31) of section 65. It provides :

"consulting engineer means any professionally qualified engineer or an engineering firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering".

Therefore, the services will fall under the consulting engineer's service, if

- any advice, consultancy or technical assistance;
- is rendered in one or more disciplines of engineering.

The term 'advice' refers to 'opinion given about what should be done; piece of information' and 'consult' refers to 'professional advice'³². Therefore, in the context of service tax 'advice or consultancy means to give professional opinion about what should be done in future.

The term 'technical' refers to 'pertaining to art, especially a useful art or applied science'³³. The term 'assistance' means 'help'. Therefore, in the context of service tax 'technical assistance' means providing assistance on the basis of special skill and knowledge. For instance, a civil engineer provides technical assistance in designing the high rise building or bridge or physical testing etc. The services which attract the levy include all the services which are rendered in the capacity of a professional person³⁴ and specifically includes the services pertaining to -

- Structural engineering works
- Civil engineering works
- Mechanical engineering works
- Electrical engineering works
- Construction management

³¹ CBE&C circular No. 56/5/2003-ST dated 25-4-2003.

³² Refer to Oxford Mini Dictionary

³³ Chambers English Dictionary

³⁴ The government has clarified this point in Circular F. No. B. 43/5/97-TRU, dated 2-7-1997

With change of time and expanding horizons of education, disciplines of engineering are also increasing. There are numerous disciplines of engineering for which there cannot be an exhaustive list, for the purpose of service tax, it should be understood in the context of its commonly understood meaning and scope.

Service tax is liable to be paid when consulting engineer's services are provided by -

- A professionally qualified engineer or
- An engineering firm.

Therefore, it is necessary to examine what is meant by '**professionally qualified engineer**'. The word 'engineer' means 'one who designs or makes, or puts to practical use, engines or machinery of any type, including electrical or one who designs or constructs public works, such as roads, railways, sewers, bridges, harbours, canals etc'³⁵. The word 'professional' means pertaining to a profession or engaged in a profession or in the profession in question'³⁶. A person is regarded as a professionally qualified person, if he has attained any particular qualification after undergoing the systematic study and rigorous examinations as well as practical training. In the present context of service tax a 'professionally qualified engineer' means an individual, who has special knowledge and degree or diploma in the field of engineering. The government has clarified that "consulting engineering shall include self-employed others to assist him. It may be noted that merely requisite knowledge cannot make a person 'professionally qualified engineer unless he has degree or diploma in any discipline of engineering. Therefore, if a person, who without the degree or diploma, on the basis of his practical knowledge and experience, renders any advice, consultancy or technical assistance he will not be covered under the service tax.

Coming to '**engineering firm**', the term 'firm' albeit has been defined under section 4 of the Indian Partnership Act, 1932 as 'collective' association of person 'who have agreed to share the profits of a business', and in sub-section (23) of section 2 of the Income tax Act, 1961 also the 'firm' has been assigned

³⁵ Chambers English Dictionary

³⁶ Ibid

the same meaning. The term 'firm' means 'the title under which a company transacts business or a business or a business house'³⁷. The term 'firm' in the context of service tax cannot be construed in limited sense; it refers to a concern engaged in providing services of engineering. The government has clarified³⁸ that an engineering firm may be "organized as a sole proprietorship, partnership, a Private or a Public Limited Company". The word 'engineering firm' includes a company³⁹. In ***M. N. Dastur & Company Limited v. Union of India***⁴⁰, it was also held that advice offered by an engineer either as an individual or a firm or a company which is integrally connected with the 'engineering discipline' comes within the ambit of service tax. It is not necessary that the persons who owned the 'firm' must also be engineers, a 'firm' may involve in providing consulting engineering services by employing other 'consulting engineers' with whose professional expertise and assistance, the 'firm' runs its business, for example, 'Larsen & Tubro', a prominent engineering company. Connected to this comes up the question ***whether firm should be 'commercial concern'?*** In the definition of 'consulting engineer', it has not been mentioned that an engineering firm should be a "commercial concern". The term 'commercial concern' refers to undertake commercial activities for consideration with profit motive. In the absence of the word 'commercial concern' from the definition of 'consulting engineer', if an engineering firm works without a profit motive, it shall be liable to pay service tax. Thus, NGO, trust or any other institution rendering any advice, consultancy or technical assistance in one or more disciplines of engineering even on 'no profit no loss' basis shall be liable to pay service tax on the gross amount charged for such services. The above definition needs to be amended thereby exempting firms working without profit motive. If they are taxed it may act as a deterrent and not bring about voluntary compliance to pay the tax.

No. Contained
of Lecturers!

Is a sub-contractor liable to pay service tax. This question was answered by the government⁴¹, saying that the services should be rendered to a client directly, and not in the capacity of a sub-consultant/associate consultant to another consulting engineer, who is the prime consultant. In case services are rendered

³⁷ Ibid

³⁸ Circular F. No. B. 43/5/97-TRU dated 2-7-1997

³⁹ Tata Consultancy Services v. Union of India, 2001 (130) ELT 726 (Kar)

⁴⁰ 2002 (140) ELT 341 (Cal)

⁴¹ Circular F. No. B. 43/5/97-TRU dated 2-7-1997

to the prime consultant, the levy of service tax does not fall on the sub-consultant but is on the prime or main consulting engineer who raises a bill on his client (which includes the charge for services rendered by the sub-consultant).

The consulting engineer's service is liable to be charged to service tax when provided to _

- ◆ A client;
- ◆ In many manner;
- ◆ Either directly or indirectly;
- ◆ In relation to one or more disciplines of engineering.

Services are liable to be charged to tax only when it is provided to a '**client**'. The word 'client' as per the dictionary meaning means "a person who employs a lawyer or professional adviser; a customer"⁴² or 'a person using the services of a professional person; customer'⁴³. Therefore, the 'client' is necessarily an external person who hires or uses the services of another person for consideration. Service tax will attract only if services are rendered to a client, not to the other department within the same concern. In other words, services must be provided to a separate entity or external person. When services are provided to a charitable institution for which no fee is charged it is not a client. Therefore, there is no question of service tax unless services are provided to a client on payment basis.

Services are subject to tax when provided '**in any manner**'. The words 'in any manner' signify that manner of giving advice or consultancy or technical assistance may be oral, or in writing, or may be over the telephone, or video conference or by any other mode of communication like fax or e-mail⁴⁴.

Services are subject to tax when provided '**directly or indirectly**'. Sometimes, it may be possible that service provider may not alone be able to execute the work and take the help of other person or concern by employing them on sub-contract basis for the execution of work. In this case, even if service provider

⁴² Chambers English Disctionary

⁴³ Oxford Mini Dictionary

gets the part of the service done by employing the services of other person or concern, it will be treated that services are provided by the original service provider and tax would be charged on the entire services.

A point was raised before the Government, ***whether the service of 'third party inspection and certification' carried out by a professionally qualified engineer or an engineering firm can fall under the category of advice, consultancy or technical assistance.*** The government has clarified⁴⁵ that certification given under authority of any statute/international protocol/code/convention, cannot be considered to be a consultancy job. An advice is generally optional in nature and has no statutory force, therefore, the activity of certification will not fall under the category of advice. The technical assistance is normally for the purpose of achieving a particular aim or result, thus, certification work done under statutory authority cannot be considered to be technical assistance. To issue the certificate under the statutory authority, it will obviously be necessary for the certifying agency to conduct some survey/inspection, such survey/inspection will not amount to consultancy, advice or technical assistance. However, if survey/inspection is done by an agency other than the certifying agency, then such survey/inspection will fall under the category of consultancy, advice or technical assistance. However, now the Finance Act, 2003 has brought the 'technical inspection and certification services' under the service tax net. It has introduced a new section 65A provide the manner of determination of classification of taxable services and service tax shall be paid according to that category of taxable service.

Whether the services rendered by the Architects would come under the purview of service tax levied on services provided by consulting engineers. To this the Government has clarified⁴⁶ that "the term 'Consulting Engineer' will not include 'architect' within its scope and therefore, service tax levy on services rendered by a consulting engineer in any discipline of engineering will not cover the architectural services rendered by architects".

⁴⁴ J. K. Mittal, "Law, Practice & Procedure of Service Tax", 7th Edition, 2004, Bharat Law House, New Delhi at pg. 105

⁴⁵ Vide Circular F. No. 177/5/2001-CX 4 (Order No. 1/1/2003 under section 37B of the Central Excise Act dated 26-2-2002

⁴⁶ Trade Notice No. 1/98-ST dated 5-1-1998

The government had to clarify **whether computer engineer/computer engineering firm falls under the consulting engineering services**. It said that a computer engineer or a computer engineering firm which renders any advice, consultancy or technical assistance in any manner to a client also falls under the consulting engineering services. For instance - advice to client in a development of software programme or technical assistance in the development of a software programme of a client will squarely fall under the ambit of consulting engineering services. But, if a computer engineer or a computer engineering firm sells readymade software programme, that will not fall under this service, since in this case, no advice, consultancy or technical assistance is provided to the client but, it is simply a transaction for sale of goods. However, the government has exempted the consulting engineering service in relation to computer software with effect from 1999.

Why is
much
emphasis
on
CE Service?

The next question was **whether services rendered by qualified engineers as insurance surveyor and loss assessor falls under the consulting engineering services?** The government said No, number of professionals other than engineers can also be engaged by the insurer for surveying and loss assessments which suggest that the services provided by the surveyor or loss assessor is not in the field of engineering. The Board in a circular⁴⁷ has clarified that the term 'consulting engineer' as defined in the context of Service Tax will not include those qualified engineers who act as 'insurance surveyors and loss assessor' within its scope and therefore, such services will not be covered within the ambit of consulting engineering services. However from 2001 services of 'surveyor and loss assessor' has been taxed separately. Connected to this comes the question **whether services rendered by an employed engineer are taxable services?** When a consulting engineer is an employee in a concern and giving any advice, consultancy and technical assistance in any disciplines of engineering, as an employee of the concern, this will not be taxable service because in this case, there is relationship of an employee and an employer. However, if such consulting engineer also works as an independent consultant then services rendered by him in independent capacity, in respect of any advice, consultancy and technical assistance in any disciplines of engineering shall be taxable services. Since, the Act does not require, in contrast to the Chartered Accountant's services, an engineer must

be a practitioner, therefore, if a consulting engineer along with his employment also renders services in the field of consulting engineering services, he shall be liable to pay the tax in respect of such services.

Does this imply that all services rendered in professional capacity are taxable services? The answer is No. A consulting engineer or an engineering firm is liable to pay service tax only in relation to 'advice, consultancy or technical assistance in any manner', therefore, if anything is done, which does not consist of 'advice, consultancy or technical assistance it would not be covered under the ambit of service tax. This is in contrast to certain other services, for instance - in the case of Chartered Accountant's services, a service is taxable if rendered 'in professional capacity' by a practising chartered accountant. The work 'in professional capacity' is not mentioned in the definition of taxable service of consulting engineering service. Therefore, if a consulting engineer or engineering firm renders any services 'in professional capacity' which does not consist of 'advice, consultancy or technical assistance' will not be covered under the service tax. Thus, if a practising chartered accountant issues a certificate, it will amount to a taxable service rendered by him 'in professional capacity' whereas, if a consulting engineer or an engineering firm, whose profession gives him authority to issue a certificate in certain case of the factual figures, against fee, it will not be a taxable service. Similarly, if a consulting engineer is a visiting faculty in an educational institute, the amount charged by him from such services would not be charged to service tax because of the aforesaid reason.

Secondly, **whether annual maintenance contracts/after sale services contracts are taxable services?** An engineering firm rendering services under annual maintenance contracts (AMC) or after sale service contracts will not be covered under the service tax if such services are in the form of repair. However, if service is rendered in the form of advice, consultancy or technical assistance, it will become taxable service. Finance Act, 2003 has brought 'maintenance or repairing service' which includes annual maintenance contracts under the service tax net.

⁴⁷ Circular No. 34/2/2001-CX dated 30-4-2001

In **V. Shanmughavel (Dr) v. C.C.E. Chennai-II**⁴⁸ it was taken up for consideration as to **whether immovable property valuation is taxable services?** It was held that the advice offered by an engineer whether it is a firm or an individual or a company on the basis of his engineering knowledge in respect of immovable property valuation would certainly amount to an advice which is integrally connected with the engineering discipline. In **Commissioner of Central Excise, Shillong v. Rabindra Das**⁴⁹ relying on the aforesaid judgment of Madras High Court, it was held that inter alia property valuation comes within the ambit of the term 'consulting engineer'. But, the government has clarified⁵⁰ that certification given under authority of any statute/international protocol/code/convention cannot be considered to be a consultancy, advice or technical assistance. Therefore, if an engineer or engineering firm issues the certificate in respect of immovable property valuation under the statutory authority, it will not amount to immovable property valuation under the statutory authority, it will not amount to consultancy, advice or technical assistance. Further, the words 'in professional capacity' is not mentioned in the definition of taxable service of consulting engineering service. Therefore, services rendered 'in professional capacity' but which do not consist of 'advice, consultancy or technical assistance' will not be within the ambit of service tax under this category of taxable service. Finance Act, 2003 has brought the 'technical inspection and certification services' under the service tax net. The government has further clarified⁵¹ that 'technical inspection and certification services would cover certification of all types including that of immovable property. Therefore, now such inspections, valuation and certification services will be taxable under that category of taxable service.

Some other doubts which have been clarified by the government are:

- A foreign engineering firm renders any services in India, which are under the ambit of consulting engineering services, will attract the service tax.
- A foreign engineering firm, if gives any part of the work to an Indian engineering firm, on sub-contract basis in respect of consulting

⁴⁸ (2001) 131 ELT 14 (Mad)

⁴⁹ (2003) 158 ELT 487 (Tribunal-Kolkata)

⁵⁰ Circular F. No. 177/5/2001-CX.4 dated 26-2-2002

⁵¹ Circular No. 59/8/2003 dated 20-6-2003

engineering services in India, in that case, an Indian firm shall not be liable to pay tax, only foreign firm shall have to pay the tax.

- A foreign engineering firm, if gives any part of the work to an Indian engineering firm, on sub-contract basis in respect of consulting engineering services in India and an Indian firm raises bill directly to the client, instead of foreign firm, in that case, an Indian firm shall be liable to pay tax even though the firm was acting as a sub-contractor.
- The definition of 'consulting engineer' does not provide that it should be 'commercial concern'. Therefore, consulting engineering services rendered by any person including a charitable institution will be covered under this service, though services may be rendered on 'no profit no loss' basis⁵².

As to ***whether design or drawing etc. done during the turnkey projects are taxable service?*** The government has clarified⁵³ that designing, drawing done and also technical assistance provided during the course of execution of turnkey project for construction of flats, building etc. by construction agencies are services provided to client, and service is definitely of 'consulting engineer', hence taxable. The government has in the same circular⁵⁴ clarified ***whether 'erection & commissioning charges' are liable to service tax?*** It is stated that work of erection and commissioning of machineries and plants is definitely one of providing 'technical assistance' to buyer of plant/machinery and is, therefore, in the nature of services provided by a 'consulting engineer' and hence taxable. The Finance Act, 2003 has brought 'commissioning and installation service's separately under the service tax net and therefore now the contents of the aforesaid circular to such extent has become redundant.

The most important question that was raised was ***whether transfer of technology under foreign collaboration is taxable service?*** The companies in India may enter into agreement with foreign companies for the transfer of technology or know how and in consideration for the same pay lump sum and /or running royalty. The question may be raised whether transfer of technology or know how is covered under the consulting engineer service. A service is

⁵² J. K. Mittal, "Law, Practice & Procedure of Service Tax" , 7th Edition, 2004, Bharat Law House, New Delhi at pg. 101

⁵³ Circular No. 49/11/2002-ST [F. No. 137/13/2001-CX.4] dated 18-12-2002

⁵⁴ Ibid

taxable under consulting engineer service only if provided in the form of 'advice', 'consultancy' or 'technical assistance' and not for 'use' of technical information or know how provided by the consulting engineer. Thus an agreement for the transfer of technology/know-how is not covered under the 'consulting engineer service'. However, on 'import of technology' under foreign collaboration, cess is payable under the Research & Development Cess Act, 1986. In ***Shree Warana Sahakari Dudh Utpadak Prakya Sangh Limited v. C.C & C.Ex., Pune***⁵⁵ it was held that technical know-how is regarding manner of producing the end product. It is like a recipe. Technical know-how can never be transferred as in all cases of job work raw materials are never transferred by supplier to job worker, cost of technical know-how could not be included in assessable value. In ***Naran Lala Metal Works Limited v. Commissioner of C.Ex., Surat-I***⁵⁶ it was held that technical know-how charges, erection and commissioning of equipment charges are not includible in the assessable value under Central Excise.

4.8. REGISTRATION:

According to section 69 "Every person liable to pay the service tax shall within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise". The procedure regarding the registration has been prescribed under rule 4 of the Service Tax Rules, 1994. As per Rule 4(1) Every person liable to pay service tax shall make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within a period of 30 days from the date on which the service tax is levied under section 66 of the Finance Act, 1994⁵⁷. However, where a person has commenced his business for providing taxable services after the date when service tax was levied, then he shall make an application for registration within a period of 30 days from the date of such commencement⁵⁸.

The department had to clarify various questions with respect to registration. Some of them are as follows:

1. *Can a new assessee delay in seeking registration?*

⁵⁵ (2003) 155 ELT 465 (Tribunal-Mumbai)

⁵⁶ (2003) 56 ELT 281 (Tribunal - Mumbai)

⁵⁷ www.escindia.org/FAQs.htm

The question is whether a person who has started business of providing taxable services, can he delay in seeking registration till he rendered first taxable service. The Commissioner, Central Excise and Customs, New Delhi, clarified that "Every person liable for paying service tax shall make an application of registration within a period of 30 days from the date of commencement of business of providing a taxable service in terms of provisions of rule 4 of Service Tax Rules, 1994". It is further clarified that "Penalty for non-payment of service tax, interest thereon or non-filing of ST-3 return is leviable under sections 75 to 78 of the Finance Act, 1994" if registration is not sought within the prescribed time. Therefore, even if an assessee who has not provided taxable services but has started his business for providing taxable services he is required to get himself registered under the service tax⁵⁹.

Whether sub-contractor is required to take registration? The answer is no⁶⁰.if there is a total sub-contract of the service, whether sub-contractor is supposed to take out a registration and discharge the tax liability?, the Central Board of Excise and Customs has answered that "the sub-contractor need not take a registration under Service Tax. In all such cases, Service Tax is to be paid by main service provider. On the same principle "the lending/hiring of Video/Sound Recording equipment is in the nature of Sub-contracts and because the Sub contractors are not providing the services to the customers directly, they are not required to pay service tax". The above-mentioned exemption from seeking registration by sub-contractor shall be available only if sub-contracting of work is under the same category of taxable service. The government has clarified⁶¹ that if sub-contracting of work is under different category of taxable service, then service tax would be required to be paid. For example where an architect sub-contracts his work to a consulting engineer, the service tax would be required to be paid by both the architect and the consulting engineer on the services rendered by them. Similarly, a market research advertising agency, even if the advertising agency is also liable to pay service tax on the amount billed to its

⁵⁸ Proviso to Rule 4(1)

⁵⁹ J. K. Mittal, "Law, Practice & Procedure of Service Tax", 7th Edition, 2004, Bharat Law House, New Delhi at pg. 543

⁶⁰ www.cbec.gov.in, Frequently asked questions on Service Tax

⁶¹ Circular F. No. B-11/3/98-TRU dated 7-10-1998

client for advertising services (which, inter alia, includes the amount paid by the advertising agency for such market research services to the market research agency).

4.8a Registration in case of Non-resident:

Earlier a person who is a non-resident or is from outside India, does not have any office in India was not necessarily required to be registered under the service tax, if service tax on taxable services rendered by him is paid by such person or on his behalf by any other person authorized by him under rule 6. The Finance Act, 2002⁶² has omitted third proviso of sub-rule (1) of rule 4 and as not w.e.f. 16-8-2002, the person receiving the taxable service has been made liable to pay service tax, therefore, he is required to take registration.

What is the position when the same assessee is providing more than one taxable service? In such cases the assessee can seek a single registration for all such services provided by him, by making a single application for registration, mentioning therein all the taxable services provided by him to the concerned Superintendent of Central Excise⁶³. The Board has clarified⁶⁴ that "however, one service provider may provide more than once taxable service. In such cases, the service provider need only take one registration, but it shall be endorsed for all the taxable services".

In the "Frequently asked questions on Service Tax"⁶⁵ it has been asked ***what is the procedure when services are provided from more than one premises/offices?*** The answer is as follows:

(a) Centralized billing system

Where the assessee is providing the taxable services from more than one premises or office and has centralized billing system at any one of such premises or office, then he has the option to get registration for only one

⁶² Notification No. /2002-ST, dated 1-8-002

⁶³ Rule 4(4)

⁶⁴ Circular No. ST-51/13/2002 [F.No. 178/1/2002-CX.4]

⁶⁵ www.cbec.gov.in

premises or office from where such centralized billing is done⁶⁶. When the assessee gets the registration for only one of the premises or office, where he has centralized billing system, he can receive the payment at any place, in respect of bills issued in respect of taxable services rendered to clients from any of such premises or offices.

(b) No Centralized Accounting system

Where the assessee is providing the taxable services from more than one premises or office, and does not have centralized billing system he shall make separate application of registration in respect of each such premises or office to the concerned Superintendent of Central Excise⁶⁷.

(c) Centralized Accounting system

Where the assessee is providing the taxable services from more than one premises or office and has centralized accounting system at any one of such premises or office, he can make an application to the Commissioner of Central Excise for the registration of such premises or office from where such centralized accounting is done. The Commissioner of Central Excise may permit for such registration, if he is satisfied that such registration shall not be detrimental to the interest of the revenue⁶⁸.

Therefore, now, assessee has option to get registration only for one premises or office, when he provides services from more than one premises or office, if he has centralized billing system or centralized accounting system. However, if the same assessee is operating business from one premise but under two different firm names, he has to take two separate registration numbers, as each firm is different entity.

The assessee is required to apply for registration on Form 'ST-1' which is quite simple. The registration under the service tax is made very simple as compared to the registration under the Central Excise. The assessee is required to give only little information like name and address and the category of services rendered except in case of registration in case of stockbroker. A new column

⁶⁶ Rule 4(2) of Service Tax Rules, 1994

⁶⁷ Rule 4(3)

⁶⁸ Rule 4(3A)

has been added⁶⁹ whereby the assessee is required to furnish the PAN number. The government has clarified that if the Permanent Account Number has not been allotted or not applied for, same may be indicated in the Form 'ST-1'. When the assessee is rendering more than one taxable service, all the services should be mentioned at one place in the registration form. While granting registration the rules do not permit the jurisdictional officer to question about the correctness of the declaration made by the service provider. The jurisdictional Superintendent of Central Excise shall, therefore, accept the declaration given by the new assessee in the application for registration for service tax⁷⁰.

The Central Government has decided to issue common identification number based on the Permanent Account Number (PAN) allotted by the Income Tax Department, which is known as Service Tax Code (STC), which has been named as Service tax payer (STP) number in the circular regarding E-filing of return. As per the decision of the Government, PAN will be the only identify for cross-referencing with the other Departments. The main objective of allocating a number is to identify the concerned person where he is located and registered.

When business is transferred by a registered assessee to another person, the transferee is required to obtain a fresh certificate of registration⁷¹. Therefore, whenever an assessee transfers his business, it is mandatory on the part of the transferee to seek a fresh registration under the service tax.

Whenever the assessee ceases to provide the taxable services for which he is registered, he should surrender his registration certificate as soon as possible to the concerned Superintendent of Central Excise. Temporary suspension of business or getting no business will not require surrendering of registration certificate. However, there is no penal provision for not surrendering the registration certificate. When assessee is providing more than one taxable services and has taken single registration for all such services and ceases to provide any one or more of such taxable services, he should intimate it to the concerned Superintendent of Central Excise and get the same endorsed on the registration certificate.

⁶⁹ Service Tax (Amendment) Rules, 2001

⁷⁰ Circular No. 72/2/2004-ST [F. No. 137/9/2003 (Pt.)- CX4

4.9. CREDIT OF SERVICE TAX PAID:

Earlier, while explaining the scope of many services the Government had clarified that in case of sub-contracting of work by one service provider to another service provider of same service category, the sub-contractor will not be required to pay service tax on the bills raised by him. The intention of the government is not to tax the same service at many stages. But, in some cases because of peculiar nature of taxable services, the tax was being charged at more than one stage on same category of taxable service. For instance, in case of photography services, a photography studio charges tax from customers and at the same time that studio also pays tax to the photo colour lab for the film development. In exercise of the powers conferred by clause (ee) of section 94(2) of the Finance Act, 1994, as amended by the Finance Act, 2002 the government has framed the 'Service Tax Credit Rules, 2002'⁷² to give credit on the service tax paid on the services consumed for providing a taxable service in case where the services consumed and the service provided fall in the same category of taxable service. Thus, for the first time the system of input credit in service tax has been introduced in limited manner, to make the service tax a value added tax. The rules have been amended in 2003⁷³ with a view to allow credit of service tax paid across all the services.

The Finance Act, 2003 has amended section 94 by inserting clause (ee) in subsection 92) of the said section, with a view to empower the Central government to make rules to allow the credit of service tax paid on the services consumed or duties paid or deemed to have been paid on goods used for providing taxable services irrespective of the fact that input and output services fall under different categories. The Finance Minister in his budget speech said "Last year credit of service tax on input services were extended for payment of service tax, provided the input and the final services fell within the same category. I propose to extend this facility across all services. Thus, the credit will now be available even if the input and the final services fall under different

⁷¹ Rule 4(6)

⁷² vide Notification No. 14/2002 dated 1-8-2002

⁷³ vide Notification No. 1/2003-ST dated 1-3-2003

categories⁷⁴". Thus, to make service tax a true Value Added Tax, the government has decided to give credit of service tax or central excise duties paid on the service consumed or goods used while providing output taxable service. The existing rules have been amended with the aim to provide relief even where sub-contract is under different categories.

4.9a. Conditions for availing Service Tax Credit:

Two conditions have to be fulfilled to avail service tax credit.

1. **Credit under the same category of services⁷⁵:** An output service provider shall be allowed to take credit of the service tax paid on such input service, where input service falls in the same category of taxable service as that of output service, for which invoice or bill or challan is issued on or after 16-8-2002⁷⁶.
2. **Credit under different category of services⁷⁷:** As per the amendment made in Rule 3, service tax credit shall also be allowed in cases other than those covered in clause (a), i.e. where input and output services are falling under different categories. Now, an output service provider shall be allowed to take credit of service tax paid on such output service for which invoice or bill or challan is issued on or after 14th May 2003⁷⁸.

The output service provider to avail service tax credit shall submit to the Superintendent of Central Excise, a return in the form annexed to the Service Tax Credit Rules, 2003 along with Form ST-3. The Output service provider availing Service Tax credit shall maintain proper records in which the relevant information regarding the Sr. No. and date of document on which Service Tax credit is availed, Service Tax registration No. and name of the input service provider, description and value of input service, Service Tax credit availed, Service Tax credit utilised for payment of Service Tax on output service shall be recorded. The burden of proof regarding the admissibility of Service Tax credit shall lie upon the person taking such credit.

⁷⁴ vide para 171 of his speech

⁷⁵ w.e.f. 16-8-2002

⁷⁶ Rule 3(1)(a)

⁷⁷ w.e.f. 14-5-2003

⁷⁸ Rule 3(1)(b)

Service Tax credit availed on input service may be utilized for payment of Service Tax on output service. Since no refund of any excess credit available is admissible, the assessee has to utilize the same on payment of Service Tax. While paying Service Tax on the output service, the service tax credit shall be utilized only to the extent such credit is available on the last date of the month for payment of Service Tax relating to the month or in case where the assessee is an individual or proprietary or partnership firm to the extent the credit is available on the last day of the quarter for payment of Service Tax relating to the quarter. Credit availed on input service may be utilized for payment of Service Tax on output service. Since no refund of any excess credit available is admissible, the assessee has to utilize the same on payment of Service Tax.

While paying Service Tax on the output service, the service tax credit shall be utilized only to the extent such credit is available on the last date of the month for payment of Service Tax relating to the month or in case where the assessee is an individual or proprietary or partnership firm to the extent the credit is available on the last day of the quarter for payment of Service Tax relating to the quarter.

What happens to the Service Tax credit lying unutilized in the account of an assessee when he shifts his establishment to another site or his establishment is transferred on account of change in ownership or on account of sale, merger, lease or transfer of such establishment?

The answer is, the output service provider is allowed to transfer the service tax credit lying unutilized in his account to such transferred sold, merged or amalgamated establishment⁷⁹. W.e.f. 1-3-2003, it is provided that the output service provider shall be allowed to take such credit, on or after the day on which he makes payment of the value of input service and the service tax paid or payable as indicated in invoice or bill or challan⁸⁰.

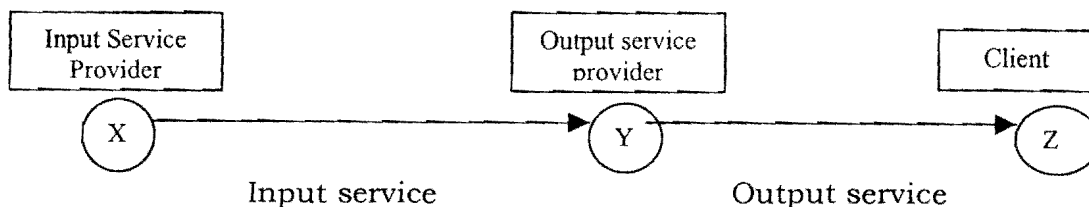
⇒ "input service" means any taxable service received and consumed by a service provider in relation to rendering of output service⁸¹;

⁷⁹ <http://www.escindia.org/FAQs.htm>

⁸⁰ Proviso to Sub-rule (1) of Rule 3.

⁸¹ Rule 2(1)(c)

The diagram⁸² below is the service provided to a person providing service to the client.



The definition covers service provided by X and not service provided to X. X cannot take credit.

⇒ "output service" means any service rendered by the service provider to a customer, client, subscriber, policy holder or any other person, as the case may be⁸³.

In the above diagram, the output service provider, i.e., the person serving the client, (namely YES providing service to Z in the diagram) can take Service Tax Credit as follows:-

1. Credit is available on the Service Tax paid on the input service.
2. Input service and output should fall under the same category (This is very important). Sixty-one services have been brought under the tax net through sub-clauses under clause 90 of section 65 of the Act. If the input service and the output service fall in the same sub-clause, then the two services shall be deemed to be falling in the same category of taxable service.

Illustration of services falling in the same category of service eligible for tax credit:

- (i) A photography studio in course of providing photography services avails service of processing labs for developing and processing of exposed film and printing of exposed film and printing of photographs. In this case service provided, by the colour lab to photography studio and by the photography studio to a customer, both fall in the same category of service i.e. photography service.

⁸² N. S. Govindan " Indirect Taxes Made Easy (Central Excise, Customs & Service Tax " , Third Edition, 2003, Law Book Publishers, Chennai at pg. 540

⁸³ Rule 2(1)(a)

Therefore, photography studio is entitled to take credit of service tax paid by the processing lab.

- (ii) A stevedore hires dock labour from the port trust and provides such labour to the client. In this case the service provided, by the port trust to stevedore and by stevedore to client, both fall in the category of port service. Therefore, stevedore is entitled to make credit of service tax paid by the port trust.

Illustration of services not falling in the same category of service, which are not eligible for tax credit earlier, now allowed to take tax credit w.e.f. 14-5-2003

(i) An advertising agency may avail services of a photography studio and/or a sound recording studio and/or a video-tape production agency during the course of rendering service to its client. Service provided by the photography studio or the sound recording studio or the video-tape production agency, as the case may be, does not fall in the category of advertising agency service. In this case, now, w.e.f. 14-5-2003, the advertising agency shall be entitled to take the credit of services paid to aforesaid service provider for which invoice or bill or challan is issued on or after 14-5-2003. However, it may be noted that illustration given in this regard in the Service Tax Credit Rules, 2002, still has not been changed, which needs to be changed as consequence of the amended in the Credit Rules to allow credit of service tax paid across all the services.

3. Invoice/Bill is dated on or after 16-8-2002.

A doubt was expressed as to ***whether credit can be availed for service tax on services consumed in manufacturing of exported goods?*** The government has clarified⁸⁴ that "service consumed/provided in India in the manufacture of goods which are ultimately exported, no credit of service tax paid can be availed or reimbursed at present as inter-sectoral tax credit between services and goods are not allowed". Since Finance Act, 2003 has amended section 94, now Central government is empowered to frame the Rules for inter-sectoral tax credit.

Secondly, Whether credit can be availed for service tax paid as a receiver of service tax? Yes, in case of a non-resident service provider who does not have any office in India, the service receiver in India is liable to pay service tax. In a point raised before the government - how such receiver would avail the service tax credit because as per Rule 5, service tax credit shall be availed on the basis of an invoice issued by the service provider of input service, the government has clarified that "as there is no bar under service tax law on the service tax payer to take the same amount back as credit, the service receiver after having paid the service tax on behalf of the non-resident service provider, can take credit of the same on the basis of document/bill/invoice under which he paid the service tax".

- Where output service is either exempted from whole of the service tax or is not taxable, no service tax credit shall be allowed on input service received and consumed in relation to rendering of such output services, except in the circumstances mentioned in Rule 3(4) and 3(5).
- Where a service provider renders output services which are chargeable to service tax as well as exempted services or non taxable services, then to avail credit on any input service, he has to maintain separate accounts for receipt and consumption of input service for each such purpose. In that case, service provider shall take credit only on that portion of input service, which is intended for use in relation to rendering output services, which are chargeable to service tax.⁸⁵
- Where service provider opts not to maintain separate accounts as discussed above, he shall be allowed to utilize service tax credit for payment of service tax on any output service only to the extent of an amount not exceeding 35% of the amount of service tax payable on such output service⁸⁶.
- Service tax credit on the service provided in relation to telephone connection shall be allowed only in respect of such telephone connections, which are installed in the premises from where output service is provided⁸⁷. This rule indicates that service tax credit in respect of tax paid on fixed telephone connections shall be allowed as the words "installed in the premises" are

⁸⁴ Circular No. 56/5/2003 dated 25th April, 2003

⁸⁵ Rule 3(5)

⁸⁶ Rule 3(5)

⁸⁷ Rule 3(6)

used in the said sub-rule, whereas mobile phone and WLL(M) phones are not "installed in the premises".

In a point raised before the Government whether credit of service tax on telephone connection would be admissible on telephone sets installed only in business premises, the government has clarified⁸⁸, "The answer is in the affirmative, and credit will be allowed only on telephone sets installed in the business premises. It was also clarified that "mobile phone are not covered", therefore, no credit shall be available for the service tax paid in respect of mobile telephone connection even if it has been used for providing the taxable service.

4.10. APPLICABILITY OF OTHER ACTS TO SERVICE TAX

The levy of Service Tax in India from 1994 and its various provisions has reference to the meaning of words or phrases or definitions from various other Acts. Certain definitions have been defined to mean the same as in those Acts, for the purposes of Service Tax. Apart from meaning and definitions, certain other provisions and regulations under various laws and regulations apply to service tax. The relevant provisions can be found in the following Acts :

- a) The Securities Contracts (Regulation) Act, 1956;
- b) The Securities Contracts (Regulation) Rules, 1957;
- c) The Customs Act, 1962;
- d) The Sale Of Goods Act, 1930;
- e) The Insurance Act, 1938 And The Insurance Regulatory And Development Authority Act, 1999;
- f) The Motor Vehicles Act, 1988;
- g) Customs House Agents Licensing Regulations, 1984;
- h) Transfer Of Property Act, 1882;
- i) The Chartered Accountants' Act, 1949 (Including Regulations);
- j) The Company Secretaries Act, 1980 (Including Regulations);
- k) The Cost And Works Accountants Act, 1959 (Including Regulations);
- l) The Architects Act, 1972 (Section 23);

⁸⁸ Circular No. 59/8/2003, dated 20-6-2003

- m) The Companies Act, 1956;
- n) SEBI (Credit Rating) Regulations, 1999;
- o) Rent-A-Cab Scheme, 1989;
- p) The Banking Regulation Act, 1949;
- q) Prasar Bharati (Broadcasting Corporation Of India) Act, 1990;
- r) The Information Technology Act, 2000;
- s) Reserve Bank Of India Act, 1934;
- t) Major Port Trusts Act, 1963;
- u) Indian Telegraph Act, 1885;
- v) The Indian Wireless Telegraphy Act, 1933;
- w) Securities And Exchange Board Of India (Stock Brokers And Sub-Brokers) Rules And Regulations, 1992.

*COURT DECISIONS
ON SERVICE TAX*

5. COURT DECISIONS ON SERVICE TAX

The validity of Service tax has been challenged in various courts of India, who have in their various decisions upheld the legality of the levy. Few important decisions in this regard are given below.

The Gujarat High Court in the case of ***Addition Advertising vs. Union of India***⁸⁹ has held that levy of tax on advertising service is not unconstitutional. It was held that this is not a tax on any profession, trade, calling or employment, but in respect of service rendered. If there is no service, there is no tax. It was further held that 'the tax is not on advertisement' but on the services rendered with reference to the advertisement and there is a clear distinction between the advertisement service and advertisement. As a result of the advertising services rendered, it results in an advertisement which can be published, republished and copied. There is nothing discriminatory either.

In another case of ***M/s. Laghu Udyog Bharati v/s. UOI*** ⁹⁰the petitioners challenged the Government's decision to shift the burden of duty liability to the service receivers in case of Goods Transport Operators and Clearing & Forwarding Agents. In this case, the Hon'ble Supreme Court upheld the contention of petitioners and held that the relevant provisions of Service Tax Rules were *ultra vires* the Finance Act, 1994.

The Hon'ble Supreme Court while deciding the case, observed as follows: -

"The service tax levied by reason of services which are offered. The imposition is on the person rendering the service. Of course, it may be indirect tax, it may be possible that the same is passed on to the customer but as far as the levy and assessment is concerned, it is the *person rendering the service who alone can be regarded as an assessee and not the customer. This is the only way in which the provision can be read harmoniously.*

The Hon'ble Apex Court further opined that "The charge of tax is on the value of services and it is only the person who is providing service can be regarded as an

⁸⁹ 1998 (98) ELT 14

⁹⁰ 1999 (89) ELT 247

assessee. The rules, therefore, cannot be so framed which do not carry out the purpose of the Chapter (Statute) and cannot be in conflict with the same."

A number of trade bodies and individual service providers have challenged the levy of service tax by the Union Government under the residuary entry No.97, list I in VIIth Schedule of the Constitution. They contended that the service tax is nothing but a tax on professions, which is specifically listed, in the State list. Therefore, the Union Government is not empowered to levy service tax on professional services. Additionally, the levy has also been challenged on the grounds of hostile discrimination vis-à-vis other services and/or the service providers within the same category. The Institute of Architects and certain representative bodies of Chartered Accountants have been in the forefront of this litigation. However, this challenge has not found favour with the courts.

The Gujarat High Court in its judgement⁹¹ have held that the tax on profession (which is in the State list) is a tax on the privilege of carrying on such profession. Therefore, such a tax is irrespective of the fact whether professional does or does not render professional service for remuneration. Whereas the service tax is a levy, which has to be paid each time a professional renders services for remuneration. Thus, professional tax and service tax are different in pith and substance. Further, the legislature is competent to identify and reasonably discriminate between various services and service providers for the purposes of taxation. Therefore, there is no ground to challenge the levy on the grounds of discrimination. The Madras High Court have also taken the same view in a plethora of petitions pending before them.

A number of trade bodies and individual service providers have challenged the levy of service tax by the Union Government under the residuary entry no. 97, list I in Seventh Schedule of the Constitution. They contended that the service tax nothing but a tax on professions, which is specifically listed, in the State list. Therefore, the Union Government is not empowered to levy service tax on professional services. Additionally, the levy has also been challenged on the grounds of hostile discrimination vis-à-vis other services and/or the service providers within the same category. The Institute of Architects and certain representative bodies of Chartered Accountants have been in the forefront of this litigation.

Considering the importance of early resolution of these disputes, the Directorate actively pursued such cases pending in Ahmedabad, Mumbai and Chennai High Courts have upheld the constitutional validity of the service tax law provisions contained in the Chapter V of the Finance Act, 1994 as amended and the Rules framed thereunder.

The conceptual aspects of Service Tax and its validity were made clear in the following judicial pronouncements:

In **Governor General in Council v. Province of Madras**⁹², it was held that 'The method of collecting the tax is an accident of administration; It is not the essence of the duty of excise which is attached on the manufacture itself.

In **R. C. Jau**⁹³ it was contended that excise duty could not be collected from the consignee, who had nothing to do with the manufacture or production of goods but Supreme Court held that 'the argument confuses the incidence of taxation with the machinery provided for the collection thereof.

In **Bombay Tyre International**⁹⁴, it was held that 'while the levy in our country has the status of a constitutional concept, the point of collection is located where the statute declares it will be'. Supreme Court in **Indian Express Newspaper's case**⁹⁵ held that 'while there can be no tax on the freedom of expression, tax can be levied on profession, occupation, trade, industry or business. Clearly, therefore, a tax on an activity which may be of expression is not immune from tax'.

The Supreme Court⁹⁶, held that "if the Central Act is challenged as being beyond Parliament's Legislative competence, it is enough to enquire if the law is, with respect to matters on taxes, enumerated in List II. If it is not, no further question arises."

⁹¹ dt.27.12.2000 (in SCA No.469/1999 and 7220/1999) and the Mumbai High Court in the judgement dt. 22.02.2001 (in the W/P no. 142/1999 and 1174/2000)

⁹² 1945 FCR 179, 1978 FLT 280

⁹³ 1992 Supplement 3 SCR 436 SC

⁹⁴ 1983 ELT 1896 (SC)

⁹⁵ AIR 1986 SC 515

⁹⁶ AIR 1977 SC 1061

In **Siddeswari Cotton Mills v. Union of India and others**⁹⁷, with reference to challenge of artificial extension of the concept of manufacture, it was held by Supreme Court that even if the concept of manufacture as introduced by the legislative enactment was not covered by Entry No. 84 of List I in the seventh schedule, the levy of tax was permissible by virtue of Entry No. 97 of list I in the seventh schedule.

In **Union of India v. Harbhajan Singh Dhillon**⁹⁸, a similar question (in relation to levy of wealth tax on agricultural property) came up for consideration before the Supreme Court. The legislative competence of the Parliament to levy tax on agricultural land, which is a State subject was challenged. The apex court held that there is no subject on which either the Parliament or the State legislatures cannot legislate and further that any matter which is not covered in List II and list III or Entries 1 to 96 of List I would be covered under Entry Sl. No. 97 of List I which is residuary entry read with Article 248 of the Constitution.

In **INI Express Worldwide Private Ltd. v. Union of India**⁹⁹, the Bombay High Court held that 'it is well settled that while considering the plea for stay of recovery of tax, the Court must proceed that the enactment is conceptually valid'.

Constitutional validity of levy of service tax has also been upheld in **Chartered Accountants Association v. Union of India**¹⁰⁰. The petitioners challenged the constitutional validity of section 88 of the Finance Act, 1997 and section 116 of the Finance Act, 1998 levying service tax on consulting engineers, architects and chartered accountants. It was held that just as the Parliament has the power to levy tax on manufacture of goods as per Entry 84 in the Union List. The Parliament also has the power to levy tax on the services being rendered by a professional. It also held that professional tax and service tax are two different taxes and the two cannot be merged. The professional tax is a tax for privilege for having the right to exercise that particular profession where as service tax is the tax which one pays each time he renders services for

⁹⁷ 1989 (39) ELT 498 (SC)

⁹⁸ 1972 (83) ITR 582 (SC)

⁹⁹ (1998) 97 ELT 407 (Bombay)

¹⁰⁰ (2001) 115 Taxman 543 (Gujarat)

remuneration. There being no other Entry in the State list or concurrent list which could possibly be referred to for the purpose of levying service tax, the legislative competence for enacting this law must be traced to Article 248, read with Entry 97, in the union list. It was also held that the services per se are not taxed. It is the services rendered by the professional which are taxed. Merely because it is the professional who is required to collect and pay the tax; it does not mean that the tax is on the professional.

In **All Kerala Chartered Accountants Association v. Union of India**¹⁰¹, it was held by Kerala High Court that the tax on profession is really a tax on the privilege of being engaged in a profession, and not with regard to any other aspect of the profession. The aspect of value of service rendered in the profession is not related to any entry in list II. Consequently, it is perfectly permissible for the Parliament to legislate for a tax thereupon. Upon the privilege of belonging to a profession, tax may be levied by the State Legislature in exercise of its power arising from entry 60 in List II of Schedule VII (State List). On the income arising from the practice of profession, parliament is competent to tax it by reason of a law made in exercise of its powers relating to entry 82 in List I (Union List).

Similarly in **Jodhpur Chartered Accountants Society & others, Jodhpur Property Dealers Association and Annu Mridul v. Union of India and others**¹⁰², it was held that service tax on Chartered Accountants and architects is different from professional tax, is not a case of clear and hostile discrimination against particular persons or classes of persons and is therefore, constitutionally valid. The levy is not on a profession but on the service rendered by the professional. The parliament has acted perfectly within its jurisdiction to legislate the Finance Act. Moreover, Article 76 is specifically enacted to validate a law made by the Legislature of a State relating to tax in respect of profession, trade, calling or employment. The Legislature enjoys a wide latitude in the matter of selection of persons, subject matter, events etc for taxation. The tests of the vice of discrimination in a taxing law are less rigorous. The statute is not open to attack on the mere ground that it taxes some persons or objects and not others. The provisions were held to be valid.

¹⁰¹ 258 ITR 679

¹⁰² (2003) 264 ITR 529 (Rajasthan)

Therefore, it can be submitted that the levy of Service tax by the Central Government cannot be challenged as unconstitutional.

In **Kerala Colour Lab Association v. Union of India & others**¹⁰³, it was held that service tax on services provided by photography studio or agency is a levy different from profession tax and that Parliament was competent to levy service tax and levy was not violative of Articles 14 and 19(1)(g) of the Constitution of India. Parliament by imposing service tax has neither taxed the material, nor the sale thereof. What has been taxed is the service rendered by the photography studios and agencies. In the levy of service tax, the taxable event is the rendering of service, and not the fact of belonging to a profession, trade, calling or employment. It is a basic principle of taxation that Parliament need not tax all in order to tax some. It has wide discretion in choosing the objects it decides to tax. It is not liable to be challenged on the ground that it does not impose service tax on free-lancers, but imposes it on photographers having an establishment. The levy of service tax does not impose any unreasonable restriction on the fundamental right guaranteed under Article 19(1)(g). The levy is valid.

In **Zodiac Advertisers v. Union of India**¹⁰⁴ it was held that tax on SSI unit engaged in printing of material like visiting cards, banners, posters, stickers etc. does not violate Articles 14 and 19(1)(g) of the Constitution. The assessee was covered under the category of advertising services. It was held that whom the legislature should tax, in what manner, and to what extent, is totally left to the wisdom of the legislature and it is not for the courts to interfere in such exercise of discretion.

In **Advertising Club & others v. CBEC & others**¹⁰⁵, it was held that levy of service tax on advertising agency, which was not covered by state list, is constitutionally valid and Parliament is competent to levy service tax. It is entirely independent of and different from existing taxes covered by the taxes provided in list II of the Seventh Schedule to the Constitution. That itself would suggest that this cannot come within the arena of entry 55 of the List II. The constitutional validity of the taxing provision could not be decided on the basis

¹⁰³ (2003) 264 ITR 633 (Kerala)

¹⁰⁴ (2003) 32 Taxman 512 (Kerala)

¹⁰⁵ (2003) 264 ITR 385 (Madras)

of measure of tax. Parliament is competent to levy the tax and the levy of service tax on advertising agencies is valid.

In **GDA Security Pvt. Ltd. & Another v. Union of India & others**¹⁰⁶, it was held that service tax is different from a tax on profession. No fault could be found with the taxing provision with reference to the measure of the tax. The provision is not violative of Article 14 of the Constitution. The taxing authority has the discretion to decide as to what are the deductible amounts and which are the others and it cannot be decided as to whether a taxing statute is constitutional or otherwise on the basis of the way the calculations are to be made by such taxing authorities.

Several other issues relating to service tax were cleared in the following cases. In **Daelim Industrial Co. Ltd v. Commissioner of Central Excise, Vadodara**¹⁰⁷, the question was whether service tax is attracted on Works Contracts on Turnkey basis undertaken by Consulting Engineers. It was held that a works contract cannot be vivisected and part of it be subjected to service tax. It cannot be taxed as consultancy rendered by a consulting engineer. A contract for construction, erection and installation of a plant on payment of a lump sum fee where drawings and documents are submitted for review by the owner on a turnkey basis, cannot be termed as a consultancy contract. Design drawing in question were incidental to the execution of work contracts.

In **Eicher Consultancy Services Ltd. v. CCE (Appeals) Mumbai**¹⁰⁸, it was held that the presentation of cheque in the designated bank on the due date, shall be deemed to be the payment on due date, even when the amount covered by the said cheque was realized a day or two later. However in **NISA Industrial Services Pvt. Ltd. v. CCE, Mumbai**¹⁰⁹ it was held that an assessee can not be required to pay service tax once again when it has earlier inadvertently paid some tax in some other bank which was not a designated bank for the purpose of service tax. Since it is a matter of transfer of amount of tax to appropriate pay and accounts officer, it cannot be concluded that tax had not been paid at

¹⁰⁶ (2003) 264 ITR 396 (Madras)

¹⁰⁷ 2003 (155) ELT 457 (CESTAT, New Delhi)

¹⁰⁸ (2003) 157 ELT 432 (CESTAT, Mumbai)

¹⁰⁹ (2003) 157 66 (CEGAT, Mumbai)

all. There was no basis for the other requiring the appellant to pay service tax once again or interest thereon.

Discussing Section 73¹¹⁰ of the Finance Act in **Super Security Services v. CCE, Trichy**¹¹¹ it was held that confirmation of demand for six months from the

¹¹⁰ 73. Value of taxable services escaping assessment

(1) If

- (a) the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise has reason to believe that by reason of omission or failure on the part of the assessee, to make a return under section &) for any prescribed period or to disclose wholly or truly all material facts required for verification of the assessment under section 71, the value of taxable service has escaped assessment or has been under-assessed or service tax has not been paid or has been short-paid or any sum has erroneously been refunded, or
- (b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise has in consequence of information in his possession, reason to believe that the value of any taxable service assessable in any prescribed period has escaped assessment or has been under-assessed or service tax has not been paid or has been short-paid or any sum has erroneously been refunded.

He may, in cases falling under clause (a), at any time within five years, and in cases falling under clause (b), at any time within one year, from the relevant date, serve notice on the person chargeable with the service tax which has escaped assessment or has been under-assessed or has not been paid or has been short-paid, or to whom any sum has been erroneously refunded, requiring him to show cause why he should not pay the amount specified in the notice.

Explanation - Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the period of five years or one year as the case may be.

- (2) The Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

[2A] Where any service tax has escaped assessment or has been under-assessed or service tax has not been paid or has been short paid or erroneously refunded, the person chargeable with the service tax, may pay the amount of tax on the basis of his own ascertainment of such tax or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of service tax, and inform the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of service tax so paid:

Provided that the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise may determine the amount of short payment of service tax, if any, which in his opinion has not been paid by such person and, then, the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise shall proceed to recover such amount in the manner specified in this section, and the period of "one year" referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

Explanation 1 - Nothing contained in this sub-section shall apply to cases falling under clause (a) of sub-section (1)

Explanation 2 - For the removal of doubts, it is hereby declared that the interest under section 75 shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of service tax, if any, as may be determined by the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise, but for this sub-section.

(2B) The provisions of sub-section (2A) shall not apply to any case where the service tax had become payable or ought to have been paid before the day on which the Finance Bill, 2003 receives the assent of the President.

(3) For the purposes of this section, "relevant date" means, -

- (i) in the case of taxable service in respect of which service tax has escaped assessment or has been under-assessed or has not been paid or has been short-paid-

date of receipt of show cause notice is justifiable when assessee had no mala fide intention to evade tax. In this case, Department insisted on filing service tax returns under 'Manpower Recruitment Agency', but the assessee filed returns under 'security agency services'. There was no proof of evasion of tax on the part of assessee.

In **CCE, Bhubaneswar-II v. Tyazhpromexport**¹¹² regarding section 80¹¹³ it was held that there cannot be an intention of non-resident foreign company under direct control of foreign country to evade service tax where the foreign company (a non-resident in India) was directly under the Ministry for Economic Affairs and Trade of Russian Federation. It was also held that when under a contract, taxes payable in India were to be borne by the Indian company and when there was some dispute on payment of tax on services provided and when the matter was resolved, immediately the tax was paid with interest, there was a reasonable cause under section 80 for failure to deposit service tax and penalty was not imposable.

In **Gujarat Containers Ltd. v. CCE Vadodara**¹¹⁴ it was held that when there is no specific demand for any amount of service tax but only for registration and filing of return of service tax, order requiring the assessee to pay service tax alongwith interest is not a valid order.

In **Kesoram Spun Pipes & Foundaries v. Commissioner of Central Excise, Calcutta-IV**¹¹⁵ the scope of the term "Goods Transport Operator" came up for

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- (a) where under the rules made under this chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;
 - (b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;
 - (c) In any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;
 - (ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;
 - (iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.

¹¹¹ (2003) 157 ELT 433 (CESTAT, Chennai)

¹¹² (2003) 157 ELT 576 (CESTAT, Kolkata)

¹¹³ 80. Penalty not to be imposed in certain cases

(1) Notwithstanding anything contained in the provisions of section 76, section 77, section 78 or section 79, no penalty shall be imposable on the assessee for any failure referred to in the said provisions if the assessee proves that there was reasonable cause for the said failure.

¹¹⁴ (2003) 157 ELT 67 (CEGAT, Mumbai)

¹¹⁵ 2002 (146) E.L.T. (Tri-Kolkata)

consideration. The appellants in this case used to get direct delivery of raw materials from the suppliers. Their contention was that the payment of transportation charges to the supplier does not attract any service and they have paid the tax on account of ignorance. It was held that "Goods Transport Operator" has been defined in Section 65(17) of Chapter V of the Finance Act, 1994 which is to the effect that 'goods transport operator' means any commercial concern engaged in the transportation of goods but does not include a courier agency. From the said definition of 'goods transport operator', it is evident that the Service Tax is leviable on the services provided by a commercial concern engaged in the transportation of the goods. Inasmuch as in the present case, the appellants have received goods directly from the suppliers, who have themselves undertaken the deliveries of the goods at the appellants' door-steps, it cannot be said that the appellants received the services of any commercial agency. The said suppliers cannot be held to be transporters. As such, the service tax was not payable.

In ***Indian Institute of Architects v. Union of India***¹¹⁶ the legislative competence of levying service tax on Architects and chartered accountants was questioned. It was held that the Parliament is competent to levy service tax on Architects and Chartered Accountants under Entry 97 List I of Schedule VII to the Constitution of India. The whole thrust of the Finance Act was against the services which constitute 40% of the National G.D.P. This would provide a very important angle while considering the real nature of this legislation. Considering the language which aims at the 'service sectors' alone, in the light of the attendant circumstances like the purpose and object of the enactment, it cannot be said that this subject of legislation is not sui generis and in reality pertains to the field of 'state legislation'. There is clear distinction between the privilege to carry on a profession and the services offered as professional which result into the income from that profession. Therefore, the two are distinct and separate and the service tax cannot be viewed or confused as a tax on profession. Professional tax has to be paid whether a professional actually has given the professional service or not whereas, the service tax will not be payable if a professional like a Chartered Accountant or a Cost Accountant has in reality not rendered any professional services to a customer. These aspects are *distinct aspects* and, therefore, an aspect which entirely depend upon the

¹¹⁶ 2002 (139) E.L.T. 245 (Mad)

services offered by the professional though may have a nexus with the profession yet the service becomes a distinct aspect in itself and can be legitimately taxed by the Parliament under Entry 97 of list I.

It is for the legislature to select any particular service or any particular subject for taxing. Having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal policy legislature enjoys wide latitude in the matter of selection of persons, subject matter, events etc for taxation. The tests of the vice of discrimination in a taxing law are, accordingly less rigorous. In examining the allegations of a hostile, discriminatory treatment what is looked into is not its phraseology, but the real effect of its provisions. There would be no question of finding any fault with the legislature for picking up the Chartered Accountants or the Cost Accountants or the Architects also for taxing their services. It is only the services offered by the Chartered Accountant in their 'Professional Capacity' which are made taxable and the services other than of auditing and accounting provided by the practising Chartered Accountants are exempted from this tax. Therefore, it cannot be said that there is any confusion regarding the taxable services. The notification issued under section 93 of the Finance Act, 1994 specifically provides the services which are made taxable and the other services which are not taxable. This is besides the fact that there is a complete machinery available in the Act itself to decide the nature of the services. There is also a provision of the appeal within the machinery of the Act and, therefore, it cannot be said that there could be confusion about the services offered by the Chartered Accountants or the Cost Accountants.

CONCLUSION

6. CONCLUSION

Service tax is envisaged as the tax of the future. Well synchronized taxation on manufacturing, trade (domestic & international) and service without giving rise to cascading effect of taxation would be an ideal worth pursuing in the immediate future. This would bring in VAT in its truest sense.

Continued growth in GDP accompanied by higher rate of growth in service sector promises new & wider avenues of taxation to the Government. If the tax on services reduces the degree of intensity of taxation on manufacturing and trade without forcing the Government to compromise on the revenue needs, then one of the basic objectives of taxing the service sector would be achieved.

Voluntary tax compliance on the part of taxpayers demands prudent accounting practices and transparency in the conduct of their business. Marginal rates of taxation would be conducive in this process. Many new services may be brought under the tax net in future. The inclusion of all value added services in the tax net would yield larger amount of revenue and make the existing tax structure more elastic.

Advanced economies of Western Europe, North America and Far East have share of service sector in their GDP ranging from 60% to 80%. The growth in absolute quantum of GDP and proportion of Service-sector in GDP holds promise for larger revenue generation without increasing the existing level of taxation.

The present position of service tax is that:

- Though the services are being taxed since the year 1994, till today there is no consolidated Act containing law and rules concerning this tax and the implementation of the Act is being done through annual Finance Acts. The Finance Act, 1994, is being amended year after year to bring more services in the tax net and to make changes concerning this tax. Year after year definitions of all the services within the tax net are being repeated and amendments are made in other sections of the Finance Act, 1994, annually making the Finance Acts of various years unduly lengthy and cumbersome to refer. For example in the Finance Bill, 2003, clause 151 relating to

service tax is spread over 11 pages in small prints, each page having more than 15 lines! The problem of the government in having a separate independent Act and continuing this tax through annual Finance Acts only is difficult to appreciate.

- Further, extending the coverage of the tax to unorganized sectors like coaching centres, private tutorials, Internet cafes, maintenance and repair services, etc., in a routine way and not implementing it effectively can seriously affect the compliance, credibility of the Government and revenue collections. Extension of the provisions of this tax should only be done after taking into account the administrative constraints and revenue potential¹¹⁷.

Future Course of Action

The following items of works have to be attended to urgently to improve the administration of Service Tax in the country.

1. Target of Rs. 8000 crores service tax collection for 2003-04 has to be exceeded.
2. Intensify the field survey operations to ensure that all taxable service assesseees are brought into the tax net and Service Tax due from them are collected without hitch.
3. Action plan, prepared by the zones, has to be implemented and monitored by various levels of supervisory officers on a fortnightly and monthly basis.
4. While the basic tenet of voluntary compliance of Service Tax law has to be adhered to, recalcitrant/ habitual evaders of Service Tax have to be booked for appropriate action under the law. There could be no leniency in this regard.
5. The statutory change to prosecute frequent offenders/tax evaders is needed in the Act.

¹¹⁷ "Budget 2003-04 and Service Tax : Enhanced rate of tax and new services brought within tax net", T. N. Pandey, Taxman, March 2-March 28, 2003 at pg. 249

6. Facilitate the implementation of the recommendations of Expert Group set up by the Government, so that steps for early rationalization and enlargement of the scope of service levy in the country is hastened.
7. Design and implement an Electronic Tax Administration (ETA) system for service tax so that service tax could be administered as first e-tax of the country. Directorate General of Systems have developed software for electronic filing of ST-3 returns for 10 major services from April, 2003. All the Chief Commissioners have been requested to arrange meetings of service providers and service tax staff to inculcate the awareness about E-filing of returns/E-Tax Administration.
8. Concentrate on liquidation of Service Tax arrears and issue necessary clarifications to the field officers so that arrears linked up with disputed interpretations of the provisions of the law could be easily resolved.
9. Attend to all major court cases relating to Service Tax law for early decision.
10. Deploy adequate staff to attend to the service tax work and provide infrastructure and conveyance to implement service tax law effectively.

Presently, in the absence of threshold limit, a large number of small service providers come within the net of this tax, generating substantial infructuous work. At present the service tax regulation does not have any threshold limit.

This would create hardship for small entities such as barbers, dhobis and other self-employed people where a similar activity done by large enterprises is taxable.

There should be a threshold limit for very small enterprises that earn their living expenses from such services and do not have any infrastructure to comply with the regulatory requirements¹¹⁸. According to the newspaper reports, even the directorate looking after this tax in the Department of the Central Excise and Customs has suggested that the threshold limit for this tax should be fixed at Rs. 10 lakhs.

¹¹⁸ www.thehindubusinessline.com/2004/04/07/stories/2004040701150400.htm

In the existing law, there is no provision for revising the return. However, prior to October 1998, under sub-section (3) of section 70, the assessee was permitted to revise the return, if he had discovered later on any omission or wrong statement therein. This facility was later removed. To avoid the hardship to the assesseees suitable provisions need to be made in the existing law or rules, to provide an opportunity to the assessee to revise the return, if any omission or wrong statement is discovered by the assessee, which is not willful.

11. A provision for self-adjustment of service tax paid needs to be incorporated.
12. In certain services like those relating to manpower recruitment or insurance auxiliary services, etc., the service providers incur certain out of the pocket expenses also, which are billed to the service receiver for reimbursement. It has been clarified by the Central Excise Department that when for such services the amount is billed along with the bill for the services, the same is not liable to tax. But there is no legal basis for this. Hence, section 67 needs to be amended to make this position explicit.
13. As per rule 7 of the Service Tax Rules, 1994, the assessee is required to submit the return 'in triplicate'. This rule was framed when there was provision for assessment by the department and one copy was sent back to the assessee after assessment. With effect from July 16, 2001, the provision for self-assessment is introduced. Therefore, no copy is required to be sent back to the assessee. Hence, to save time, energy, cost one copy was sent back. Thus, the rule is required to be amended to provide that the returns be filed in duplicate only.
14. The present law is that refund for service tax can be claimed in terms of section 11B of the Central Excise Act, 1994. Under this provision, refund application relating to goods can be made within one year from the relevant date. A separate provision for this refund under service tax is needed.

15. A provision is needed to provide for changing of registration certificate on application when there is change in name, location or for other reason. Presently, there is no such provision in the service tax law.
16. To locate the ways, the areas and the *modus operandi* for evasion/avoidance of this tax.
17. How arrears of tax can be liquidated and not allowed to accumulate.
18. To provide clarity regarding interpretation of legal provisions and rules where confusion and litigation is presently existing.

The revenue collections and number of assessees are increasing year after year. Rs. 8,000 crores was expected to be collected from service sector during 2003-2004 as against estimate (Revised) of Rs. 5,000 crores in the year 2002-03. Service sector contributes nearly 50% of the Gross National Product and annual growth rate of service sector over the last two decades has been substantially higher, i.e. 7 % to 8%. Composition of this sector is heterogeneous in character and proportion of services rendered by unorganized sector remains substantial. Hence, great concern needs to be shown for its growth, development and administration of law relating to tax. Separate comprehensive legislation- not in bits- and distinctive efficient administrative machinery exclusively earmarked for this tax is the need of the time. The goals of revenue maximization along with bringing in the culture of voluntary tax compliance throw major challenges before the service tax administration in the country. As suggested by the Govinda Rao task force, the tax should be administered with online web-based connectivity with the assessees¹¹⁹.

Attempt should be made to be more selective instead of covering the entire spectrum of services in India. It should be kept in mind that higher buoyancy in tax revenue is dependent upon industrial growth and regeneration, and plugging the loopholes for evasion. Ordinarily services connected with health, education, rural development and development of tribal and backward areas, should not be taxed and if at all it should be at a nominal rate. Ordinarily, compounded or presumptive levy of tax will bring less revenue though such a method would save bother for the assessees and to some extent, they will get incentive to produce more services. Apart from that, taxable services are mostly

urban-oriented and they do not need such facilities. The criteria for exemption from service tax would be the aims and objectives of individuals or organizations or corporate bodies and the actual work done and continued to be done.

The tax rates should be different for different services because earnings are different. Taxation of services should be combined with Union Excise Duties to evolve a Value Added Tax combining Sales Tax, Excise and Customs Duties and Service Tax. In countries where services are taxed they are integrated with the VAT system of taxation. However, with Service Tax net widening, it is worth considering whether there could be some other variety of "Goods and Service Tax" as believed to be prevalent in Australia, Canada and Singapore. As regards Service-givers in the small unorganized sector it has to be admitted that control over the small-scale sector, whether for central excise or sales tax, is difficult. Either they should be exempted or for them there can be compounded or presumptive payment of tax.

For selective taxation of services for some it should be at a higher rate and if the rate is too high there should be internal credit set-off. It is not desirable to devolve the power to levy tax on Services to the States as this may lead to different treatment to assesseees and also tax assessment in different States in the country. The Central Government give major portion of the tax collected to the States. Central taxation is necessary for facility in tax collection and ensuring uniformity. The question giving right to the States to levy Service Tax should, therefore, not arise. It appears there are some difficulties in regard to taxing of housing, financial and social services but their specific difficulties are not known. Promoters of houses make large profits and the same is the case with the financial services who borrow money at a low rate and lend at a very high rate. Social services are, however, in a different footing and they should not ordinarily be taxed, unless they are also found to be making big profit. Computer related services viz. Software, Internet, and e-commerce should be

¹¹⁹ "Budget 2003-04 and Service Tax : Enhanced rate of tax and new services brought within tax net", T. N. Pandey, Taxman, March 2-March 28, 2003 at pg. 249

taxed with a gradualist approach. The country has made considerable progress in information technology and its growth not be hampered¹²⁰.

With gradual lowering of customs and excise duties, over a period of time, indirect taxes to gross domestic product ratio will continue to reduce and with service tax gaining importance it will become the largest contributor to the kitty.

Service Tax is the tax of the future with GATS under WTO regime, services are expected to grow further and excise and custom tariffs are likely to come down. It is a fact that those who provide the service have to incur some amount of expenditure, in terms of both- money and time. The compliance cost appears more to be a burden of psychological nature but as a citizen, one has to pay the cost in wider national interest.

Services such as arbitrators, valuers, corporate hospitals, diagnostic centres, discount cards, privilege cards, jewellery designers, airport authorities, lawyers, software consultants, auctioneers, internet service providers, web designers, recreation clubs, private airlines, business process out sourcing services etc. are several services which may come in tax net in future. The inclusion of more services in the tax net would yield greater revenue and make the existing commodity tax structure more income elastic. Empirical estimates of income elasticity of services vis-à-vis goods indicate that while the former is generally higher than unity, the latter is invariably less than unity.

¹²⁰ Dr. A. K. Bandyopadhyay "Service Tax - Reform and Extension", 2000 ELT (122) A89

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ANNEXURES

ANNEXURE - I

CHAPTER V OF THE FINANCE ACT, **1994** **(as amended)** **Service Tax**

64. Extent, commencement and application.

- (1) This Chapter extends to the whole of India except the State of Jammu and Kashmir.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- (3) It shall apply to taxable services provided on or after the commencement of this Chapter.

65. Definitions. - In this Chapter, unless the context otherwise requires, --

- (1) "actuary" has the meaning assigned to it in clause (1) of section 2 of the Insurance Act, 1938 (4 of 1938);
- (2) "advertisement" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas;
- (3) "advertising agency" means any commercial concern engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant;
- (4) "air travel agent" means any person engaged in providing any service connected with the booking of passage for travel by air;
- (5) "Appellate Tribunal" means the Customs, Excise and Gold (Control) Appellate constituted under section 129 of the Customs Act, 1962 (52 of 1962);
- (6) "architect" means any person whose name is, for the time being, entered in the register of architects maintained under section 23 of the Architect Act, 1972 (20 of 1972) and also includes any commercial concern engaged in any manner,

- whether directly or indirectly, in rendering services in the field of architecture;
- (7) "assessee" means a person liable to pay the service tax and includes his agent;
- (8) "authorized service station" means any service station or centre, authorized by any motor vehicle manufacturer, to carry out any service or repair of any motor car or two wheeled motor vehicle manufactured by such manufacturer;
- (9) "banking" shall have the meanings assigned to it in clauses (b) of section 5 of the Banking Regulation Act, 1949 (10 of 1949),
- (10) "banking company" shall have the meanings assigned to it in clauses (a) of section 45 A of the Reserve Bank of India Act, 1934 (2 of 1934);
- (11) " banking and other financial services" means, the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate, namely :-
- (i) financial leasing services including equipment leasing, and hire-purchase by a body corporate;
 - (ii) credit card services;
 - (iii) merchant banking services;
 - (iv) securities and foreign exchange (forex) broking;
 - (v) asset management including portfolio management, all forms of fund management, pension fund management, custodial depository and trust services, but does not include cash management;
 - (vi) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisition and advice on corporate restructuring and strategy; and
 - (vii) provision and transfer of information and data processing;
- (12) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);
- (13) "body corporate" shall have the meaning assigned to it in clause (7) of Section 2 of the Companies Act, 1956 (1 of 1956);
- (14) "broadcasting " has the meaning assigned to it in clause (c) of section 2 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (25 of 1990) and also includes programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is intended for public listening or viewing, as the case may be; and in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes the activity of selling of time slots or obtaining sponsorships for broadcasting of any programme or collecting the broadcasting charges on behalf of the said agency or organisation, by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner;

- (15) "broadcasting agency or organization" means any agency or organization engaged in providing service in relating to broadcasting in any manner and, in the case of a broadcasting agency or organization, having its head office situated in any place outside India, includes its branch office or subsidiary or representative in India or any agent appointed in India or any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting broadcasting charges on behalf of the said agency or organisation;
- (16) "beauty treatment" means face and beauty treatment, cosmetic treatment, manicure, pedicure or counseling services on beauty, face care or make-up;
- (17) "beauty parlour" means any establishment providing beauty treatment services;
- (18) "cab" means a motor cab or maxi cab;
- (19) "cable operator" shall have the meaning assigned to it in clause (aa) of section 2 of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995);
- (20) "cable service" shall have the meaning assigned to it in clause (b) of section 2 of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995);
- (21) "cargo handling service" means loading, unloading, packing or unpacking of cargo and includes cargo handling services provided for freight in special containers or for non-containerized freight, services provided by a container freight terminal or nay other freight terminal, for all modes of transport and cargo handling services incidental to freight, but does not include handling of export cargo or passenger baggage or mere transportation of goods;
- (22) "caterer" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose of occasion;
- (23) "clearing and forwarding" means any person who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent;
- (24) "computer network" has the meaning assigned to it in clause (j) of sub-section (1) of section 2 of the Information Technology Act,2000 (21 of 2000);
- (25) "consulting engineer" means any professionally qualified engineer or an engineering firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering;
- (26) "convention" means a formal meeting or assembly which is not open to the general public, and dose not include a meeting or assembly the principal purpose of which is to provide any type of amusement, entertainment or recreation;
- (27) "courier agency" means a commercial concern engaged in the door-to-door transportation of time –sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such

documents, goods or articles;

- (28) "credit rating agency" means any commercial concern engaged in the business of credit rating of any debt obligation or of any project or programme requiring finance, whether in the form of debt or otherwise, and includes credit rating of any financial obligation, instrument or security, which has the purpose of providing a potential investor or any other person any information pertaining to the relative safety of timely payment of interest or principal;
- (29) "customs house agent" means a person licensed, temporarily or otherwise, under the regulations made under sub-section (2) of section 146 of the Customs Act, 1962 (52 of 1962);
- (30) "data" has the meaning assigned to it in clause (o) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- (31) "dry cleaning" includes dry cleaning of apparels, garments or other textile, fur or leather articles;
- (32) "dry cleaner" means any commercial concern providing service in relation to dry cleaning;
- (33) "electronic form" has the meaning assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- (34) "event management" means any service provided in relation to planning, promotion, organizing or presentation of any arts, entertainment, business, sports or any other event and includes any consultation provided in this regard;
- (35) "event manager" means any person who is engaged in providing any service in relation to event management in any manner;
- (36) "facsimile (FAX)" means a form of telecommunication by which fixed graphic images, such as printed texts and pictures are scanned and the information converted into electrical signals for transmission over the telecommunication system;
- (37) "fashion designing" includes any activity relating to conceptualizing, outlining, creating the designs and preparing patterns for costumes, apparels, garments, clothing accessories, jewellery or any other articles intended to be worn by human beings and any other service incidental thereto;
- (38) "fashion designer" means any person engaged in providing service in relation to fashion designing;
- (39) "financial institution" has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934); (40) "general insurance business" has the meaning assigned to it in clause (g) of section 3 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972);
- (41) "goods" has the meaning assigned to it in clause (7) of section 2 of the Sale of Goods Act, 1930 (3 of 1930);
- (42) "health club and fitness service" means service for physical well-being such as,

sauna and steam bath, Turkish bath, solarium, spas, reducing or slimming salons, gymnasium, yoga, meditation, massage (excluding therapeutic massage) or any other like service;

- (43) "health club and fitness centre" means any establishment, including a hotel or resort, providing health and fitness service;
- (44) "information" has the meaning assigned to it in clause (v) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- (45) "Insurance Agent" has the meaning assigned to it in clause (10) of section 2 of the Insurance Act, 1938 (4 of 1938);
- (46) "insurance auxiliary service" means any service provided by an actuary, an intermediary or insurance intermediary or an insurance agent in relation to general insurance business and includes risk assessment, claim settlement, survey and loss assessment;
- (47) "intermediary" or insurance intermediary" has the meaning assigned to it in sub-clause (f) of clause (1) of section 2 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);
- (48) "insurer" means any person carrying on the general insurance business in India;
- (49) "Interior decorator" means any person engaged, whether directly or indirectly, in the business of providing by way of advice, consulting, technical assistance or in any other manner, services related to planning, design or beautification of space, whether man-made or otherwise and includes a landscape designer;
- (50) "leased circuit" means a dedicated link provided between two fixed locations for exclusive use of the subscriber and includes a speech circuit, data circuit or a telegraph circuit;
- (51) "life insurance business" has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);
- (52) "magnetic storage device" include wax blanks, discs or blank strips or films for the purpose of original sound recording;
- (53) "management consultant" means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organisation in any manner and includes any person who renders any advice, consultancy or technical assistance, relating to conceptualizing, devising, development, modification, rectification or upgradation of any working system of any organization.
- (54) "Mandap" means any immovable property as defined in section 3 of the Transfer of Property Act, 1882 (4 of 1882) and includes any furniture, fixtures, light fittings and floor coverings therein let out for consideration for organizing any official, social or business function;
- (55) "Mandap keeper" means a person who allows temporary occupation of a Mandap for consideration for organizing any official, social or business

function;

- (56) "manpower recruitment agency" means any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment or manpower, to a client;
- (57) "market research agency" means any commercial concern engaged in conducting market research in any manner, in relation to any product, service or utility, including all types of customized and syndicated research services;
- (58) "maxi cab" has the meaning assigned to it in clause (22) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);
- (59) "motor cab" has the meaning assigned to it in clause (25) of section 2 of the Motor Vehicle Act, 1988 (59 of 1988)
- (60) "non-banking financial company" has the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);
- (61) "on-line information and database access or retrieval" means providing data or information, retrievable or otherwise, to a customer, in electronic form through a computer network;
- (62) "pager" means an instrument, apparatus or appliance which is a non-speech, one way personal calling system which alert and has the capability of receiving, storing and displaying numeric or alpha-numeric message;
- (63) "photography" includes still photography, motion picture photography, laser photography, aerial photography and fluorescent photography;
- (64) "photography studio or agency" means any professional photographer or a commercial concern engaged in the business of rendering service relating to photography;
- (65) "policy holder" has the meaning assigned to it in clause (2) of section 2 of the Insurance Act, 1963 (4 of 1938);
- (66) "port" has the meaning assigned to it in clause (q) of section 2 of the Major Port Trust Act, 1963 (38 of 1963);
- (67) "port services" means any service rendered by a port or any person authorized by the port, in any manner, in relation to a vessel or goods;
- (68) "practising chartered accountant" means a person who is a member of the Institute of Chartered Accountants of India and is holding a certificate of practice granted under the provision of the Chartered Accountants Act, 1949 (38 of 1949) and includes any concern engaged in rendering services in the field of Chartered accountancy;
- (69) "practicing cost accountant" means a person who is member of the Institute of Cost and Works Accountants of India and is holding a certificate of practice granted under the provisions of the Cost and works Accountants Act, 1959 (23 of 1959) and includes any concern engaged in rendering services in the field of cost accountancy;

- (70) "practicing company secretary" means a person who is a member of the Institute of company Secretaries of India and is holding a certificate of practice granted under the provisions of the Company Secretaries Act, 1980 (56 of 1980) and includes any concern engaged in rendering services in the field of company secretaryship;
- (71) "prescribed" means prescribed by rules made under this Chapter;
- (72) "rail travel agent" means any person engaged in providing any service connected with booking of passage for travel by rail;
- (73) "real estate agent" means a person who is engaged in rendering any service in relation to sale, purchase, leasing or renting of real estate and includes a real estate consultant;
- (74) "real estate consultant" means a person who renders in any manner, either directly or indirectly, advice, consultancy or technical assistance, in relation to evaluation, conception, design. Development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate;
- (75) "recognized stock exchange" has the meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (76) "rent-a-cab scheme operator" means any person engaged in the business of renting of cabs;
- (77) "scientific or technical consultancy" means any advice, consultancy or scientific or technical assistance rendered in any manner, either directly or indirectly, by a scientist or a technocrat or any science or technology institution or organization, to a client, in one or more disciplines of science or technology;
- (78) "securities" has the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (79) "security agency" means any commercial concern engaged in the business of rendering 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, whether of a personal nature or otherwise, including the services of providing security personnel;
- (80) "service tax" means tax leviable under the provisions of this Chapter;
- (81) "ship" means a sea-going vessel and includes a sailing vessel;
- (82) "shipping line" means any person who owns or charters a ship and includes an enterprise which operates or manages the business of shipping;
- (83) "sound recording" means recording of sound on a magnetic storage device and editing thereof, in any manner;
- (84) "sound recording studio or agency" means any commercial concern engaged in the business of rendering any service relating to sound recording;

- (85) "steamer agent" means any person who undertakes, either directly or indirectly,
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- (a) to perform any service in connection with the ship's husbandry or dispatch including the rendering of administrative work related thereto; or
 - (b) to book, advertise or canvass for cargo for or on behalf of a shipping line; or
 - (c) to provide container feeder services for or on behalf of a shipping line;
- (86) "stock broker" means a stock broker who has either made an application for registration or is registered as a stock-broker in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (87) "storage and warehousing" includes storage and warehousing services for goods including liquids and gases but does not include any service provided for storage of agricultural produce or any service provided by a cold storage;
- (88) "sub-broker" means a sub-broker who has either made an application for registration or is registered as a sub-broker in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (89) "subscriber" means a person to whom any service of a telephone connection or a facsimile or a leased circuit or pager or a telegraph or a telex has been provided by the telegraph authority;
- (90) "taxable service" means any service provided -
- (a) to an investor, by a stock-broker in connection with the sale or purchase of securities listed on a recognized stock exchange;
 - (b) to a subscriber, by the telegraph authority in relation to a telephone connection;
 - (c) to a subscriber, by the telegraph authority in relation to a pager;
 - (d) to a policy holder, by an insurer carrying on general insurance business in relation to general insurance businesses;
 - (e) to a client, by an advertising agency in relation to advertisement, in any manner;
 - (f) to a customer, by courier agency in relation to door-to-door transportation of time-sensitive documents, goods or articles;
 - (g) to a client, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering;
 - (h) to a client, by a custom house agent in relation to the entry or departure of conveyances or the import or export of goods;

- (i) to a shipping line, by a steamer agent in relation to a ship's husbandry or dispatch or any administrative work related thereto as well as the booking, advertising or canvassing of cargo, including container feeder services;
- (j) to a client, by a clearing and forwarding agent in relation to clearing and forwarding operations, in any manner;
- (k) to a client, by a manpower recruitment agency in relation to the recruitment of manpower, in any manner;
- (l) to a customer, by an air travel agent in relation to the booking of passage for travel by air;
- (m) to a client, by a Mandap keeper in relation to the use of Mandap in any manner including the facilities provided to the client in relation to such use and also the services, if any rendered as a caterer;
- (n) to any person, by a tour operator in relation to a tour;
- (o) to any person, by a rent-a-cab scheme operator in relation to the renting of a cab;
- (p) to a client, by an architect in his professional capacity, in any manner;
- (q) to a client, by an interior decorator in relation to planning, design or beautification of spaces, whether manmade or otherwise, in any manner;
- (r) to a client by a management consultant in connection with the management of any organization, in any manner;
- (s) to a client, by a practising chartered accountant in his professional capacity, in any manner;
- (t) to a client, by a practising cost accountant in his professional capacity, in any manner;
- (u) to a client, by a practising company secretary in his professional capacity, in any manner;
- (v) to a client, by a real estate agent in relation to real estate;
- (w) to a client, by a security agency in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity;
- (x) to a client, by a credit rating agency in relation to credit rating of any financial obligation, instrument or security;
- (y) to a client, by a market research agency in relation to market research of any product, service or utility, in any manner;
- (z) to a client, by an underwriter in relation to underwriting, in any manner;

- (za) to a client, by a scientist or technocrat or any science or technology institution or organization, in relation to scientific or technical consultancy;
- (zb) to a customer, by a photography studio or agency in relation to photography, in any manner;
- (zc) to a client, by any commercial concern in relation to holding of convention, in any manner;
- (zd) to a subscriber, by the telegraph authority in relation to a leased circuit;
- (ze) to a subscriber, by the telegraph authority in relation to a communication through telegraph;
- (zf) to a subscriber, by the telegraph authority in relation to a communication through telex;
- (zg) to a subscriber, by the telegraph authority in relation to a facsimile communication;
- (zh) to a customer, by a commercial concern, in relation to on-line information and database access or retrieval or both in electronic form through computer network, in any manner;
- (zi) to a client, by a video production agency in relation to video-tape production, in any manner;
- (zj) to a client, by a sound recording studio or agency in relation to any kind of sound recording;
- (zk) to a client, by a broadcasting agency or organization in relation to broadcasting, in any manner and, in the case of broadcasting agency or organisation, having its head office situated in any place outside India, includes service provided by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programmes or collecting broadcasting charges on behalf of the said agency or organisation.

Explanation: For the removal of doubts, it is hereby declared that so long as the radio or television programme broadcast is received in India and intended for listening or viewing, as the case may be, by the public, such service shall be taxable service in relation to broadcasting, even if the encryption of the signals or beaming thereof through the satellite might have taken place outside India;

- (zl) to a policy holder or insurer, by an actuary or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services;
- (zm) to a customer, by a banking company or a financial institution including a

non-banking financial company, in relation to banking and other financial services;

- (zn) to any person, by a port or any person authorised by the port, in relation to port services, in any manner;
- (zo) to a customer, by an authorised service station, in relation to any service or repair of motor cars or two wheeled motor vehicles; in any manner
- (zp) to a customer, by a body-corporate other than the body corporate referred to in sub-clause (zm), in relation to banking and other financial services;
- (zq) to a customer, by a beauty parlour in relation to beauty treatment;
- (zr) to any person, by a cargo handling agency in relation to cargo handling services;
- (zs) to a customer, by a cable operator in relation to cable services;
- (zt) to a customer, by a dry cleaner in relation to dry cleaning;
- (zu) to a client, by an event manager in relation to event management.
- (zv) to any person, by a fashion designer in relation to fashion designing;
- (zw) to any person, by a health club and fitness centre in relation to health and fitness services;
- (zx) to a policy holder, by an insurer carrying on life insurance business in relation to life insurance business;
- (zy) to a policy holder or insurer by an actuary, or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services concerning life insurance business;
- (zz) to a customer, by a rail travel agent in relation to booking of passage for travel by rail;
- (zza) to any person, by a storage or warehouse keeper in relation to storage and warehousing of goods;

and the term "service provider" shall be construed accordingly;

- (91) "telegraph" has the meaning assigned to it in clause (1) of section 3 of the Indian Telegraph Act, 1885 (13 of 1885);
- (92) "telegraph authority" has the meaning assigned to it in clause (6) of section 3 of the Indian Telegraph Act, 1885 (13 of 1885) and includes a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of that Act;
- (93) "telex" means a typed communication by using teleprinters through telex exchanges;
- (94) "tour" means a journey from one place to another irrespective of the distance

between such places;

- (95) "tourist vehicle" has the meaning assigned to it in clause (43) of section 2 of the Motor Vehicles Act 1988 (59 of 1988);
- (96) "tour operator" means any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made thereunder;
- (97) "underwriter" has the meaning assigned to it in clause (f) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993;
- (98) "underwriting" has the meaning assigned to it in clause (g) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rule, 1993;
- (99) "vessel" has the meaning assigned to it in clause (z) of section 2 of the Major Port Trust Act, 1963 (38 of 1963);
- (100) "video production agency" means any professional videographer or any commercial concern engaged in the business of rendering services relating to video-tape production;
- (101) "video-tape production" means the process of any recording of any programme, event or function on a magnetic tape and includes editing thereof, in any manner;
- (102) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall apply, so far as may be in relation to service tax as they apply in relation to a duty of excise.

[66. Charge of service tax –

- (1) on and from the date of commencement of this Chapter, there shall be levied a tax (hereinafter referred to as the service tax), at the rate of five per cent of the value of the taxable services referred to in sub-clauses (a), (b) and (d) of clause (90) of section 65 and collected in such manner as may be prescribed.
- (2) With effect from the date notified under section 85 of the Finance (No.2) Act, 1996 (33 of 1996), there shall be levied a service tax at the rate of five per cent of the value of the taxable services referred to in sub-clauses (c), (e) and (f) of clause (90) of section 65 and collected in such manner as may be prescribed;
- (3) With effect from the date notified under section 88 of the Finance Act, 1997 (26 of 1997), there shall be levied a service tax at the rate of five per cent of the value of the taxable services referred to in sub-clauses (g), (h), (i), (j), (k), (l), (m), (n) and (o) of clause (90) of section 65 and collected in such manner as may be prescribed.
- (4) With effect from the date notified under section 116 of the Finance (No.2) Act, 1998 (21 of 1998) there shall be levied a service tax at the rate of five per cent of the value of the taxable services referred to in sub-clause (p), (q), (r), (s), (t), (u), (v), (w), (x), (y) and (z) of clause (90) of section 65 and collected in such manner

as may be prescribed.

- (5) with effect from the date notified under section 137 of the Finance Act, 2001 (14 of 2001), there shall be levied a service tax at the rate of five percent of the value of taxable services referred to in sub-clauses (za), (zb), (zc), (zd), (ze), (zf), (zg), (zh), (zi), (zj), (zk), (zl), (zm), (zn) and (zo) of clause (90) of section 65 and collected in such manner as may be prescribed.
- (6) With effect from the date notified under section 149 of the Finance Act, 2002, there shall be levied a service tax at the rate of five percent of the value of the taxable services referred to in sub-clauses (zp), (zq), (zr), (zs), (zt), (zu), (zv), (zw), (zx), (zy), (zz) and (zza) of clause (90) of section 65 and collected in such manner as may be prescribed.]

[67. Valuation of taxable services for charging service tax.— For the purposes of this Chapter, the value of any taxable service shall be the gross amount charged by the service provider of such service rendered by him.

Explanation – for the removal of doubts, it is hereby declared that the value of a taxable service, as the case may be, includes, --

- (a) the aggregate of commission or brokerage charged by a broker on the sale of purchase of securities including the commission or brokerage paid by the stock broker to any sub-broker;
- (b) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraphic or telex or for leased circuit;
- (c) the amount of premium charged by the insurer from the policy holder;
- (d) the commission received by the air travel agent from the airline;
- (e) the commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;
- (f) the reimbursement received by the authorised service station from manufacturer for carrying out any service of any motor car or two wheeled motor vehicle manufactured by such manufacturer, and
- [(g) the commission or any amount received by the rail travel agent from the Railways or the customer,]

but does not include, -

- (a) initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or leased circuit
- (b) the cost of unexposed photography films, unrecorded magnetic tape or such other storage devices if any, sold to the client during the course of providing service;
- (c) the cost of parts or accessories, if any, sold to the customer during the course of service or repair of motor cars or two wheeled motor vehicles;

- (d) the airfare collected by air travel agent in respect of service provided by him; and
- (e) the rail fare collected by rail travel agent in respect of service provided by him.

[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 any taxable service notified by the Central Govt. 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.]

[69. Registration - Every person liable to pay the service tax under this chapter or the rules made there under shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise].

[70. Furnishing of Returns. – Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.]

[71. Verification of tax assessed by the assessee, etc. –

- (1) The Superintendent of Central Excise may, on the basis of information contained in the return filed by the assessee under section 70, verify the correctness of the tax assessed by the assessee on the services provided.
- (2) The Superintendent of Central Excise may require the assessee to produce any accounts, documents or other evidence as he may deem necessary for such verification as and when required.
- (3) If on verification under sub-section (2), the Superintendent of Central Excise is of the opinion that service tax on any service provided has escaped assessment or has been under-assessed, he may refer the matter to the Asstt. Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise, who may pass such order of assessment as he thinks fit.

72. Best judgment assessment. – If –

- [(a) any person fails to make the return under section 70, or
- (b) any person having made a return fails [to comply with the provisions of section 71] or
- (c) the [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise] is not satisfied with the correctness or the completeness of the accounts of the assessee,

the [Assistant Commissioner of Central Excise or, as the case may be Deputy Commissioner of Central Excise] after taking into account all the relevant material which he has gathered, shall, by an order in writing, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

73. Value of taxable services escaping assessment. –

- (1) If-
 - (a) the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise has reason to believe that by reason of omission or failure on the part of the assessee, to make a return under section 70 for any prescribed period or to disclose wholly or truly all material facts required for verification of the assessment under section 71, the value of taxable service has escaped assessment or has been under-assessed [or service tax has not been paid or has been short paid] or any sum has erroneously been refunded, or]
 - (b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the, assessee the [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise has in consequence of information in his possession, reason to believe that the value of any taxable service assessable in any prescribed period has escaped assessment or has been under-assessed [or service tax has not been paid or has been short paid] or any sum has erroneously been refunded],

[he may, in cases falling under clause (a), at any time within five years, and in cases falling under clause (b), at any time within one year, from the relevant date, serve notice on the person chargeable with the service tax which has escaped assessment or has been under-assessed or has not been paid or has been short-paid, or to whom any sum has been erroneously refunded, requiring him to show cause why he should not pay the amount specified in the notice.]

[*Explanation* – Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of five years or six months, as the case may be.]

- (2) The Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise shall, after considering the representation, if any,

made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

- (3) For the purposes of this section, "relevant date" means,-
- (i) in the case of taxable service in respect of which service tax has escaped assessment or has been under-assessed or has not been paid or has been short-paid-
 - (a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;
 - (b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;
 - (c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;
 - (ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;
 - (iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.

74. Rectification of mistake. –

- (1) With a view to rectifying any mistake apparent from the record, the [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise] who passed any order under the provisions of this Chapter may, within two years of the date on which such order was passed, amend the order.
- (2) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise] passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.
- (3) Subject to the other provisions of this section, the [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise] concerned –
 - (a) may make an amendment under sub-section (1) of his own motion; or
 - (b) shall make such amendment if any mistake is brought to his notice by the assessee or the [Commissioner] of Central Excise or the [Commissioner] of

Central Excise (Appeals).

- (4) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise] concerned has given notice to the assessee of his intention so to do and has allowed the assessee a reasonable opportunity of being heard.
- (5) Where an amendment is made under this section, an order shall be passed in writing by the [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise] concerned.
- (6) Subject to the other provisions of this Chapter where any such amendment has the effect of reducing the assessment, the [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise] shall make any refund which may be due to such assessee.
- (7) Where any such amendment has the effect of enhancing the assessment or reducing the refund already made, the [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise] shall make an order specifying the sum payable by the assessee and the provisions of this Chapter shall apply accordingly.

[75. Interest on delayed payment of Service Tax – Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest [at the rate of [fifteen] per cent per annum for the period] by which such crediting of the tax or any part thereof is delayed.

[75A. Penalty for failure of registration. – Any person, liable to pay service tax in accordance with the provisions of section 68 or the rules made thereunder, fails to make an application for registration under section 69, shall pay, by way of penalty, a sum of five hundred rupees.]

76. Penalty for failure to pay service tax. – Any person, liable to pay service tax in accordance with the provisions of section 68 or the rules made thereunder, who fails to pay such tax shall pay in addition to paying such tax, and interest on that tax in accordance with the provisions of section 75, a penalty which shall not be less than one hundred rupees but which may extend to two hundred rupees for every day during which such failure continues, so, however, that the penalty under this clause shall not exceed the amount of service tax that he failed to pay.

77. Penalty for failure to furnish prescribed return. – If a person fails to furnish in due time the return which he is required to furnish under section 70 or the rules made thereunder, he shall [be liable to a penalty which may extend to an amount not exceeding [one thousand] rupees.]

78. Penalty for suppressing value of taxable service. – If the [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise] in the course of any proceedings under this Chapter is satisfied that any person has, with intent to evade payment of service tax, suppressed or concealed the value of taxable service or has furnished inaccurate value of such taxable service, he may direct that such person shall pay by way of penalty, in addition to service tax and interest, if any, payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount of service tax sought to be evaded by reason of suppression or concealment of the value of taxable service or the furnishing of inaccurate value of such taxable service:

Provided that if the value of taxable service (as determined by the [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise] on assessment) in respect of which value has been suppressed or concealed or inaccurate value has been furnished exceed a sum of [two lakhs] rupees, the [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise] shall not issue any direction for payment by way of penalty without the previous approval of the [Commissioner] of Central Excise.

79. Penalty for failure to comply with notice. – [If the Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise in the course of any proceedings under this Chapter is satisfied that any person has failed to comply with the provisions of section 71] he may direct that such person shall pay, by way of penalty, in addition to any service tax and interest, if any, payable by him, a sum which shall not be less than ten percent, but which shall not exceed fifty per cent, of the amount of the service tax, if any, which would have been avoided if the value of taxable service stated in the return by such person had been accepted as the correct value of taxable service.

80. Penalty not to be imposed in certain cases. – Notwithstanding anything contained in the provisions of section 76, section 77, section 78 or section 79, no penalty shall be imposed on the assessee for any failure referred to in said provisions, if the assessee proves that there was reasonable cause for the said failure.

81. Offences by companies –

- (1) Where an offence under this Chapter has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Chapter, if he proves that the offence was committed without his knowledge and that he had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1) where an offence under this Chapter has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished

accordingly.

Explanation: - For the purpose of this section, -

- (a) "company " means any body corporate and includes a firm or other association of individuals; and
- (b) "director" in relation to a firm means a partner in the firm.

82. Power to search premises –

- (1) If the [Commissioner of Central Excise] has reason to believe that any documents or book or things which in his opinion will be any useful for or relevant to proceedings under this Chapter are secreted in any place, he may authorize any [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise] [*to search for and seize or may himself search for and seize, such documents or books or things*].
- (2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches, shall, so far as may be, apply or searches under this section as they apply to searches under that Code.

83. Application of certain provisions of Act 1 of 1944 – The provisions of the following section of the Central Excise Act, 1944 (1 of 1944), as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise: -

9C, 9D, 11, 11B, [11BB, [11D,] 12A,] 12B, 12C, 12D, 12E, 14, 15, 35F to 35-O (both inclusive), 35Q, 36, 36A, 36B, 37A, 37B, 37C, 37D and 40.

84. Revision of orders by the Commissioner of Central Excise.-

- (1) The Commissioner of Central Excise may call for the record of a proceeding under this Chapter which has been taken by the [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise] and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Chapter, pass such order thereon as he thinks fit.
- (2) No order, which is prejudicial to the assessee shall be passed under this section unless the assessee has been given an opportunity of being heard.
- (3) The Commissioner of Central Excise shall communicate the order passed by him under sub-section (1) to the assessee, the [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise] and the Board.
- (4) No order under this section shall be passed by the Commissioner of Central Excise in respect of any issue if an appeal against such is pending before the

Commissioner of Central Excise (Appeals).

- (5) No order under this section shall be passed after the expiry of two years from the date on which the order sought to be revised has been passed.

85. Appeals to the Commissioner of Central Excise (Appeals). –

- (1) Any person aggrieved by any assessment order passed by the [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise] under section 71, section 72 or section 73, or denying his liability to be assessed under this Chapter, or by an order levying interest or penalty under this Chapter, may appeal to the Commissioner of Central Excise (Appeals).
- (2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.
- (3) An appeal shall be presented within three months from the date of receipt of the decision or order of the [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise] relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

- (4) The Commissioner of Central Excise (Appeals) shall hear and determine the appeals and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty :

Provided that an order enhancing the service tax, interest or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

- (5) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the Commissioner of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercise and follows in hearing the appeals and making orders under the Central Excise Act, 1944 (1 of 1944).

86. Appeals to Appellate Tribunal –

- (1) Any assessee aggrieved by an order passed by a Commissioner of Central Excise under section 84, or an order passed by a Commissioner of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal against such order.
- [(2) The Board may, if it objects to any order passed by the Commissioner of Central Excise under section 84, direct the Commissioner of Central Excise to appeal to

the Appellate Tribunal against the order.

- (2A) The Commissioner of Central Excise may, if he objects to any order passed by the Commissioner of Central Excise (Appeals) under section 85, direct the Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise to appeal to the Appellate Tribunal against the order].
- (3) Every appeal under sub-section (1) [or sub-section (2) or sub-section (2A)] shall be filed within three months of the date on which the order sought to be appealed against is received by the assessee, the Board or by the Commissioner of Central Excise, as the case may be.
- [(4) The Commissioner of Central Excise or Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise or the assessee, as the case may be, on receipt of a notice that an appeal against the order of the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals) has been preferred under sub-section (1) or sub-section (2) or sub-section (2A)] by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within forty-five days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).
- (5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4) if it is satisfied that there was sufficient cause for not presenting it within that period.
- (6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, except in the case of an appeal referred to [in sub-section (2) or sub-section (2A)] or a memorandum of cross-objections referred to in sub-section (4), be accompanied by a fee of two hundred rupees.
- (7) Subject to the provisions of this Chapter, in hearing the appeal and making orders under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercise and follows in hearing the appeals and making orders under the Central Excise Act, 1944 (1 of 1944).

[(87) * * *]

[(88) * * *]

[(89) * * *] **Omitted.**

[(90) * * *]

[(91) * * *]

[(92) * * *]

93. Power to grant exemption from service tax. –

- (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally or subject to such conditions as may be specified in the notification, taxable service of any specified description from the whole or any part of the service tax leviable thereon.
- (2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt any taxable service of any specified description from the payment of whole or any part of the service tax leviable thereon, under circumstances of exceptional nature to be stated in such order.]

94. Power to make rules. -

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.
- [(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -
 - (a) collection and recovery of service tax under sections 66 and 68;
 - (b) the time and manner and the form in which application for registration shall be made under section 69;
 - (c) the form, manner and frequency of the returns to be furnished under section 70;
 - (d) the form in which appeal under section 85 or under sub-section (6) of section 86 may be filed and the manner in which they may be verified;
 - (e) the manner in which the memorandum of cross objections under sub-section (4) of section 86 may be verified;
 - [(ee) the credit of service tax paid on the services consumed for providing a taxable service in case where the services consumed and the service provided fall in the same category of taxable service;]
 - (f) any other matter which by this Chapter is to be or may be prescribed.
- (3) The power to make rules conferred by this section shall on the first occasion of the exercise thereof include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this

Chapter come into force.

- (4) Every rule made under this Chapter and every notification issued under section 93 shall be laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule should not be made or the notification should not be issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

95. Power to remove difficulties –

- (1) If any difficulty arises in respect of implementing, or assessing the value of, any taxable service incorporated in this Chapter by the Finance Act, 2002, the Central Government may, by order published in the Official Gazette, which is not inconsistent with the provisions of this Chapter remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of the Finance Act, 2002 incorporating such taxable services in this Chapter come into force.

- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of the Parliament.

96. Consequential amendment.– In the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974), in the Schedule, after entry 7 relating to the Central Excise Act, 1944 (1 of 1944), the following entry shall be inserted, namely:-

"7A. Chapter V of the Finance Act, 1994."

ANNEXURE - II

SERVICE TAX RULES, 1994

(as amended)

Notification No.2/94, dated the 28th June, 1994 as amended.

In exercise of the powers conferred by sub-section (1) read with sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules for the purpose of the assessment and collection of service tax namely: -

1. Short title and commencement –

- (1) These rules may be called the Service Tax Rules, 1994.
- (2) They shall come into force on the 1st day of July, 1994.

2. Definitions –

(1) In these rules, unless the context otherwise requires,-

- (a) "Act" means the Finance Act, 1994 (32 of 1994);
- [(b) "assessment" includes self assessment of service tax by the assessee, reassessment, provisional assessment, best judgment assessment and any order of assessment in which the tax assessed is nil; determination of the interest on the tax assessed or reassessed;]
- (c) "Form" means a Form appended to these rules;
- [(cc) "Half year" means the period between 1st April to 30th September or 1st October to 31st March of a financial year;]
- [(d) "Person liable for paying service tax" means,-
 - (i) in relation to a telephone connection or pager [or a communication through telegraph or telex or a facsimile communication or a leased circuit]-
 - (a) the Director General of Posts and Telegraphs, referred to in clause (6) of Section 3 of the Indian Telegraph Act, 1885(13 of 1885); or
 - (b) the Chairman-cum-Managing Director,

- Mahanagar Telephone Nigam Ltd, Delhi, a company registered under the Companies Act, 1956 (1 of 1956); or
- (c) any other person who has been granted a licence by the Central Government under the first proviso to sub-section (1) of Section 4 of the Indian Telegraph Act, 1885(13 of 1885);
- (ii) [in relation to general insurance business]-
- (a) the Chairman of the General Insurance Corporation of India, Mumbai; or
- (b) the Chairman-cum-Managing Director of the National Insurance company Ltd., Calcutta; or
- (c) the Chairman-cum-Managing Director of the New India Assurance Company Ltd; Mumbai; or
- (d) the Chairman-cum-Managing Director of the Oriental Insurance Company Ltd., Delhi; or
- (e) the Chairman-cum-Managing Director of the United India Insurance Company Ltd., Chennai; or
- (f) any other person carrying on general insurance business and who has obtained a certificate of registration under section 3 of the Insurance Act, 1938 (4 of 1938); and
- [(iii) in relation to insurance auxiliary service by an insurance agent, any person carrying on the general insurance business [or the life insurance business, as the case may be,] in India;]
- [(iv) in relation to any taxable service provided by a person who is a non-resident or is from outside India, does not have any office

in India, the person receiving taxable service in India;]

[(e) "quarter" means the period between 1st January to 31st March or 1st April to 30th June or 1st July to 30th September or 1st October to 31st December of a financial year;]

(2) All words and expressions used but not defined in these rules but defined in the Central Excise Act, 1944 (1 of 1944) [and the rules made thereunder shall have the meanings assigned to them in that Act and rules.]

3. Appointment of officers – The Central Board of Excise and Customs may appoint such Central Excise Officers as it thinks fit for exercising the powers under Chapter V of the Act within such local limits as it may assign to them as also specify the taxable service in relation to which any such Central Excise Officers shall exercise his powers.

4. Registration –

(1) Every person liable for paying the service tax shall make an application to the concerned Superintendent of Central Excise in form ST-1 for registration within a period of thirty days from the date on which the service tax under section 66 of the Finance Act, 1994(32 of 1994) is levied:

Provided that where a person commences the business of providing a taxable service after such service has been levied, he shall make an application for registration within a period of thirty days from the date of such commencement:

[Provided further that a person liable for paying the service tax in the case of taxable services referred to in sub-section (4) or sub-section (5) of section 66 of the Finance Act, 1994 (32 of 1994) may make an application for registration on or before the 31st day of December, 1998:]

(2) Where an assessee is providing a taxable service from more than one premises or offices and has a centralized billing systems in respect of such service rendered to clients from such premises or offices at any one premises or office, he may opt for registering only the premises or office from where such centralized billing is done.

(3) Where an assessee is providing a taxable service from more than one premises or offices, and does not have any centralized billing systems, he shall make separate applications for registration in respect of each such premises or offices to the concerned Superintendent of Central Excise.

[(3A) Where an assessee is providing taxable service from more than one premises or office and has a centralized accounting system in respect of such service rendered to clients

from each such premises or office at any one premises or office, the Commissioner of Central Excise may permit such assessee to registering only the premises or office from where such centralized accounting is done, if he is satisfied that such registration shall not be detrimental to the interest of revenue.]

- (4) Where an assessee is providing more than one taxable service, he may make a single application, mentioning therein all the taxable services provided by him, to the concerned Superintendent of Central Excise.
- (5) The Superintendent of Central Excise shall after due verification of the application form, grant a certificate of registration in Form ST-2 within seven days from the date of receipt of the application. If the registration certificate is not granted within the said period, the registration applied for shall be deemed to have been granted.
- (6) Where a registered assessee transfers his business to another person, the transferee shall obtain a fresh certificate of registration.
- (7) Every registered assessee, who ceases to provide the taxable service for which he is registered, shall surrender his registration certificate immediately.]

5. Records -

- (1) The records (including computerized data) as maintained by an assessee in accordance with the various laws in force from time to time shall be acceptable.
- (2) Every assessee shall furnish to the Superintendent of Central Excise at the time of filing his return for the first time a list of all accounts maintained by the assessee in relation to service tax including memoranda received his branch offices.

6. Payment of service tax –

- (1) The service tax on the value of taxable services received during any calendar month shall be paid to the credit of the Central Government by the 25th if the month immediately following the said calendar month:

[Provided further that, in the case of a person who is a non-resident or is from outside India, does not have any office in India and is liable to pay service tax on taxable services provided in India,-

- (i) the service tax thereon shall be paid by such person or on his behalf by any other person authorized by him, who shall submit to the Commissioner of Central Excise in whose jurisdiction the taxable services have been rendered, a return, containing the following details,

- (a) name and address;
- (b) name and address of the client to whom the taxable services were rendered;
- (c) nature of taxable services rendered;
- (d) period for which taxable services were rendered;
- (e) value of the taxable services rendered;
- (f) service tax liability on the taxable services rendered.

Alongwith a copy of the bill raised on the client to whom services have been rendered, a copy of the contract or agreement regarding the provision of such services to the client, and a demand draft payable to the Commissioner of Central Excise towards his service tax liability; and

- (ii) the return along with the demand draft shall be submitted within a period of 30 days from the date of raising of the bill on the client for the taxable services rendered, failing which he shall be liable to pay interest, as per the provisions of section 75 of the Finance Act, 1994 (32 of 1994)].

- (2) The assessee shall deposit the service tax liable to be paid by him with the bank designated by the Central Board of Excise and Customs for this purpose in Form TR-6 or in any other manner prescribed by the Central Board of Excise and Customs.

[(2a) for the purpose of this rule, if the assessee deposits the service tax by cheque, the date of presentation of cheque to the bank designated by the Central Board of Excise and Customs for this purpose shall be deemed to be the date on which service tax has been paid subject to realization of that cheque.]

- (3) Where an assessee has paid to the credit of Central Government service tax in respect of a taxable service, which is not so provided by him either wholly or partially for any reason, the assessee may adjust the excess service tax so paid by him (calculated on a pro rata basis) against his service tax liability for the subsequent period, if the assessee

has refunded the value of taxable service and the service tax thereon to the person from whom it was received.

- [(4) Where an assessee is, for any reason, unable to correctly estimate, on the date of deposit, the actual amount payable for any particular month or quarter, as the case may be, he may make a request in writing to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, giving reasons for payment of service tax on provisional basis and the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, on receipt of such request, may allow payment of service tax on provisional basis on such value of taxable service as may be specified by him and the provisions of the Central Excise (No.2) Rules, 2001, relating to provisional assessment, except so far as they relate to execution of bond, shall, so far as may be, apply to such assessment.]
- (5) Where an assessee under sub-rule (4) requests for a provisional assessment he shall file a statement giving details of the difference between the service tax deposited and the service tax liable to be paid for each month in a memorandum in Form ST-3A accompanying the quarterly or half yearly return, as the case may be.
- (6) Where the assessee submits a memorandum, in Form ST-3A under sub-rule (5), it shall be lawful of the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be to complete the assessment, wherever he deems it necessary, after calling such further documents or records as he may consider necessary and proper in the circumstances of the case.
- Explanation.* – For the purposes of this rule and rule 7, "Form TR-6" means a memorandum or challan referred to in rule 92 of the Treasury Rules of the Central Government.
- (7) The person liable for paying the service tax in relation to the services provided by an air travel agent, shall have the option, to pay an amount calculated at the rate of 0.25% of the basic fare in the case of domestic bookings, and at the rate of 0.5% of the basic fare in the case of international bookings, of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax at the rate of five per cent of the value of taxable service rendered by him and the option, once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances.

Explanation - For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

- (8) The value of the taxable service in relation to the services provided by a clearing and forwarding agent to a client for rendering services of clearing and forwarding operations in any manner shall be deemed to be the gross amount of remuneration or commission (by whatever name called) paid to such agent by the client engaging such agent.
- (9) The value of taxable service in relation to insurance auxiliary services provided by an insurance agent shall be deemed to be the gross amount of commission, fee or any other sum (by whatever name called) paid to such agent by the insurer appointing such agent.

7. Returns –

- (1) Every assessee shall submit a half yearly return in Form 'ST-3' or 'ST-3A', as the case may be, along with a copy of the Form TR-6, in triplicate for the months covered in the half-yearly return.
- (2) Every assessee shall submit the half yearly return by the 25th of the month following the particular half-year.

[(3) & (4) * * *]

8. Form of Appeals to Commissioner of Central Excise (Appeals).

- (1) An appeal under Section 85 of the Act to the Commissioner of Central Excise (Appeals) shall be in Form ST-4.
- (2) The appeal shall be filed in duplicate and shall be accompanied by a copy of order appealed against.

9. Form of appeals to Appellate Tribunal. -

- (1) An appeal under sub-section (1) of section 86 of the Act to the Appellate Tribunal shall be made in Form ST-5 in quadruplicate and shall be accompanied by a copy of the Order appealed against (one of which shall be a certified copy).
- (2) An appeal under sub-section (2) of section 86 of the Act to the Appellate Tribunal shall be made in Form ST-7 in quadruplicate and shall be accompanied by a copy of the order of the Commissioner of Central Excise (one of which shall be a certified copy) and a copy of the order passed by the Central Board of Excise and Customs directing the Commissioner of Central Excise to apply to the Appellate Tribunal.

- (2A) An appeal under sub-section (2A) of Section 86 of the Act to the Appellate Tribunal shall be made in form ST-7 in quadruplicate and shall be accompanied by a copy of the order of the Commissioner of Central Excise (Appeals) (one of which shall be a certified copy) and a copy of the order passed by the Commissioner of Central Excise directing the Assistant Commissioner of Central Excise or as the case may be, the Deputy Commissioner of Central Excise to apply to the Appellate Tribunal; and
- (3) A memorandum of cross-objections under sub-section (4) of section 86 of the Act, shall be made in form ST-6 in quadruplicate.

ANNEXURE - III

CATEGORIES OF TAXABLE SERVICES IN VOGUE:

1. Stock broking services
2. Telephone services
3. Insurance services
4. Courier services
5. Advertising services
6. Pager services
7. Consulting engineers services
8. Custom house agent's services
9. Steamer agents services
10. Clearing and forwarding agent's services
11. Manpower recruitment agency's services
12. Air travel agent's services
13. Mandap Keeper's services
14. Tour operator's services
15. Rent a cab scheme operator's service
16. Architect's services
17. Interior Decorator's services
18. Management consultant's services
19. Practising chartered Accountant's services
20. Practising Cost Accountant's services
21. Practising Company Secretary's services
22. Real estate agent's services
23. Security agency's services
24. Credit rating agency's services
25. Market research agency's services
26. Underwriter's services

27. Scientific or technical consultancy services
28. Service by a photography studio
29. Services provided in holding of convention by a commercial concern.
30. Services provided by the telegraph authority in relation to leased circuit.
31. Services provided by the telegraph authority in relation to a communication through telegraphs
32. Services provided by the telegraph authority in relation to a communication through telex.
33. Services provided by the telegraph authority in relation to a facsimile communication.
34. Services provided to a customer by a commercial concern in relation to online information and database access or retrieval or both in electronic form through computer network.
35. Services provided by a video production agency in relation to video-tape production in any manner.
36. Services provided to a client by a sound recording studio in relation to any kind of sound recording.
37. Services provided by a broadcasting agency or organisation in relation to broadcasting in any manner.
38. Services provided by an actuary or intermediary or insurance inter-mediator or insurance agent in relation to insurance auxiliary services
39. Services provided by a banking company or a financial institution, including a NBFC in relation to banking and other financial services.
40. Services provided in relation to port services by a port to any person.
41. Services provided in relation to any service or repair of automobiles by an authorised service station.
42. Services provided by body corporates other than referred to in relation to banking and other financial services
43. Beauty parlour's services
44. Cargo handling agency's services.
45. Cable operator's service in relation to cable services.
46. Dry cleaner's services
47. Event manager's services
48. Fashion designer's services
49. Health club and fitness center's services

50. Insurance auxiliary services
51. Rail travel agent's services
52. Storage or warehouse keeper's services
53. Business auxiliary services
54. Commercial training or coaching services
55. Commissioning or installing services
56. Franchise services
57. Access of internet service by an internet café
58. Maintenance and repair services
59. Technical testing and analysis
60. Technical inspection and certification services.

ANNEXURE - IV

LIST OF SERVICES¹ AND THE YEAR THEY WERE INTRODUCED IN²

S.No.	Service Category	Year of introduction
1.	Advertising Agency	1996
2.	Air Travel Agency	1997
3.	Architects Services	1998
4.	Banking And Financial	2001
5.	Beauty Parlours	2002
6.	Broadcasting Service	2001
7.	Business Auxiliary Services	2003
8.	Cab Operators	1997
9.	Cable Operators	2002
10.	Cargo Handling Services	2002
11.	Chartered Accountants	1998
12.	Clearing And Forwarding Agency	1997
13.	Commercial Training And Coaching	2003
14.	Commissioning And Installation	2003
15.	Company Secretaries	1998
16.	Consulting Engineer	1997
17.	Convention Service	2001
18.	Cost Accountants	1998
19.	Courier Agency	1996

¹ As on May 2004

² Obtained from Superintendent (Service Tax), Belgaum Central Excise 1998 Commissionerate

20.	Credit Rating Agencies	1998
21.	Custom House Agent	1997
22.	Dry Cleaning Services	2002
23.	Event Management Service	2002
24.	Facsimile Services	2001
25.	Fashion Designer Services	2002
26.	Franchise Services	2003
27.	General Insurance Business	1994
28.	Goods Transport Operators	1997
29.	Health Club And Fitness Center	2002
30.	Insurance Auxiliary	2001
31.	Interior Decorators	1998
32.	Internet Café	2003
33.	Leased Circuits	2001
34.	Life Insurance Services	2002
35.	Maintenance And Repair	2003
36.	Management Consultants	1998
37.	Mandap Keeper	1997
38.	Manpower Recruitment Agency	1997
39.	Market Research Agency	1998
40.	Online Information And Data	2001
41.	Outdoor Caterers	1997
42.	Pager Services	1996
43.	Pandal And Shamiana Service	1997
44.	Photography Service	2001
45.	Port Services	2001
46.	Rail Travel Agent	2002
47.	Real Estate Agents	1998
48.	Scientific And Technical Consultants	2001
49.	Security Agencies	1998
50.	Servicing Of Motor Vehicles	2001
51.	Sound Recording Service	2001

52.	Steamer Agent	1997
53.	Stock Broker	1994
54.	Storage And Warehouse Service	2002
55.	Telegraph Service	2001
56.	Telephone Services	1994
57.	Telex Services	2001
58.	Test Inspection Certification	2003
59.	Tour Operator	1997
60.	Underwriters	1998
61.	Videotape Production	2001

ANNEXURE V

VARIOUS SERVICES : ILLUSTRATIVE POSSIBLE INCLUSIONS AND EXCLUSIONS FROM SERVICE TAX

<u>S.No</u>	<u>Service/ Service Provider</u>	<u>Inclusions</u>	<u>Exclusions</u>
1.	Advertisement Agency	Commercial concerns, Advertising agents, consultants, audio visual representations, film Producers, ad designers, artists, modeling agents, artwork, creative work, related market research, window display, hoarding hire, display boards, sponsors, event managers undertaking advertising, advertisements on websites, advertisements in yellow pages directories, undertaking preparation of advertisements, exhibitions etc., professional neon, sign board display, window displays, hoarding, rentals, consultancy, for selection of media etc.	Non-Commercial concerns, Government agency or departments, DAVP, press, news papers, charitable institutions, data base management services, services taxable under other categories, services provided to diplomatic missions, business and telephone directories, export of services, printing job works, creation of data base, yellow pages directory printing services and business directories.
2.	Air Travel Agents	Air travel agents registered with IATA, tour conducting companies engaged in air travel, domestic and international ticketing, agents chartering private copters.	Sub-agents, employees of airlines, cargo services, air fare charges.
3.	Architects	Architects registered under Architects Act, firms engaged in architect's services, services relating to designs, drawings, supervision.	Landscape designers and developers, engineers, contractors, interior decorators.
4.	Authorised Service Stations	Authorised service stations or Centre, service and repairs of motor car or two wheeled motor	Unauthorised service station, three wheelers, vehicles other than two wheeled motor

		vehicle or light motor vehicles service during warranty period, routine check up, engine tuning, engine/gear oil check, wheel alignment, balancing clutch/brake adjustment, wheel rotation, washing, service etc, reimbursement of free service from automobile manufacturer.	vehicles or cars, or light motor vehicle, sale of goods and spare parts. Commercial vehicles, buses, motor vehicles with seating capacity over twelve persons.
5.	Auxiliary services relating to life insurance	Services ancillary and auxiliary to life insurance, actuary services and valuations, pension policies, endorsement and whole life policies etc., medical policies of LIC, risks and claim settlement services, claim investigations, management services reinsurance brokers, loss assessment etc.	General insurance, non human life insurance services, cattle insurance, life insurance service.
6.	Banking and Financial Services	Specified services provided by banks, including private, nationalised and foreign banks, State Bank of India and its subsidiaries, financial institutions and NBFC's (including other body corporates ³), depository custodial services provided by depository participants, portfolio management, asset management, credit card service, securities/forex broking, transfer of information and data processing, financial leasing, equipment leasing and hire purchase, investment and portfolio research and advice, advice on merger and acquisitions, corporate restructuring, market analysis, trust services, electronic access to securities information provided by depositories, forex broking by individuals. ⁴	Cooperative banks, general banking business, agriculture finance, kisan credit cards, e-broking, depository services of NSDL or CDSL, mutual funds, purchase or sale of goods, leasing rendered by non-corporate bodies, mutual funds, e-broking, CAs advising on mergers/acquisition, chit funds.
7.	Beauty Parlours	Establishments providing beauty treatment services, beauty parlours in	Services offered to club members without extra or additional charge, skin

³ Inserted by Finance Act, 2002 w.e.f. 16-8-2002

⁴ Inserted by Finance Act, 2003 w.e.f. 1-7-2003

		hotels/clubs/resorts; face and beauty treatment, manicure, pedicure, facial make-up doctors giving beauty treatment, etc.	treatment from a doctor, any medical treatment, hair dyeing, sale of cosmetics, employees of parlour health club, cosmetic surgery, beauty training.
8.	Broadcasting Services	All broadcasting agencies and organisations, All India Radio, doordarshan, foreign and private radio and TV Channels, broadcasting stations, other home channels, satellite channels, FM radio channels, foreign channels including their branches, subsidiaries and representatives, sale of time slots for advertisement, programme selection, scheduling, presentation of sound or visual matter, obtaining sponsorships, collection of broadcasting charges etc.	Cable TV operators, cinema halls, studios, broadcasting earth station, TV producers, satellite transponder hiring uplinking stations, multi system operators merely retransmitting signals.
9.	Business Auxiliary services	Business promotion and support services, processes out sourcing, customer care, managing front offices, launching of products, customer education programme, Seminars, data warehousing, help desk services, enquiry bureaus, housekeeping, accounts, public relations, recovery of dues, front office services, etc.	Information technology services, computer enabled services, data processing, networking, back office processing, computer facility management, call centres, medical transcription centres.
10.	Cable Operators	Services provided by Cable Operators, to ultimate subscribers, transmission and retransmission services, amounts charged from subscribers.	Broadcasting services, advertising, amount of entertainment tax recovered.
11.	Chartered Accountants	Practising CA's and CA firms undertaking profession of accountancy and auditing as per CA Regulations, other services taxable under any category.	CA's in jobs, employees of practicing firms not practicing in individual names. CA's in business or other vocation. CA's providing exempted services; services of man power recruitment, management consultancy etc. to be taxed under respective

			category.
12.	Clearing and Forwarding Agents	C&F agents, consignment agents, unregistered custom clearance agents, C&F work for agricultural goods, octroi agents, arhtiyas.	Distributors, wholesalers, sales depots of companies, DMA's etc. C&F work being done by company employees or any branch, godown hire, storage tanks, billing agents, ICD's.
13.	Commercial vocational institutions, coaching centres, tuitions	Institutions providing commercial coaching or training, coaching classes, tutorial classes, motor driving, classes, beauty and working classes, etc.	Sports training, pre-school coaching centres, institutions giving degree/diploma, individuals tuitions at home, hobby classes, vocational classes, computer classes.
14.	Commissioning/ installation services	Commissioning/installation of projects, equipments, plant and machinery	Consulting engineer's services, repairs and maintenance.
15.	Company Secretaries	Practising CS providing taxable service in his name or in CS firm as per CS Regulations.	Practising CS providing exempt or non-taxable services, CS in employment or business, CS acting as trustee or executor, CS employed with practicing CS; services of manpower recruitment, management consultancy etc. to be taxed under respective category.
16.	Consulting Engineers	All consulting/professional engineers, engineering firms, project consultants, software consultants and engineers, firms engaged in supply of designs, drawings or technical assistance, implementation of software plans, structural engineering works, civil, mechanical or electrical engineering or construction management, erection and installation of machinery, commissioning of plants, turnkey projects, valuation of immovable properties.	Employed engineers, sub-contractors, architects and interior decorators, civil contractors, software development firms, firms engaged in post/after sale services, engineers dealing with sea worthiness of ships, testing laboratories, repair workshops, insurance surveys and loss assessments, education and training, architects.
17.	Convention Services	Convention/formal meetings and programmes, Training programmes, conferences, workshops, annual general meetings, board meetings, video conferencing, services of technical support in convention,	Exhibition, mandaps, trade fairs, road shows, concerts, entertainment shows, fashion shows etc., chambers of commerce etc.

		event management services relating to convention, conduct of seminars personnel training programmes, conduct of various training courses by institutes, etc.	
18.	Cost Accountants	Practising Cost Accountants and firms engaged in CWA practice as per CWA Regulations, Cost accounting, cost auditing etc.	CWA's in employment, CWA's in employment of practicing CWA.
19.	Courier	Courier services and agents, door to door delivery transport operators, VPP services provided by courier, angadiya services.	Government services, speed post, EMS, Express services, co loading, goods transport operators, incoming couriers from abroad.
20.	Credit Rating Agencies	SEBI approved credit rating agencies (CRISIL, ICRA, CARE Fitch India), private rating agencies, rating of debt obligations and financial instruments, projects or programme or any other type of rating.	Non-credit rating agencies, market research rating agencies.
21.	Custom House Agents	Custom house agents having licences.	Unlicenced agents.
22.	Dry cleaning services	Cleaning of garments and apparels by dry-cleaning process, (i.e., with non-aqueous organic solvents) apparels, garments, other textiles, fur, leather Articles, dry cleaning shops.	Laundry services, stain removing services not involving dry cleaning such as washing, ironing, repairs, modifications, alterations, sale of garments etc., washing, wet leaning, dyeing, drying, in-house dry cleaning services in hotels etc.
23.	Event management	Management of any function or event, planning of event, promotion or organisation or presentation of events -arts, exhibitions, fairs, business, entertainment, sports, cultural, commercial events, counselling related to events.	Non-commercial concerns, convention centres being taxed separately, event managed in-house, Governments tourism department.
24.	Facsimile services	Fax services by telegraph authority, bureau fax, internet fax service.	Private fax, privately run PCO's , offices doing faxes from office.
25.	Fashion Designing	Fashion shows, exhibition, commercial promotional events persons providing fashion	Educational isntitutes imparting professional courses, beauty parlours, individuals

		designing services, includes conceptualizing outlising, creating the designs, patterns, samples, etc. for costumes, garments, apparels, clothing, clothing accessories, jewellery designing, other designs or accessories for human wearing, ancillary services relating to fashion designing.	engaged in in fahsion designing as a hobby; cost of samples, tailors, jewellers, boutiques selling readymade garments, goldsmith.
26.	Franchise services	Franchisee fee, royalty, other fees by whatever name called.	Franchisee providing other services not related to franchiser.
27.	General Insurance	GIC and its subsidiaries, general insurance business, non-life insurance, medical insurance, (mediclaim), private insurance companies.	Life insurance business, agricultural and cattle insurance, other exempt services.
28.	Health Clubs and Fitness Centres	Health clubs, Fitness centres, gyms, hotels and resorts providing such services, clubs, services relating to physical well being, health and fitness, yoga centres, meditation and massage centres, sauna, steam bath, turkish bath, spas slimming centres, solarium, spa, massage saloon, etc. consultancy and counselling, diet management etc., monthly fees charged by clubs etc.	Medical therapy, naturopathy therapeutic massages, ayurvedic health centres providing medically advised therapies and massages, clubs/centres providing services only to their own members without separate charges as a composite part of membership fee, cooperative housing society providing such services to its members, yoga classes, sports centres, etc.
29.	Inland Cargo Handling	Cargo handling (domestic) - loading, unloading, packing, unpacking of cargo, handling for freight in special containers or otherwise, services provided by container freight terminal or other freight terminals, services of container corporation of India etc.	Passenger handling, courier services, mail services, export shipments, clearing and forwarding services, passenger baggage, mere transportation of goods, service relating to agricultural produce, goods intended to be stored in cold storage, service provided by ports covered under that category, transshipment of export cargo, empty cargo, marketing services, crane services, warehousing services central warehousing corporation.
30.	Insurance Auxiliary Service	Insurance agents, surveyor, actuary, risk assessment and claim settlement agents,	Life insurance, insured persons.

		reinsurance, consultants in insurance, marketing of insurance policies, reinsurance brokers.	
31.	Interior Decorators	Professional decorators, unqualified decorators, landscape designers, vastu consultants, horticulture consultants, beautification of gardens etc.	Civil contractors, artists, painters, carpenters, persons furnishing the premises, architects, civil engineers, sale of furniture.
32.	Internet Café	Internet access services, sale of internet hours.	Other services provided by internet café/kiosks call centres etc., computer jobwork etc.
33.	Leased Circuit Services	MTNL, BSNL, VSNL, private and broad band service providers, cable internet service provider, VSAT service provider, inter connection linked charges, sea link services.	Persons other than telegraph authority, rentals, for function links, port charges.
34.	Maintenance and Repair Services	Commercial repairs, maintenance, services under agreement/contract, repairs etc. of goods or equipment by manufacturer, authorised repair services.	Free testing/repair camps, after sales services, repairs not under AMC
35.	Management Consultants	Management Consultants, labour advisors, consultancy firms, consultancy in the field of environment, pollution, advisory services for mergers and acquisitions, cost, efficiency, productivity, EDP, systems, internal controls, manufacturing, HRD, security, system control, ERP, operational research, marketing, security, financial management, project planning, manufacturing process consultancy, operational research, surveillance, public relation management public relation, space management, CA's etc. practicing mainly as CA's and providing consultancy. Etc.	ISO certifications, architect services, employees of management consultants, industrial legal consultancy, tax consultant, merchant bankers performing statutory functions during merger or takeover assignment, PF or ESI matters.
36.	Mandap Keepers	All types of mandaps for official, business and social functions, kalyan mandapams, barat ghars, banquet halls,	Mandaps without any consideration, leased premises, shamiana or pandal; hotels providing such services

		conference halls, hotels & restaurants, mandaps provided by charitable, religious or other organizations/clubs, open grounds and lawns, premises let out for film shooting etc, farm houses and any other premises used as mandaps, community centres used on commercial basis by local bodies etc.	alongwith catering, art galleries, religious places used as mandaps.
37.	Manpower Recruitment Agents	Manpower suppliers, consultants, labour contractors, placement services, arranging interviews, counselling, manpower database, paid websites for manpower recruitment, services provided by professional as manpower consultants, placement bureaus, experts rendering services as experts for interviews on regular basis.	Employment exchanges or bureau, educational and professional institutions like ICAI, ICSI, IIM etc., offering campus, recruitment civil or electrical or other contractors, experts taking interviews Government departments.
38.	Market Research Agents	Market research agencies, agencies engaged in opinion or exit polls, product or services research, syndicated research, advertising research, market related any research conducted on a commercial basis.	Employees of research agency, research wing or department of company, academic and professional research.
39.	Online Information and data base retrieval system	Paid websites, database companies, database provision, services provided by ISP's to cyber cafes, internet telephony services.	Cyber cafes, advertisements on web sites, e-commerce transactions, inter connectivity services provided by one ISP to another ISP, services provided free of charge.
40.	Photography services	All types of photography, studios, colour processing labs, motion picture photographers, film processing labs, professional, photographers, still photography studies, studios or their agents, being commercial concerns.	Amateur photographers press photographers, individual photographers not being commercial concerns, collection agents or centres, sub-contractors not involving client of customer, videography, painters, services rendered abroad, artists, X-ray or C.T. scans, domestic photography done as a hobby etc.
41.	Port services	Port trust authorities, corporate ports, minor ports other services at ports, port storage, railway	Airports, Airport authority, land custom station, Inland container depots.

		haulage, container handling services, crane services at ports, management committee of paradeep port, minor ports, etc.	
42.	Rail Travel Agents	Travel agents (authorised or unauthorized) engaged in booking/cancellation/planning train travel, booking of passage by rail for persons, commission received from railways and passengers, package tours.	Cargo booking, actual rail fare, travel other than by rail.
43.	Real Estate Agents and Consultants	Estate brokers, agents, consultants for purchase/sale/letout services, legal consultants, landscape consultants, security advisors, vastu consultants, real estate project planning, stamp duty advises, orchid broker, RCC consultant, acquisition advisory services, layout design, FSI consultants, real estate related financial, legal and technical advisory services.	Construction and civil contractors, experts such as lawyers, etc doing documentation and acting as advocates for disputes, architects, engineers, plantation companies, housing finance companies, interior decorators, engineer's certifying life of building, etc.
44.	Rent-a-cab Scheme Operator	Scheme operators, unlicensed cab operators providing cabs on hire.	Metered taxies/cabs for normal commuting, personal cabs, company cabs.
45.	Scientific or Technical Consultancy Services	Scientist, technocrat, educational and research institutes, medical colleges, energy consultants, rehabilitation consultants, public funded research institutions,	Employed scientists and technocrats, doctors and nursing homes, diagnostic laboratories.
46.	Security Agency	Agents and consultants, detective services, investigation agencies, security of property and persons, providing personnel, investigations, detection and verification services, escort services.	Government agencies police, security staff employed with companies, Industrial security force, Central Bureau of Investigation; safe deposits vaults.
47.	Sound Recording Services	Sound recording, storage, providing studios, editing, providing technical persons, instruments, other devices etc.	Music companies, studios owned for own use by music companies, Government studios, reproduction of original master to make more copies of audio tape, CD, sale of cassettes, non-commercial concerns, etc.
48.	Steamer	Steamer Agents, container	Passenger booking, cruises,

	Agents	feeder services, booking and canvassing for cargo on behalf of shipping line, ship husbandry or dispatch.	employees of shipping line.
49.	Stock brokers	Sebi registered brokers, transactions done at stock exchanges, or trading terminals located at various locations transactions in listed securities including futures and derivatives, trades done on NSE/BSE by Sub-brokers, trading	Sub-brokers, underwriters, off market deals, deal in unlisted securities, transactions done by non members and members of unrecognized stock exchange.
50.	Storage and warehousing services	Storage and warehousing for goods, liquids and gases, marketing services, crane services, warehousing services, central warehousing corporation, state ware housing corporations working as commercial concern, providing storage facility and charging rent for storage facility and charging rent for storage of liquid cargo in tanks, service of container freight stations, public and private warehouses, empty containers.	Storage for agricultural produce, cold storages, clearing and forwarding services, government ware housing corporations not providing commercial services, Food Corporation of India, only renting of premises, or cylinders, port trust authorities.
51.	Technical testing analysis, certification	Testing, analysis, inspection, certification, inspection/examination of goods/processes/material/property, standards testing, chemical testing	Health and diagnostic testing, pollution testing, environmental tests, weather forecasts, test, on humans and animals.
52.	Telegraph services	Telegraph authority, BSNL, MTNL, private operators E-mail, VSAT providers, wireless radio service, satellite communications, circuit and packet switched data transmission	Services provided by any non-telegraph authority.
53.	Telephone/Pager Services	Director General, Posts & Telegraphs, MTNL, BSNL and other licenced agencies, pager services, sale of sim cards and activation charges, inter connectivity, linked charges, Cellular telephone service providers, wireless speech service providers.	e-mail, Internet services, infrastructure charges, port charges.

54.	Telex services	Telex message providers, BSNL/MTNL providing telex services, telegraph authority	Private telexes, telexes used by companies for own purpose.
55.	Tour Operators	Tour operators, travel agents, permit holders, non-permit holders providing such services, organising tours in a tourist vehicle.	Company vehicles for use, vehicle owner giving vehicle for use to operator, booking agents, educational/religious institutions organizing tours, vehicles owned by airlines for free use of passengers.
56.	Underwriters	Sebi registered underwriters, Sebi registered merchant bankers and brokers acting as underwriters.	Sub-underwriting.
57.	Video Production Agency	Videography, video production, editing videotapes, recording meant for broadcasting, providing studio, lights, gadgets etc., services of dubbing, printing, special effects, film processing.	Film shooting, contracts not involving client, individual videographers, reproduction of copies.

ANNEXURE VI

QUESTIONNAIRE⁵ – SERVICE TAX

(EXCISE DEPARTMENT)

1. Excise department deals with big matters, big assesses, how is it to deal with smaller assesses in service tax?
2. How is the service tax collected?
3. What do you have to say about the income tax department handling service tax?
4. Is there any overlapping when the same goods are subjected to both excise duty and service tax?
5. Do you have any suggestion to bring about a clear demarcation between excise duty and service tax on the same goods?
6. Have you received any complaints from assesses on being administered both service tax and excise duty?
7. There is a provision for provisional assessment of service tax, how effective has this been?
8. Who does the assessments?
9. The person liable to collect service tax has to obtain a certificate of registration, how do you see that this is complied?
10. Is there any basic limit for the taxable value of services for registration- Do you suggest any.
11. What is your opinion about introducing VAT?
12. Do you have the latest statistics on the year wise gross collection of service tax.

⁵ Administered to Mr. Mehboob [Superintendent, Belgaum Central Excise Commissionerate, Belgaum]

ANNEXURE VII

PUNISHMENTS/PENALTIES RELATING TO SERVICE TAX

SECTION	OFFENCE/DEFAULT	PENAL PROVISIONS
75	Delay in payment of Service Tax	Simple interest @ 15% p.a. for the delayed period
75A	Penalty for failure to obtain registration	A fixed sum of Rs. 500 (non-discretionary) for failure to make an application for registration under section 69 or rule 4
76	Failure to pay service tax	In addition to paying service tax and interest u/s 75, not less than one hundred rupees for every day during which the failure continues. However, the penalty shall not exceed the service tax assessee has failed to pay
77	Failure to furnish prescribed return	Penalty which may extend to an amount not exceeding Rs. 1,000 for each failure to file return within the due date
78	Suppressing value of taxable service	<ol style="list-style-type: none"> 1. in addition to service tax and interest, a sum which shall not exceed twice the amount of service tax sought to be evaded 2. where service tax is paid along with interest payable within 30 days of order, penalty shall be 25 per cent of the tax determined
79	Failure to comply with notice	A sum which shall not be less than ten percent but which shall not exceed fifty percent of the amount of the service tax that would have been avoided, had the return accepted as correct.

ANNEXURE VIII

PERSONS LIABLE TO PAY SERVICE TAX

RULE 2(1)(D)

SR. NO	TAXABLE SERVICE	PERSON(S) LIABLE
1.	Stock-Broker	Every stock-broker who is a member of a recognised tock exchange. Presently, sub-brokers are not covered.
2.	Telephone Services	Director General of Posts and telegraphs, Mahanagar Telephone Nigam Ltd. And any other person who has been granted a licence by the Central Government under Indian Telegraph Act, 1885.
3.	General Insurance Services	Chairman/Managing Directors of General Insurance Corporation of India, National Insurance Company Ltd., New India Assurance Company Ltd., Oriental Insurance Company Ltd., United India Insurance Company Ltd. Or any other person carrying on general insurance business who has obtained a certificate or registration under Insurance Act, 938.
4.	Courier Service	Every courier agency raising the bill for services rendered to a client by such agency.
5.	Advertising Services	Every advertising agency which raises the bill for services rendered to a client by it.
6.	Radio Pager Services	Same as in (2) above
7.	Customs House Agents	Every Custom House Agency which raises the bill for services rendered to a customer.
8.	Steamer Agents	Every Steamer Agent which raises the bill for services rendered to a shipping line.

9.	Consulting Engineers	Every Consulting Engineer who raises a bill for services rendered to a client by him.
10.	Clearing & Forwarding Agents	Every Clearing and Forwarding agent engaged in providing any service connected with the clearing and forwarding operations including a consignment agent.
11.	Manpower Recruitment Agents	Every Manpower Recruitment Agency which raises a bill for services rendered to a client by such agency.
12.	Air Travel Agents	Every Air Travel Agency who books the passage for travel by air for a passenger.
13.	Mandap Keeper's Services	Every Mandap Keeper who raises the bill for services rendered to a client by such Mandap Keeper (excluding hotels)
14.	Tour Operators	Every Tour Operator who raises the bill for services rendered to any person by such operator.
15.	Rent-A-Cab Scheme Operators	Every Rent-a-cab scheme operator who raises a bill for services rendered to any person by such operator.
16.	Architects	Every Architect who raises a bill for services rendered to a client by him/her.
17.	Interior Decorators	Every Interior Decorator who raises a bill for services rendered to a client by him/her
18.	Management Consultants	Every Management Consultant who raises a bill for services rendered to a client by him/her.
19.	Practising Chartered Accountants	Every practising Chartered Accountant who raises a bill for taxable services rendered to a client by him/her.
20.	Practising Company Secretaries	Every practising Company Secretary who raises a bill for taxable services rendered to a client by him/her.
21.	Practising Cost Accountants	Every Cost Accountant in practise who raises a

		bill for taxable services rendered to a client by him/her.
22.	Private Security Agencies	Every Private Security Agency which raises a bill for services rendered to a client by such agency
23.	Real Estate Agents And Consultants	Every Real Estate Agency or Consultant which raises a bill for services rendered to a client or customer.
24.	Market Research Agencies	Every Market Research Agency which raises a bill for the services rendered to a client by such agency.
25.	Credit Rating Agencies	Every approved Credit Rating Agency which raises a bill for services rendered to a client.
26.	Underwriters	Every recognised Underwriter who charges underwriting commission or fee from the client for the underwriting done.
27.	Scientific And Technical Consultancy Services	Professional scientist or technocrat or any institute or organization engaged in science/technology rendering services to a client.
28.	Photography Services	Professional photographer or studio or agency, being a commercial concern rendering service to a customer. In case of still photography, studio etc. Other than a commercial concern are exempt.
29.	Convention Services	Any commercial concern rendering such service to a client.
30.	Telex Services	Telegraph authority rendering services to a subscriber (See Sr.No.2 above)
31.	Telegraph Services	Telegraph authority rendering service to a subscriber (See Sr.No.2 above)
32.	Facsimile (Fax) Services	Telegraph authority rendering service to a subscriber including that of 'bureau fax'

33.	Online Information & Data Access/Retrieval Services	Commercial concern rendering such service to a customer including ISP/s and paid web sites. Cyber cafes are not liable.
34.	Video Tape Production Services	Video tape producing agency except individual videographers providing service to a client.
35.	Sound Recording Services	Sound recording studio or agency providing sound recording services to a client.
36.	Broadcasting Services	Broadcasting agency or organisation rendering service to a client including AIR, DD, Private and foreign channels including its branch office or subsidiary or representative in India but excluding cable TV operators.
37.	Insurance Auxiliary Services	Actuary or intermediary or insurance intermediary or insurance agent providing service to a policy holder or insurer. In case of insurance agents, insurer shall be liable.
38.	Specified Banking And Financial Services Including Forex Broking	Banking company, financial institution, non-banking financial company, or other body corporate rendering specified services to customers including credit cards, merchant banking, hire purchase, etc., forex brokers.
39.	Port Services	Port and minor port or any person authorised by the port rendering port and dock service etc. to any person
40.	Authorised Service Stations	Authorised service stations providing service to a customer in respect of motor car or two wheeled motor vehicle or light motor vehicle/
41.	Service To Leased Circuit Line Holders	Telegraph authority rendering service to a subscriber
42.	Auxiliary Services Relating To Life Insurance	Actuary or intermediary or agent providing services to policyholder or insurer concerning life insurance services; In case of agents, insurer will be liable as is in case of general

		insurance.
43.	Inland Cargo Services	Cargo handling agency providing domestic cargo services excluding passenger baggage or mere transportation of goods.
44.	Storage & Warehousing Services	Storage and warehouse keepers providing services for storage and warehousing of goods excluding cold storage and storage of agricultural produce.
45.	Event Management Services	Persons engaged in providing event management services (event managers or organisations engaged therein)
46.	Rail Travel Agents	Rail travel agents engaged in providing services of booking of passage for travel by rail.
47.	Health Clubs & Fitness Centres	Establishments including hotel or resort providing health and fitness services.
48.	Beauty Parlours	Establishments providing beauty treatment services including counselling.
49.	Fashion Designing	Persons engaged in providing services in relation to fashion designing with respect to human beings.
50.	Cable Operators	Persons working as cable operators for retransmitting the programmes or providing cable services to subscribers.
51.	Dry Cleaning Services	Commercial concerns providing services to customers relating to dry cleaning of apparels etc.
52.	Commercial Vocational Institutes, Coaching Centres, Tuitions	Commercial institutions, centres and tutorials providing commercial training coaching to any person.
53.	Technical Testing Analysis, Certification	Technical testing and analysis agency, technical inspection and certification agency providing taxable services.

54.	Maintenance And Repairs Services	Any person providing maintenance or repair services to a customer.
55.	Commissioning And Installation Services	Any commissioning and installation agency providing such services to a customer.
56.	Business Auxiliary Services	Commercial concerns providing any business auxiliary service to a client.
57.	Internet Café	Any internet or cyber café providing access of internet to any person.
58.	Franchise Services	Franshisor providing franchise service to the franchisee.
59.	Service Provided By Non-Resident/Person Outside India Not Having Office In India	The person receiving taxable services in India.

Note: (1) Sr.Nos 16 to 29 were added by the Finance Act, 1999

Sr.Nos. 30 to 41 were added by the Finance Act, 2001.

Sr.Nos. 42 to 51 were added by the Finance Act, 200.

Sr. No. 52 was provided by Service Tax (Amendment) Rules 2002.

Sr.No. 53 to 59 were added by the Finance Act, 2003