

**Circular No. 151 /2 /2012-ST**

F.No.332/13 /2011-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
(Tax Research Unit)

New Delhi, 10<sup>th</sup> February, 2012

To  
Chief Commissioner of Customs and Central Excise (All)  
Chief Commissioner of Central Excise & Service Tax (All)  
Director General of Service Tax  
Director General of Central Excise Intelligence  
Director General of Audit  
Commissioner of Customs and Central Excise (All)  
Commissioner of Central Excise and Service Tax (All)  
Commissioner of Service Tax (All)

Madam/Sir,

**Subject:** Service tax on construction services — regarding.

Many issues have been referred by the field formations, in the recent past, seeking clarification regarding the levy and collection of service tax on construction services [clauses (zzq), (zzzh) of section 65(105) of the Finance Act, 1994], in the light of varying business models. Across the country, divergent business models and practices are being followed in the construction sector. Some of these business models and practices could be region specific.

2. From the issues referred by the field formations, important ones have been identified model wise, examined and clarified as follows:

2.1. **Tripartite Business Model** (Parties in the model: (i) landowner; (ii) builder or developer; and (iii) contractor who undertakes construction): Issue involved is regarding the liability to pay service tax on flats/houses agreed to be given by builder/developer to the land owner towards the land /development rights and to other buyers.

**Clarification:** Here two important transactions are identifiable: (a) sale of land by the landowner which is not a taxable service; and (b) construction service provided by the builder/developer. The builder/developer receives consideration for the construction service provided by him, from two categories of service receivers: (a) from landowner: in the form of land/development rights; and (b) from other buyers: normally in cash.

**(A) Taxability of the construction service:**

- (i) For the period prior to 01/07/2010: construction service provided by the builder/developer will not be taxable, in terms of Board's Circular No.108/02/2009-ST dated 29.01.2009.
- (ii) For the period after 01/07/2010, construction service provided by the builder/developer is taxable in case any part of the payment/development rights of the land was received by the builder/developer before the issuance of completion certificate and the service tax would be required to be paid by builder/developers even for the flats given to the land owner.

**(B) Valuation:**

- (i) Value, in the case of flats given to first category of service receiver, is determinable in terms of section 67(1)(iii) read with rule 3(a) of Service Tax (Determination of Value) Rules, 2006, as the consideration for these flats i.e., value of land / development rights in the land may not be ascertainable ordinarily. Accordingly, the value of these flats would be equal to the value of similar flats charged by the builder/developer from the second category of service receivers. In case the prices of flats/houses undergo a change over the period of sale (from the first sale of flat/house in the residential complex to the last sale of the flat/house), the value of similar flats as are sold nearer to the date on which land is being made available for construction should be used for arriving at the value for the purpose of tax. Service tax is liable to be paid by the builder/developer on the 'construction service' involved in the flats to be given to the land owner, at the time when the possession or right in the property of the said flats are transferred to the land owner by entering into a conveyance deed or similar instrument(eg. allotment letter).
- (ii) Value, in the case of flats given to the second category of service receivers, shall be determined in terms of section 67 of the Finance Act, 1994.

**2.2 Redevelopment including slum rehabilitation projects:** Generally in this model, land is owned by a society, comprising members of the society with each member entitled to his share by way of an apartment. When it becomes necessary after the lapse of a certain period, society or its flat owners may engage a builder/developer for undertaking re-construction. Society /individual flat

owners give 'No Objection Certificate' (NOC) or permission to the builder/developer, for re-construction. The builder/developer makes new flats with same or different carpet area for original owners of flats and additionally may also be involved in one or more of the following:

- (i) construct some additional flats for sale to others;
- (ii) arrange for rental accommodation or rent payments for society members/original owners for stay during the period of re-construction;
- (iii) pay an additional amount to the original owners of flats in the society.

**Clarification:** Under this model, the builder/developer receives consideration for the construction service provided by him, from two categories of service receivers. First category is the society/members of the society, who transfer development rights over the land (including the permission for additional number of flats), to the builder/developer. The second category of service receivers consist of buyers of flats other than the society/members. Generally, they pay by cash.

**(A) Taxability:**

- (i) Re-construction undertaken by a building society by directly engaging a builder/developer will not be chargeable to service tax as it is meant for the personal use of the society/its members. Construction of additional flats undertaken as part of the reconstruction, for sale to the second category of service receivers, will also not be a taxable service, during the period prior to 01/07/2010;
- (ii) For the period after 01/07/2010, construction service provided by the builder/developer to second category of service receivers is taxable in case any payment is made to the builder/ developer before the issuance of completion certificate.

**(B) Valuation:**

Value, in the case of flats given to second category of service receivers, shall be determined in terms of section 67(1)(i) of the Finance Act, 1994.

2.3 **Investment model:** In this model, before the commencement of the project, the same is on offer to investors. Either a specified area of construction is earmarked or a flat of a specified area is allotted to the investors and as it happens in some places, additionally the investor may also be promised a fixed

rate of interest. After a certain specified period an investor has the option either to exit from the project on receipt of the amount invested alongwith interest or he can re-sell the said allotment to another buyer or retain the flat for his own use.

**Clarification:** In this model, after 01/07/2010, investment amount shall be treated as consideration paid in advance for the construction service to be provided by the builder/developer to the investor and the said amount would be subject to service tax. If the investor decides to exit from the project at a later date, either before or after the issuance of completion certificate, the builder/developer would be entitled to take credit under rule 6(3) of the Service Tax Rules, 1994( to the extent he has refunded the original amount). If the builder/developer resells the flat before the issuance of completion certificate, again tax liability would arise.

**2.4 Conversion Model:** Conversion of any hitherto untaxed construction /complex or part thereof into a building or civil structure to be used for commerce or industry, after lapse of a period of time.

**Clarification:** Mere change in use of the building does not involve any taxable service, unless conversion falls within the meaning of commercial or industrial construction service.

**2.5 Non requirement of completion certificate / where completion certificate is waived or not prescribed:** In certain states, completion certificates have been waived or are considered as not required for certain specified types of buildings. Doubts have been raised, regarding levy of service tax on the construction service provided, in such situations.

**Clarification:** Where completion certificate is waived or is not prescribed for a specified type of building, the equivalent of completion certificate by whatever name called should be used as the dividing line between service and sale. In terms of the Service Tax (Removal of Difficulty) Order, 2010, dated 22/06/2010, authority competent to issue completion certificate includes an architect or chartered engineer or licensed surveyor.

**2.6 Build- Operate - Transfer (BOT) Projects:** Many variants of this model are being followed in different regions of the country, depending on the nature of the project. Build-Own-Operate-Transfer (BOOT) is a popular variant. Generally under BOT model, Government or its agency, concessionaire (who may be a developer/builder himself or may be independent) and the users are the parties. Risk taking and sharing ability of the parties concerned is the essence of a BOT project. Government or its agency by an agreement transfers the 'right to use'

and/or 'right to develop' for a period specified, usually thirty years or near about, to the concessionaire.

**Clarification:** Transactions involving taxable service take place usually at three different levels: firstly, between Government or its agency and the concessionaire; secondly, between concessionaire and the contractor and thirdly, between concessionaire and users, all in terms of specific agreements.

At the first level, Government or its agency transfers the right to use and/or develop the land, to the concessionaire, for a specific period, for construction of a building for furtherance of business or commerce (partly or wholly). Consideration for this taxable service may be in the nature of upfront lease amount or annual charges paid by the concessionaire to the Government or its agency. Here the Government or its agency is providing 'renting of immovable property service' (renting of vacant land to be used for furtherance of business or commerce) and in such cases the concessionaire becomes the service receiver.

In this model, though the concessionaire is undertaking construction of a building to be used wholly or partly for furtherance of business or commerce, on the land provided by the government or its agency for temporary use, he will not be treated as a service provider since such construction has been undertaken by him on his own account and he remains the owner of the building during the concession period.

At the second level, transaction can take place between a concessionaire and the contractor. Where the concessionaire himself does not have exposure to construction sector, he may engage a contractor for undertaking construction of a building on the land, in respect of which right to use has been obtained in his favour, from the Government or its agency. If the concessionaire is himself a builder/developer, this level of transaction may not arise. Where an independent contractor is engaged by a concessionaire for undertaking construction for him, then service tax is payable on the construction service provided by the contractor to the concessionaire.

At the third level, the concessionaire enters into agreement with several users for commercially exploiting the building developed/constructed by him, during the lease period. For example, the user may be paying a rent or premium on the sub-lease for temporary use of immovable property or part thereof, to the concessionaire. At this third level, concessionaire is the service provider and user of the building is the service receiver. The concessionaire may provide to the users, taxable services such as 'renting of immovable property service', 'business support service', 'management, maintenance or repair service', 'sale of space for

advertisement', etc. Service tax is leviable on the taxable services provided by the concessionaire to the users.

There could be many variants of the BOT model explained above and implications of tax may differ. For example, at times it is possible that the concessionaire may outsource the management or commercial exploitation of the building developed/constructed by him, to another person and may receive a pre-determined amount as commission. Taxable service here will be business auxiliary service and service tax is leviable on the commission.

**(A) Taxability:**

- (i) the service provided by the Government or its agency to the concessionaire is liable to service tax;
- (ii) the construction services provided by the contractor to the concessionaire would be examined from the point of taxability as to whether the activity is not otherwise excluded;
- (iii) the services provided by the concessionaire to the user of the facility are liable to service tax;

**(B) Persons liable to pay tax:**

Government or its agency and concessionaire are liable to pay tax on the services being provided by them. There could be several other persons liable to pay service tax, depending on the variant of the BOT model followed.

2.7 **Joint Development Agreement Model:** Under this model, land owner and builder/developer join hands and may either create a new entity or otherwise operate as an unincorporated association, on partnership /joint / collaboration basis, with mutuality of interest and to share common risk/profit together. The new entity undertakes construction on behalf of landowner and builder/developer.

**Clarification:** Circular 148/17/2011-ST dated 13/12/2011, particularly paragraphs 7, 8, 9 apply *mutandis mutandis* in this regard.

3. This Circular may be communicated to the field formations and service tax assesseees, through Trade Notice/ Public Notice. Hindi version to follow.

(Samar Nanda)  
Under Secretary, TRU  
Tel/Fax: 011-23092037

**Circular No. 150/1/2012-ST**

F.No.354/236/2010-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
(Tax Research Unit)

New Delhi, 8<sup>th</sup> February, 2012

To

Chief Commissioner of Customs and Central Excise (All)  
Chief Commissioner of Central Excise & Service Tax (All)  
Director General of Service Tax  
Director General of Central Excise Intelligence  
Director General of Audit  
Commissioner of Customs and Central Excise (All)  
Commissioner of Central Excise and Service Tax (All)  
Commissioner of Service Tax (All)

Madam/Sir,

**Subject:** Meaning of the expression 'gross amount' appearing in Rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, as it stood prior to 07<sup>th</sup> day of July 2009 - regarding.

Reference has been received from a field formation seeking clarification as to whether 'gross amount', for the purpose of payment of service tax under the Works Contract Composition Scheme, included the value of free of cost supplies, for the period prior to 07/07/2009.

2. The issue has been examined. The meaning of the expression 'gross amount' appearing in Rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, is qualified by the *Explanation* inserted in the said Rule with effect from 07/07/2009. Since the *Explanation* inserted in Rule 3(1) with effect from 07/07/2009 is clarificatory and prospective in nature, inclusion of value of free-of-cost supplies of goods and services in or in relation to the execution of Works Contract [mentioned in the *Explanation* to Rule 3(1). (a) (i) and (ii)] in the 'gross amount' for the purpose of payment of service tax on works contract under the composition scheme, is a legal requirement, only with effect from 07/07/2009 when the *Explanation* became a part of Rule 3(1).

3. The explanation appended to Rule 3(1) with effect from 07/07/2009, categorically says in the proviso that "...nothing contained in this *Explanation* shall apply to a works contract where the execution under the said contract has commenced or where any payment, except by way of credit or debit to any account, has been made in relation to the said contract on or before the 7<sup>th</sup> day of July, 2009." Where execution of works contract has commenced prior to 07/07/2009 or where any payment(except payment through credit or

debit) . has been made towards a works contract prior to 07/07/2009, then in those cases 'gross amount' for the purpose of payment of service tax does not include the value of free of cost supplies.

4. The above clarification may be communicated to the field formations and service tax assesseees through Trade Notice/ Public Notice. Hindi version to follow.

(Samar Nanda)  
Under Secretary, TRU  
Tel/Fax: 011-23092037



**Circular No. 108/02/2009 – ST**

F. No. 137/12/2006-CX.4  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
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New Delhi, dated 29<sup>th</sup> January 2009

**Subject: Imposition of service tax on Builders - regarding**

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Construction of residential complex was brought under service tax w.e.f.01.06.2005. Doubts have arisen regarding the applicability of service tax in a case where developer / builder/promoter enters into an agreement, with the ultimate owner for selling a dwelling unit in a residential complex at any stage of construction (or even prior to that) and who makes construction linked payment. The 'Construction of Complex' service has been defined under Section 65 (105)(zzzh) of the Finance Act as "any service provided or to be provided to any person, by any other person, in relation to construction of a complex". The 'Construction of Complex' includes construction of a 'new residential complex'. For this purpose, 'residential complex' means any complex of a building or buildings, having more than twelve residential units. A complex constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex intended for personal use as residence by such person has been excluded from the ambit of service tax.

2. A view has been expressed that once an agreement of sale is entered into with the buyer for a unit in a residential complex, he becomes the owner of the residential unit and subsequent activity of a builder for construction of residential unit is a service of 'construction of residential complex' to the customer and hence service tax would be applicable to it. A contrary view has been expressed arguing that where a buyer makes construction linked payment after entering into agreement to sell, the nature of transaction is not a service but that of a sale. Where a buyer enters into an agreement to get a fully constructed residential unit, the transaction of sale is completed only after complete construction of the residential unit. Till the completion of the construction activity, the property belongs to the builder or promoter and any service provided by him towards construction is in the nature of self service. It has also been argued that even if it is taken that service is provided to the customer, a single residential unit bought by the individual customer would not fall in the definition of 'residential complex' as defined for the purposes of levy of service tax and hence construction of it would not attract service tax.

3. The matter has been examined by the Board. Generally, the initial agreement between the promoters / builders / developers and the ultimate owner is in the nature of 'agreement to sell'. Such a case, as per the provisions of the Transfer of Property Act, does not by itself create any interest in or charge on such property. The property remains under the ownership of the seller (in the instant case, the promoters/builders/developers). It is only after the completion of the construction and full payment of the agreed sum that a sale deed is executed and only then the ownership of the property gets transferred to the ultimate owner. Therefore, any service provided by such seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of 'self-service' and consequently would not attract service tax. Further, if the ultimate owner enters into a contract for construction of a residential complex with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because this case would fall under the

exclusion provided in the definition of 'residential complex'. However, in both these situations, if services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax.

4. All pending cases may be disposed of accordingly. Any decision by the Advance Ruling Authority in a specific case, which is contrary to the foregoing views, would have limited application to that case only. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned.

(Gautam Bhattacharya)  
Commissioner (Service Tax)  
CBEC, New Delhi

F.No.354/27/2011-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
Tax Research Unit

153 North Block, New Delhi  
Dated: 13.12.2011

To

Chief Commissioners of Central Excise and Service Tax (All),  
Director General (Service Tax),  
Director General (Central Excise Intelligence),  
Director General (Audit),  
Commissioners of Service Tax (All),  
Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

**Subject: - Clarification on levy of service tax on distributors/sub-distributors of films & exhibitors of movie - regarding.**

1. Representations requesting clarification on taxability of consideration earned by the distributors/sub-distributors/area distributors of Indian & Foreign films in the form of 'revenue share' from the exhibitors of the movie, and on revenue retained as percentage by the exhibitors of the movie from the sale of tickets have been received from certain sections of service providers in the light of recent changes in the law and CBEC Circular No 109/03/2009 dated 23.02.2009 issued under F. No. 137/186/2007-CX.4.
2. These representations have been examined. Subsequent to issuance of CBEC Circular No. 109/03/2009 dated 23.02.2009 significant changes in the law have taken place. Temporary transfer or permitting the use or enjoyment of, any copyright defined in the Copyright Act, 1957 (14 of 1957), except the rights covered under sub-clause (a) of clause (1) of section 13 of the said Act were made taxable w.e.f. 01.07.2010 under the sub-clause (zzzzt) of Sec 65(105) by the Finance Act of 2010. Also, for the words 'operational assistance for marketing' the words 'operational or administrative assistance in any manner' were substituted in the clause (104c) of Sec 64 of the Act by the Finance Act, 2011, w.e.f. 01.05.2011.
3. The normal business practice in the industry is that the producer of the film, who owns the intellectual property rights of the film, temporarily transfers the rights to a person [normally distributor or any other person] who directly or indirectly enters into an agreement with the exhibitor [normally theatre owner] for screening of the film. There are also other variant modes of transaction in the industry.
4. In cases where distributor transfers the rights to sub-distributor, area distributor, exhibitor or theatre owner, the distributor is liable to collect the service tax under copyright service & deposit it with the government exchequer. Similarly when the sub-distributor or area distributor etc further transfers the rights to any person, he is also liable to collect the service tax under copyright service & deposit it with the government exchequer.
5. In cases where no such copyrights are transferred by the distributor or sub-distributor or area distributor to the exhibitor or theatre owner, the same is not chargeable to service tax under Copyright Services. However the business transaction needs to be examined for levability of service tax under other heads. Depending upon the arrangement whether the theatre owner has merely let out its premises to the distributor or is also involved in giving support services for the business of the distributor, there can be a case of levability of service tax on the remuneration retained by such theatre owner under "Business Support service"

or "Renting of Immovable Property". The definition of "Business Support service" has been amended in Budget 2011 to include "operational or administrative assistance in any manner" in its definition.

6. It is being represented that in certain situation the distributor and the theatre owner conduct business together and hence no service tax is leviable. Arrangement amongst two or more entities can either be on principal-to-principal basis or on partnership/joint/collaboration basis. In the former, the constituent members are independent of each other and do not share any risk/revenue/profit/loss/liability of the other while in latter the constituent members join hands for mutuality of interest and share common risk/profit together.

7. Unincorporated joint venture, not operating on principal-to-principal basis, will exist only if the arrangement entered into between the two independent persons is also recognized as a person. It may be noted that the word "person" has not been defined in the Finance Act, 1994. As per Sec 3(42) of General Clauses Act, 1897 "person shall include any company or association or body of individuals, whether incorporated or not". In this regard attention is invited to explanation to Sec 65 of the Finance Act, 1994 wherein the taxable service includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof.

8. Such a joint venture is also recognized as a legal & juristic entity in the nature of a partnership of the constituent companies by the hon'ble Supreme Court of India in the case of New Horizons [1995 SCC (1) 478; 1994 - TMI - 83686] wherein it was held that "the expression 'joint venture' connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject-matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses. The independence of joint venture as a separate legal entity, away from its constituent members, has further been fortified in the case of M/s Gammon India Ltd. Vs Commissioner of Customs, Mumbai, 2011-TMI - 204309 wherein the hon'ble Supreme Court categorically denied the benefit of exemption to the JV as the impugned goods were directly imported by constituent member.

9. Thus, where the distributor or sub-distributor or area distributor enters into an arrangement with the exhibitor or theatre owner, with the understanding to share revenue/profits and not provide the service on principal-to-principal basis, a new entity emerges, distinct from its constituents. As the new entity acquires the character of a "person", the transactions between it and the other independent entities namely the distributor / sub-distributor / area distributor and the exhibitor etc will be a taxable service. Whereas, in cases the character of a "person" is not acquired in the business transaction and the transaction is as on principal-to-principal basis, the tax is leviable on either of the constituent members based on the nature of the transaction and as per rules of classification of service as embodied under Sec 65A of Finance Act, 1994.

10. To sum-up the above, the arrangements entered into by the distributor or sub-distributor or area distributor etc and the exhibitor or theatre owner etc in exhibiting the film produced by the producer, the original copyright holder, the arrangements and their respective service tax classification is tabulated as under:

Type of Arrangement	Movie exhibited on whose account	Service Tax Implication
Principal -to - Principal Basis	Movie being exhibited by theatre owner or exhibitor on his account - i.e. The copyrights are temporarily transferred	Service tax under copyright service to be provided by distributor or sub-distributor or area distributor or producer etc, as the case may be
	Movie being exhibited on behalf of Distributor or Sub-Distributor or Area Distributor or Producer etc - i.e. no copyrights are temporarily transferred	Service Tax under Business Support Service / Renting of Immovable Property Service, as the case may be, to be provided by Theatre Owner or Exhibitor

Arrangement under  
unincorporated  
partnership/ joint/  
collaboration basis

Service provided by each of the person i.e. the 'new entity'/ Theater Owner or Exhibitor / Distributor or Sub-Distributor or Area Distributor or Producer etc, as the case may be, is liable to Service Tax under applicable service head.

11. It is understood that the Circular dated 23.02.2009 has been misinterpreted to exclude all 'revenue sharing' arrangements from the levy of service tax. Remuneration or payment arrangements on basis of fixed or revenue sharing or profit sharing or hybrid versions of these may exist. However, the nature of transaction determines the levability of service tax. Each case may be looked into on its merits and decision be taken on case to case basis.

12. The arrangements mentioned in this Circular will apply *mutatis mutandis* to similar situations across all the services taxable under the Finance Act.

(Samar Nanda)  
Under Secretary (TRU)

Government of India  
Ministry of Finance  
Department of Revenue

New Delhi, the 30<sup>th</sup> December, 2011

Notification No. 52/2011-Service Tax

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification 17/2009 - Service Tax, dated the 7th July, 2009, published in the Gazette of India, Extraordinary, part II, section 3, subsection (i) vide number G.S.R. 489(E), dated the 7th July, 2009, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services specified in column (3) of the Table below (hereinafter referred to as specified services) falling under sub-clauses of clause (105) of section 65 of the said Act, received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods (hereinafter referred to as said goods), from the whole of the service tax leviable thereon under section 66 and section 66A of the said Act, subject to the specified conditions:

Provided that-

- a. the exemption shall be provided by way of refund of service tax paid on the specified services used for export of the said goods;
- b. the exemption shall be claimed either on the basis of rates specified in the Schedule of rates annexed to this notification (hereinafter referred to as the Schedule), as per the procedure specified in paragraph 2 or on the basis of documents, as per the procedure specified in paragraph 3;
- c. no CENVAT credit of service tax paid on the specified services used for export of the said goods has been taken under the CENVAT Credit Rules, 2004;
- d. the exemption shall not be claimed by a Unit or Developer of a Special Economic Zone;

(2) the exemption shall be given effect to in the following manner, namely:-

- a. manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder shall register his central excise registration number and bank account number with the customs;
- b. exporter who is not so registered under the provisions referred to in clause (a), shall register his service tax code number and bank account number with the customs;
- c. service tax code number referred to in clause (b), shall be obtained by filing a declaration in Form A-2 to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;
- d. the exporter shall make a declaration in the electronic shipping bill or bill of export, as the case may be, while presenting the same to the proper officer of customs, to the effect that—

- i. the refund of service tax paid on the specified services is claimed as a percentage of the declared FOB value of the said goods, on the basis of rate specified in the Schedule;
- ii. no further refund shall be claimed in respect of the specified services, under procedure specified in paragraph 3 or in any other manner, including on the ground that the refund obtained is less than the service tax paid on the specified services;
- e. service tax paid on the specified services eligible as refund under this exemption, shall be calculated by applying the rate specified for goods of a class or description, in the Schedule, as a percentage of the FOB value of the said goods;
- f. amount so calculated as refund shall be deposited in the bank account of the exporter;
- g. shipping bill or bill of export on which refund has been claimed on the basis of rate specified in the Schedule, by way of procedure specified in this paragraph, is not eligible for refund claim on the basis of documents, specified in paragraph 3;
- h. where the refund involved in a shipping bill or bill of export is less than rupees fifty, the same shall not be allowed;

(3) the exemption shall be given effect to in the following manner, namely:-

- a. the exporter claiming the exemption has actually paid the service tax on the specified service used for export of the said goods;
- b. the person liable to pay service tax under section 68 of the said Act on the specified service provided to the exporter and used for export of the said goods shall not be eligible to claim exemption for the specified service;
- c. exemption by way of refund claimed by following the procedure specified in this paragraph shall be subject to the conditions specified against the specified service in column (4) of the said Table;
- d. the manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall file a claim for refund of service tax paid on the specified service to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture in Form A-1;
- e. the exporter who is not so registered under the provisions referred to in clause (d), shall before filing a claim for refund of service tax, file a declaration in Form A-2, seeking allotment of service tax code, to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;
- f. the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the exporter referred to in clause (e), within seven days from the date of receipt of the said Form A-2;
- g. on obtaining the service tax code, exporter referred to in clause (e), shall file the claim for refund of service tax to the Assistant Commissioner of Central Excise or the

Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, in Form A-1;

- h. the claim for refund shall be filed within one year from the date of export of the said goods.

**Explanation.**- For the purposes of this clause the date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962 (52 of 1962);

- i. where the refund involved in a claim is less than rupees five hundred, the same shall not be allowed;
- j. where the total amount of refund sought under a claim is upto 0.25% of the total FOB value of export goods and the exporter is registered with the Export Promotion Council sponsored by Ministry of Commerce or Ministry of Textiles, Form A-1 shall be submitted along with relevant invoice, bill or challan, or any other document including documents specified in column (4) of the said Table for each taxable service, in original, issued in the name of the exporter, evidencing payment for the specified service used for export of the said goods and the service tax payable, certified in the manner specified in sub-clauses (A) and (B);

(A) if the exporter is a proprietorship concern or partnership firm, the documents enclosed with the claim shall be self-certified by the exporter and if the exporter is a limited company, the documents enclosed with the claim shall be certified by the person authorised by the Board of Directors;

(B) the documents enclosed with the claim shall also contain a certificate from the exporter or the person authorised by the Board of Directors, to the effect that specified service to which the document pertains has been received, the service tax payable thereon has been paid and the specified service has been used for export of the said goods under the shipping bill number;

- k. where the total amount of refund sought under a claim is more than 0.25% of the total FOB value of export goods, the procedure specified in clause (j) above shall stand modified to the extent that the certification prescribed thereon, in sub-clauses (A) and (B) shall be made by the Chartered Accountant who audits the annual accounts of the exporter for the purposes of the Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961(43 of 1961), as the case may be;
- l. the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself,-
  - i. that the service tax refund claim filed in Form A-1 is complete in every respect;
  - ii. that the specified documents have been enclosed after due certification;
  - iii. that refund has not been already received on the shipping bills or bills of export on the basis of procedure prescribed in paragraph 2;and
  - iv. that the refund claimed is arithmetically accurate, refund the service tax paid on the specified service within a period of one month from the receipt of said claim:

Provided that where the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, has reason to believe that the claim, or the enclosed



documents are not in order or that there is a reason to deny such refund, he may, after recording the reasons in writing, take action, in accordance with the provisions of the said Act and the rules made thereunder;

(4) Where any refund of service tax paid on specified service utilized for export of said goods has been allowed to an exporter but the sale proceeds in respect of said goods are not received by or on behalf of the exporter, in India, within the period allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such refund shall be deemed never to have been allowed and recovered under the provisions of the said Act and the rules made thereunder, as if it is a recovery of service tax erroneously refunded;

(5) This notification shall come into effect on the 3rd day of January, 2012.

Table

Sl.No.	Classification under sub-clauses of clause (105) of section 65 of the said Act	Taxable Services (referred to as 'specified services')	Conditions
(1)	(2)	(3)	(4)
1.	(d)	Service provided to an exporter by an insurer, including re-insurer, insurer, including a reinsurer carrying for payment of insurance on general insurance business in premium and the document relation to insurance of said goods.	Exporter shall submit document issued by the insurer, including re-insurer, insurer, including a reinsurer carrying for payment of insurance on general insurance business in premium and the document shall be specific to export goods and shall be in the name of the exporter.
2.	(zn)	Service provided by a port or any person authorised by the port in respect of the export of said goods.	
3.	(zzh)	Service provided by a technical testing and analysis agency, in relation to technical testing and analysis of said goods.	
4.	(zzi)	Service provided by a technical inspection and certification agency in relation to inspection and certification of export goods.	
5.	(zzl)	Service provided by other port or any person authorised by that port in respect for export of said goods.	
6.	(zzp)	(i) Service provided for transport of said goods from the inland container depot to the port of export; (ii) Service provided to an exporter in relation to transport of export goods directly from the place of removal, to inland container depot or port or airport, as the case may be, from where the	(i) exporter shall certify that the benefit of exemption provided vide notification number 18/2009-S.T. has not been claimed; and (ii) details, those are specified in the invoice of exporter relating to export goods, are specifically mentioned in the

		goods are exported.	
7.	(zzzp)	(i) Service provided for transport of said goods from the inland container depot to the port of export, and the corresponding shipping and bill; (ii) services provided to an exporter in relation to transport of export goods directly from the place of removal to inland container depot or port or airport, as the case may be, from where the goods are exported.	(i) lorry receipt or consignment note or transporters' invoice issued by the exporter in relation to export of goods shall indicate the inland container depot or port or airport from where the goods are exported.
8.	(zzzd)	Specialized cleaning services namely disinfecting, exterminating, sterilizing or fumigating of containers used for export of said goods provided to an exporter.	
9.	(zza)	Service provided for storage and warehousing of said goods.	
10.	(f)	Service provided by a courier agency to an exporter in relation to transportation of time sensitive documents, goods or articles relating to export, to a destination outside India.	(i) The receipt issued by the courier agency shall specify the importer exporter code (IEC) number of the exporter, export invoice number, nature of courier, destination of the courier including name and address of the recipient of the courier; and (ii) exporter produces documents relating to the use of courier service to export goods.
11.	(h)	Service provided by a custom house agent in relation to export goods exported by the exporter.	Exporter shall produce,- (i) invoice issued by custom house agent for providing services specified in column (3) specifying,- (a) number and date of shipping bill; (b) number and date of the invoice issued by the exporter relating to export goods; (c) details of all the charges, whether or not reimbursable, collected by the custom house agent from the exporter in relation to export goods; (ii) details of other taxable services provided by the said custom house agent and received by the exporter, whether or not relatable to export goods.
12.	(zm)	(i) Service provided in relation to collection of export bills;	

		(ii) Service provided in relation to export letters of credit such as advising commission, advising amendment, confirmation charges; (iii) Service of purchase or sale of foreign currency, including money changing provided to an exporter in relation to export goods.	
13.	(zzk)	Service of purchase or sale of foreign currency including money changing provided to an exporter in relation to export goods.	
14.	(zzzzj)	Service of supply of tangible goods for use, without transferring right of possession and effective control of tangible goods, provided to an exporter in relation to goods exported by the exporter.	
15.	(j)	Service provided by a clearing and forwarding agent in relation to export goods exported by the exporter.	Exporter shall produce,- (i) invoice issued by clearing and forwarding agent for providing services specified in column (3) specifying,- (a) number and date of shipping bill; (b) description of export goods; (c) number and date of the invoice issued by the exporter relating to export goods; (d) details of all the charges, whether or not reimbursable, collected by the clearing and forwarding agent from the exporter in relation to export goods; (ii) details of other taxable services provided by the said clearing and forwarding agent and received by the exporter, whether or not relatable to export goods.
16.	classified under any sub-clause of clause (105) of section 65.	Payment of service tax paid on services commonly known as terminal handling charges in relation to export goods exported by the exporter	
17.	(zzzzl)	Service provided for transport of export goods through national waterway, inland water and coastal shipping.	(i) The exporter shall produce the Bill of Lading or a Consignment Note or a similar document by whatever name called, issued by name; (b) produce evidence to the

			effect that the said transport is provided for export of said goods.
18.	(zzm)	Service provided by airports authority or any other person in any airport in respect of the export of said goods.	

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**Form A - 1**

Application for claiming refund of service tax paid on specified services used for export of the said goods, under Notification No. \_\_\_ / 20\_\_-ST

To,

The Deputy/Assistant Commissioner of Central Excise

Sir,

I/We claim refund of Rs..... (Rupees in words), under Notification No. \_\_\_ dated \_\_\_\_\_, in respect of service tax paid on specified services used for export of goods.

1. Name of the exporter:
2. Membership number of the Export Council:
3. Name of the Export Council:
4. Address of the registered / head office of exporter:
5. Telephone Number and e-mail ID of the exporter:
6. Division ..... Commissionerate .....
7. Central Excise Registration Number (for manufacturer exporter) / Service Tax Code Number (for exporters other than manufacturer exporter)
8. Import Export Code Number.....
9. Details of Bank Account (Name of Bank, branch address and account number)
10. Details of the refund claim (separately for each Shipping Bill): (Rupees in thousands)

(Rupees in thousands)

S. No.	Details of goods exported on which refund of service tax claimed.	
	Details of shipping bill/ bill of export, etc. (2)	Details of goods exported. (3)

No.	Date.	Date of Let export order.	Bill lading Airway bill Number.	of or Date.	Description of goods exported.	Quantity.	Unit.	FOB value.
Details of specified services used for export of goods mentioned in Columns 2 and 3. (4)						Documents attached to evidence the amount of service tax paid and establish the use of service in exports. (5)		Total amount of service tax claimed as refund. (6)
Name of service provider	Service Tax Registration No./ Service Tax Code	Invoice No (pl. attach original invoice)	Date	Description of specified service	Classification under the Finance Act, 1994	Total amount of service tax paid	In Figures	As a percentage of f.o.b. value in shipping bill

9. Declaration:-

I / We hereby declare that-

(i) the information given in this application form is true, correct and complete in every respect, in accordance with the notification and that I am authorised to sign on behalf of the exporter; electronic refund of service tax has not been received from customs on the shipping bills on which refund is claimed;

(ii) no CENVAT credit of service tax paid on the specified services used for export of said goods is/shall be taken under the CENVAT Credit Rules, 2004;

(iii) the exemption has been claimed for service tax which has been actually paid on the specified services;

(iv) I / we shall maintain records pertaining to export of said goods and the specified services used for export of the said goods and shall make available, at the declared premises, at all reasonable time, such records for inspection and examination by the Central Excise Officer authorised in writing by the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be.

Date:

Place:

Signature and full address of Exporter  
(Affix stamp)

Form A-2

Declaration by an exporter, for obtaining Service Tax Code  
(referred under clause 3(e) of Notification No. \_\_\_/20\_\_ - ST dated \_\_\_\_\_)

1. Name of the exporter:
2. Address of the registered office or head office of the Exporter :
3. Permanent Account Number (PAN) of the Exporter :
4. Import Export Code (IEC) of the Exporter:

5. Details of Bank Account of the Exporter:

- (a) Name of the Bank :
- (b) Name of the Branch :
- (c) Account Number :

6. (a) Constitution of Exporter [Proprietorship /Partnership /Registered Private Limited Company /Registered Public Limited Company /Others (specify)]

(b) Name, address and telephone number of proprietor /partner /director

7. Name, designation and address of the authorised signatory / signatories:

8. I / We hereby declare that-

(i) the information given in this application form is true, correct and complete in every respect and that I am authorised to sign on behalf of the exporter;

(ii) I / we shall maintain records pertaining to export of said goods and the specified services used for export of the said goods and shall make available, at the declared premises, at all reasonable time, such records for inspection and examination by the Central Excise Officer authorised in writing by the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be.

(Signature of the applicant / authorised person with stamp)

Date:  
Place:

Schedule of rates

The Chapter or sub-Heading and descriptions of goods in the following Schedule are aligned with the tariff items and descriptions of goods in the First Schedule to the Customs Tariff Act, 1975(51 of 1975). The General Rules for the Interpretation of the First Schedule to the said

Customs Tariff Act, 1975 shall mutatis mutandis apply for classifying the export goods listed in the Schedule.

Sl.No.	Chapter or sub-Heading No.	Description of goods	Rate
(1)	(2)	(3)	(4)
1	01	Live animal	-
2	02	Meat and Edible Meat Offal	0.1
3	03	Fish and Crustaceans, Molluscs and other Aquatic Invertebrates	0.1
4	04	Dairy Produce; Birds' Eggs; Natural honey; Edible Products of Animal origin, not elsewhere specified or included	0.1
5	05	Product of animal origin not elsewhere specified or included.	0.1
6	06	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage	0.1
7	07	Edible Vegetables and certain Roots and Tubers	0.1
8	08	Edible Fruits and Nuts, Peel of Citrus Fruit or Melons	0.1
9	09	Coffee, Tea, Mate and Spices	0.1
10	10	Cereals	0.1
11	11	Products of the milling industry; malt; starches; inulin; wheat gluten.	0.1
12	12	Oil seeds and Oleaginous Fruits; Miscellaneous Grains, Seeds and Fruit; Industrial and Medicinal Plants; Straw and Fodder	0.1
13	13	Lac; Gums, Resins and Other Vegetable Saps and Extracts	0.1
14	14	Vegetable plaiting materials; vegetable products, not elsewhere specified or included.	0.1
15	15	Animal or Vegetable fats and oils and their Cleavage products prepared edible fats; Animal or Vegetable Waxes	0.1
16	16	Preparations of Meat, or Fish or of Crustaceans, Molluscs or other Aquatic Invertebrates	0.1
17	17	Sugars and sugar confectionery	0.1
18	18	Cocoa and Cocoa preparations	0.1
19	19	Preparations of cereals, flour, starch or milk; pastry cooks' products	0.1
20	20	Preparation of Vegetables, Fruits, nuts or other parts of plants	0.2
21	21	Miscellaneous Edible Preparations	0.1
22	2201	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter not flavoured; ice and snow	0.1
23	2202	Waters, including mineral waters and aerated waters containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of heading 2009	0.1
24	2203	Beer made from malt	0.1
25	2204	Wine of fresh grapes, including fortified wines; grape must other than that of heading 2009	0.1
26	2205	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances	0.1
27	2206	Other fermented beverages (for example cider, perry, mead); mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included	0.1
28	2207	Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol. or higher; ethyl alcohol and other spirits, denatured, of any strength	0.2
29	2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than	0.1

		80% vol.; spirit, liquors and other spirituous beverages	
30	2209	Vinegar and substitutes for vinegar obtained from acetic acid	0.1
31	23	Residues and waste from the food industries; prepared animal fodder	0.03
32	24	Tobacco and manufactured tobacco substitutes	0.03
33	25	Salt; Sulphur; Earths And Stone; Plastering Materials, Lime And Cement	0.1
34	26	Ores, Slag And Ash	-
35	27	Mineral Fuels, Mineral Oils And Products Of Their Distillation; Bituminous Substances; Mineral Waxes	-
36	28	Inorganic Chemicals; Organic Or Inorganic Compounds Of Precious Metals, Of Rare-Earth Metals, Of Radioactive Elements Or Of Isotopes	0.1
37	29	Organic Chemicals	0.1
38	30	Pharmaceutical Products	0.2
39	31	Fertilizers	-
40	32	Tanning Or Dyeing Extracts; Tannins And Their Derivatives; Dyes, Pigments And Other Colouring Matter; Paints And Varnishes; Putty And Other Mastics; Inks	0.03
41	33	Essential Oils And Resinoids; Perfumery, Cosmetic Or Toilet Preparations	0.1
42	34	Soap, Organic Surface-Active Agents, Washing Preparations, Lubricating Preparations, Artificial Waxes, Prepared Waxes, Polishing Or Scouring Preparations, Candles And Similar Articles, Modeling Pastes, "Dental Waxes" And Dental Preparations With A Basis Of Plaster	0.1
43	35	Albuminoidal Substances; Modified Starches; Glues; Enzymes	0.1
44	36	Explosives	-
45	37	Photographic or Cinematographic Goods	0.1
46	38	Miscellaneous Chemical Products	0.1
47	39	Plastics And Articles Thereof	0.1
48	40	Rubber and Articles Thereof	0.05
49	41	Raw Hides And Skins (Other Than Fur skins) And Leather	0.03
50	4201	Saddlery and harness for any animal (including traces, leads, knee pads, muzzles, saddle cloths, saddle bags, dog coats and the like), of any material	0.05
51	4202	Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, insulated food or beverages bags, toilet bags, rucksacks, handbags, shopping-bags, wallets, purses, map-cases, cigarette-cases, tobacco-pouches, tool bags, sports bags, bottle-cases, jewellery boxes, powder-boxes, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paper-board, or wholly or mainly covered with such materials or with paper	0.1
52	4203	Articles of apparel and clothing accessories, of leather or of composition leather	0.1
53	4204	Omitted	-
54	4205	Other articles of leather or of composition leather	0.1
55	4206	Articles of gut (other than silk-worm gut), of goldbeater's skin, of bladders or of tendons	0.1
56	4301	Raw fur skins (including heads, tails, paws and other pieces or cuttings, suitable for furriers' use), other than raw hides and skins of headings 4101, 4102 or 4103	Nil
57	4302	Tanned or dressed fur skins (including heads, tails, paws and other pieces or cuttings), unassembled, or assembled (without the addition of other materials) other than those of heading 4303	0.1



58	4303	Articles of apparel, clothing accessories and other articles of fur skin	0.1
59	4304	Artificial fur and articles thereof	0.1
60	4401	Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms	Nil
61	4402	Wood charcoal (including shell or nut charcoal), whether or not agglomerated	Nil
62	4403	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared	Nil
63	4404	Hoop wood; split poles; piles, pickets and stakes of wood, pointed but not sawn lengthwise; wooden sticks, roughly trimmed but not turned, bent or otherwise worked, suitable for the manufacture of walking sticks, umbrellas, tool handles or the like; chip wood and the like	Nil
64	4405	Wood wool; wood flour	Nil
65	4406	Railway or tramway sleepers (cross-ties) of wood	Nil
66	4407	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end jointed, of a thickness exceeding 6 mm	Nil
67	4408	Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm	0.1
68	4409	Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, v-jointed, beaded, moulded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or end-jointed	0.1
69	4410	Particle board, oriented strand board (OSB) and similar board (for example wafer board) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances	0.1
70	4411	Fiberboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances	0.1
71	4412	Plywood, veneered panels and similar laminated wood	0.1
72	4413	Densified wood, in blocks, plates, strips or profile shapes	0.1
73	4414	Wooden frames for paintings, photographs, mirrors or similar objects	0.1
74	4415	Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, Box pallets and other load boards, of wood; pallet collars of wood	0.1
75	4416	Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves	0.1
76	4417	Tools, tool bodies, tool handles, broom or brush bodies and handles, of wood; boot or shoe lasts and trees, of wood	0.1
77	4418	Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, Shingles and shakes	0.1
78	4419	Tableware and kitchenware, of wood	0.1
79	4420	Wood marquetry and inlaid wood; caskets and cases for jewellery or cutlery, and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling in chapter 94	0.1
80	4421	Other articles of wood	0.1
81	45	Cork And Articles Of Cork	Nil
82	46	Manufactures of straw, of esparto or of other plaiting materials; basket-ware and wickerwork.	0.1
83	47	Pulp Of Wood Or Of Other Fibrous Cellulosic Material; Recovered (Waste And Scrap) Paper Or Paperboard	Nil
84	4801	Newsprint, in rolls or sheets	0.1

85	4802	Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes, and non perforated punch card and punch tape paper, in rolls or rectangular (including square) sheets of any size, other than paper of heading 4801 or 4803; hand-made paper and paperboard	0.1
86	4803	Toilet or facial tissue stock, towel or napkin stock and similar paper of a kind used for household or sanitary purposes, cellulose wadding and webs of cellulose fibres, whether or not creped, crinkled, embossed, perforated, surface-coloured, surface-decorated or printed, in rolls or sheets	0.1
87	4804	Uncoated Craft Paper And Paperboard, In Rolls Or Sheets, Other Than That Of Heading 4802 Or 4803	0.1
88	4805	Other uncoated paper and paperboard, in rolls or sheets, not further worked or processed than as specified in Note 3 to this Chapter	0.1
89	4806	Vegetable parchment, greaseproof papers, tracing papers and glassine and other glazed transparent or translucent papers, in rolls or sheets	0.1
90	4807	Composite paper and paperboard (made by sticking flat layers of paper or paperboard together with an adhesive), not surface-coated or impregnated, whether or not internally reinforced, in rolls or sheets	0.1
91	4808	Paper and paperboard, corrugated (with or without glued flat surface sheets), creped, crinkled, embossed or perforated, in rolls or sheets, other than paper of the kind described in heading 4803	0.1
92	4809	Carbon paper, self-copy paper and other copying or transfer papers (including coated or impregnated paper for duplicator stencils or offset plates), whether or not printed; in rolls or sheets	0.1
93	4810	Paper and paperboard, coated on one or both sides with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating, whether or not surface - coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size	0.1
94	4811	Paper, paperboard, cellulose wadding and webs of cellulose fibres, coated, impregnated, covered, surface coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810	0.1
95	4812	Filter blocks, slabs and plates, of paper pulp	0.1
96	4813	Cigarette paper, whether or not cut to size or in the form of booklets or tubes	0.1
97	4814	Wallpaper and similar wall coverings; window transparencies of paper	0.1
98	4815	Deleted	
99	4816	Carbon-paper, self-copy paper and other copying or transfer papers (other than those of heading 4809), duplicator stencils and offset plates, of paper, whether or not put up in boxes	0.1
100	4817	Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery	0.15
101	4818	Toilet paper and similar paper, cellulose wadding or webs of cellulose fibres, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, table cloths, serviettes, napkins for babies, tampons, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibres	0.15
102	4819	Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like	0.15

103	4820	Registers, account books, note books, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, excise books, blotting-pads, binders (loose-leaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers, of paper or paperboard	0.15
104	4821	Paper or paperboard labels of all kinds, whether or not printed	0.15
105	4822	Bobbins, spools, cops and similar supports of paper pulp, paper or paperboard (whether or not perforated or hardened)	0.15
106	4823	Other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres	0.15
107	49	Printed Books, Newspapers, Pictures And Other Products Of The Printing Industry; Manuscripts, Typescripts And Plans	0.1
108	50	Silk	0.1
109	51	Wool, Fine or Coarse Animal hair, Horsehair Yarn and Woven Fabrics	0.1
110	5201	Cotton, not carded or combed	Nil
111	5202	Cotton waste (including yarn waste and garnetted stock)	Nil
112	5203	Cotton, carded or combed	Nil
113	5204	Cotton sewing thread, whether or not put up for retail sale	Nil
114	5205	Cotton yarn (other than sewing thread), containing 85% or more by weight of cotton, not put up for retail sale	0.05
115	5206	Cotton yarn (other than sewing thread), containing less than 85% by weight of cotton, not put up for retail sale	0.05
116	5207	Cotton yarn (other than sewing thread) put up for retail sale	0.05
117	5208	Woven fabrics of cotton, containing 85% or more by weight of cotton, weighing not more than 200 g/m <sup>2</sup>	0.1
118	5209	Woven fabrics of cotton, containing 85% or more by weight of cotton, weighing more than 200 g/m <sup>2</sup>	0.1
119	5210	Woven fabrics of cotton, containing less than 85% by weight of cotton, mixed mainly or solely with man-made fibres, weighing not more than 2000.1 g/m <sup>2</sup>	0.1
120	5211	Woven fabrics of cotton, containing less than 85% by weight of cotton, mixed mainly or solely with man-made fibres, weighing more than 2000.1 g/m <sup>2</sup>	0.1
121	5212	Other woven fabrics of cotton	0.1
122	53	Other Vegetable Textile Fibres; Paper yarn and Woven Fabrics of Paper yarn	0.1
123	5401	Sewing thread of man-made filaments, whether or not put up for retail sale	0.05
124	5402	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex	0.05
125	5403	Artificial filament yarn (other than sewing thread), not put for retail sale, including artificial mono filament of less than 67 decitex	0.05
126	5404	Synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; strip and the like (for example, artificial straw) of synthetic textile materials of an apparent width not exceeding 5 mm	0.05
127	5405	Artificial monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; strip and the like (for example, artificial straw) of artificial textile materials of an apparent width not exceeding 5 mm	0.05
128	5406	Man-made filament yarn (other than sewing thread), put up for retail sale	0.05

129	5407	Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404	0.1
130	5408	Woven fabrics of artificial filament yarn, including woven fabrics obtained from materials of heading 5405	0.1
131	5501	Synthetic filament tow	0.05
132	5502	Artificial filament tow	0.05
133	5503	Synthetic staple fibres, not carded, combed or otherwise processed for spinning	0.05
134	5504	Artificial staple fibres, not carded, combed or otherwise processed for spinning	0.05
135	5505	Waste (including noils, yarn waste and garneted stock) of man-made fibres	0.05
136	5506	Synthetic staple fibres, carded, combed or otherwise processed for spinning	0.05
137	5507	Artificial staple fibres, carded, combed or otherwise processed for spinning	0.05
138	5508	Sewing thread of man-made staple fibres, whether or not put up for retail sale	0.05
139	5509	Yarn (other than sewing thread) of synthetic staple fibres, not put up for retail sale	0.05
140	5510	Yarn (other than sewing thread) of artificial staple fibres, not put up for retail sale	0.05
141	5511	Yarn (other than sewing thread) of man-made staple fibres, put up for retail sale	0.05
142	5512	Woven fabrics of synthetic staple fibres, containing 85% or more by weight of synthetic staple fibres	0.1
143	5513	Woven fabrics of synthetic staple fibres, containing less than 85% by weight of such fibres, mixed mainly or solely with cotton, of a weight not exceeding 170g/m <sup>2</sup>	0.1
144	5514	Woven fabrics of synthetic staple fibres, containing less than 85% by weight of such fibres, mixed mainly or solely with cotton, of a weight exceeding 170 g/m <sup>2</sup>	0.1
145	5515	Other woven fabrics of synthetic staple fibres	0.1
146	5516	Woven fabrics of artificial staple fibres	0.1
147	56	Wadding, Felt and Non-Woven; special yarns; twine, cordage, ropes and cables and Articles thereof	0.1
148	57	Carpets and Other Textile Floor Coverings	0.1
149	58	Special Woven Fabrics; Tufted Textile Fabrics; Lace; Tapestries; Trimmings; Embroidery	0.1
150	59	Impregnated, Coated, Covered or Laminated Textile Fabrics; Textile Articles of a kind suitable for Industrial use	0.1
151	60	Knitted or crocheted fabrics	0.1
152	61	Articles of Apparel and Clothing Accessories, Knitted or Crocheted	0.15
153	62	Articles of Apparel and Clothing Accessories, Not Knitted or Crocheted	0.15
154	63	Other Made Up Textiles Articles; Sets; Worn Clothing and Worn Textile Articles; Rags	0.15
155	64	Footwear, gaiters and the like; parts of such articles	0.1
156	65	Headgear and parts thereof	0.05
157	66	Umbrellas, sun umbrellas, walking-sticks, whips, riding-crops and parts thereof	0.03
158	67	Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair	0.1
159	68	Articles of stone, plaster, cement, asbestos, mica or similar materials	0.15

160	69	Ceramic Products	0.15
161	70	Glass And Glassware	0.15
162	71	Natural Or Cultured Pearls, Precious Or Semi-Precious Stones, Precious Metals, Metals Clad With Precious Metal, And Articles Thereof; Imitation Jewellery; Coin	0.03
163	7201	Pig iron and spiegeleisen in pigs, blocks or other primary forms	0.03
164	7202	Ferro alloys	0.15
165	7203	Ferrous products obtained by direct reduction of iron ore and other spongy ferrous products, in lumps, pellets or similar forms; iron having minimum purity by weight of 99.94%, in lumps, pellets or similar forms	0.03
166	7204	Ferrous waste and scrap; remelting scrap ingots of iron or steel	0.03
167	7205	Granules and powders, of pig iron, spiegeleisen, iron or steel	0.03
168	7206	Iron and non-alloy steel in ingots or other primary forms (excluding iron of heading 7203)	0.03
169	7207	Semi-finished products of iron or non-alloy steel	0.03
170	7208	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated	0.03
171	7209	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated	0.03
172	7210	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated	0.03
173	7211	Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, not clad, plated or coated	0.03
174	7212	Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, clad, plated or coated	0.03
175	7213	Bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel	0.03
176	7214	Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling	0.03
177	7215	Other bars and rods of iron or non-alloy steel	0.03
178	7216	Angles, shapes and sections of iron or non-alloy steel	0.03
179	7217	Wire of iron or non-alloy steel	0.15
180	7218	Stainless steel in ingots or other primary forms; semi-finished products of stainless steel	0.03
181	7219	Flat-rolled products of stainless steel, of a width of 600 mm or more	0.03
182	7220	Flat-rolled products of stainless steel, of a width of less than 600 mm	0.03
183	7221	Bars and rods, hot-rolled, in irregularly wound coils, of stainless steel	0.03
184	7222	Other bars and rods of stainless steel; angles, shapes and sections of stainless steel	0.03
185	7223	Wire of stainless steel	0.15
186	7224	Other alloy steel in ingots or other primary forms; semi-finished products of other alloy steel	0.03
187	7225	Flat-rolled products of other alloy steel, of a width of 600 mm or more	0.03
188	7226	Flat-rolled products of other alloy steel, of a width of less than 600 mm	0.03
189	7227	Bars and rods, hot-rolled, in irregularly wound coils, of other alloy steel	0.03
190	7228	Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel	0.03
191	7229	Wire of other alloy steel	0.15
192	7301	Sheet piling of iron or steel, whether or not drilled, punched or made from assembled elements; welded angles, shapes and sections, of iron or steel	0.05
193	7302	Railway or tramway track construction material of iron or steel, the	0.05

		following: rails, check-rails and rack rails, switch blades, crossing frogs, point rods and other crossing pieces, sleepers (cross-ties), fish-plates, chairs, chair wedges, sole plates (base plates), rail clips, bedplates, ties and other material specialized for jointing or fixing rails	
194	7303	Tubes, pipes and hollow profiles, of cast iron	0.05
195	7304	Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel	0.05
196	7305	Other tubes and pipes (for example, welded, riveted or similarly closed), having circular cross-sections, the external diameter of which exceeds 406.4 mm, of iron or steel	0.05
197	7306	Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel	0.05
198	7307	Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel	0.05
199	7308	Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel	0.05
200	7309	Reservoirs, tanks, vats and similar containers for any material (other than compressed or liquefied gas), of iron or steel, of a capacity exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment	0.05
201	7310	Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment	0.05
202	7311	Containers for compressed or liquefied gas, of iron or steel	0.05
203	7312	Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated	0.05
204	7313	Barbed wire of iron or steel; twisted hoop or single flat wire, barbed or not, and loosely twisted double wire, of a kind used for fencing of iron or steel	0.05
205	7314	Cloth (including endless bands), Grill, netting and fencing, of iron or steel wire; expanded metal of iron or steel	0.05
206	7315	Chain and parts thereof, of iron or steel	0.05
207	7316	Anchors, grapnels and parts thereof, of iron or steel	0.05
208	7317	Nails, tacks, drawing pins, corrugated nails, staples (other than those of heading 8305) and similar articles, of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper	0.15
209	7318	Screws, bolts, nuts, coach-screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel	0.15
210	7319	Sewing needles, knitting needles, bodkins, crochet hooks, embroidery stilettos and similar articles, for use in the hand, of iron or steel; safety pins and other pins, of iron or steel, not elsewhere specified or included	0.15
211	7320	Springs and leaves for springs, of iron or steel	0.15
212	7321	Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron or steel	0.15
213	7322	Radiators for central heating, not electrically heated, and parts thereof, of iron or steel; air heaters and hot air distributors (including distributors	0.15

		which can also distribute fresh or conditioned air), not electrically heated, incorporating a motor-driven fan or blower, and parts thereof, of iron or steel	
214	7323	Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel	0.15
215	7324	Sanitary ware and parts thereof, of iron or steel	0.15
216	7325	Other cast articles of iron or steel	0.15
217	7326	Other articles of iron and steel	0.15
218	7401	Copper mattes; cement copper (precipitated copper)	0.03
219	7402	Unrefined copper; copper anodes for electrolytic refining	0.03
220	7403	Refined copper and copper alloys, unwrought	0.03
221	7404	Copper waste and scrap	0.03
222	7405	Master alloys of copper	0.03
223	7406	Copper powders and flakes	0.03
224	7407	Copper bars, rods and profiles	0.03
225	7408	Copper wire	0.03
226	7409	Copper plates, sheets and strip, of a thickness exceeding 0.15 mm	0.03
227	7410	Copper foil (whether or not printed or backed with paper, per board, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.15 mm	0.03
228	7411	Copper tubes and pipes	0.15
229	7412	Copper tube or pipe fittings (for example, couplings, elbows, sleeves)	0.15
230	7413	Stranded wire, cables, plated bands and the like, of copper, not electrically insulated	0.15
231	7414	Deleted	
232	7415	Nails, tacks, drawing pins, staples (other than those of heading 8305) and similar articles, of copper or of iron or steel with heads of copper; screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of copper	0.15
233	7416	Deleted	
234	7417	Deleted	
235	7418	Table, kitchen or other household articles and parts thereof, of copper; pot scourers and scouring or polishing pads, gloves and the like, of copper; sanitary ware and parts thereof, of copper	0.15
236	7419	Other articles of copper	0.15
237	75	Nickel and articles thereof	0.03
238	7601	Unwrought aluminium	0.03
239	7602	Aluminium waste and scrap	0.03
240	7603	Aluminium powders and flakes	0.03
241	7604	Aluminium bars, rods and profiles	0.03
242	7605	Aluminium wire	0.03
243	7606	Aluminium plates, sheets and strip, of a thickness exceeding 0.2 mm	0.03
244	7607	Aluminium foil (whether or not printed or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2mm	0.03
245	7608	Aluminium tubes and pipes	0.15
246	7609	Aluminium tube or pipe fittings (for example, couplings, elbows, sleeves)	0.15
247	7610	Aluminium structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); aluminium plates, rods, profiles, tubes and the like, prepared for use in	0.15

		structures	
248	7611	Aluminium reservoirs, tanks, vats and similar containers, for any material (other than compressed or liquefied gas), of a capacity exceeding 300l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment	0.15
249	7612	Aluminium casks, drums, cans, boxes and similar containers (including rigid or collapsible tubular containers), for any material (other than compressed or liquefied gas), of a capacity not exceeding 300l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment	0.15
250	7613	Aluminium containers for compressed or liquefied gas	0.15
251	7614	Stranded wire, cables, plaited bands and the like, of aluminium, not electrically insulated	0.15
252	7615	Table, kitchen or other household articles and parts thereof, of aluminium; pot scourers and scouring or polishing pads, gloves and the like, of aluminium; sanitary ware and parts thereof, of aluminium	0.15
253	7616	Other articles of aluminium	0.15
254	78	Lead and articles thereof	0.03
255	79	Zinc and articles thereof	0.03
256	80	Tin and articles thereof	0.03
257	81	Other base metals; cermets, articles thereof	0.03
258	82	Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal	0.15
259	83	Miscellaneous articles of base metal	0.15
260	84	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	0.05
261	85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	0.05
262	86	Railway or tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signaling equipment of all kinds	0.05
263	8701	Tractors (other than tractors of heading 8709)	0.05
264	8702	Motor vehicles for the transport of ten or more persons, including the driver	0.05
265	8703	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars	0.05
266	8704	Motor vehicles for the transport of goods	0.05
267	8705	Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixers lorries, spraying lorries, mobile workshops, mobile radiological units)	0.05
268	8706	Chassis fitted with engines, for the motor vehicles of headings 8701 to 8705	0.05
269	8707	Bodies (including cabs), for the motor vehicles of headings 8701 to 8705	0.05
270	8708	Parts and accessories of the motor vehicles of headings 8701 to 8705	0.05
271	8709	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles	0.05
272	8710	Tanks and other armoured fighting vehicles, motorized, whether or not fitted with weapons, and parts of such vehicles	0.05



273	8711	Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars;	0.05
274	8712	Bicycles and other cycles (including delivery tricycles), not motorised	0.1
275	8713	Carriages for disabled persons, whether or not motorised or otherwise mechanically propelled	0.05
276	8714	Parts and accessories of vehicles of headings 8711 to 8713	0.15
277	8715	Baby carriages and parts thereof	0.05
278	8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof	0.05
279	88	Aircraft, spacecraft, and parts thereof	0.05
280	89	Ships, boats and floating structures	0.05
281	90	Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	0.1
282	91	Clocks and watches and parts thereof	0.05
283	92	Musical instruments; parts and accessories of such articles	0.2
284	93	Arms and ammunition; parts and accessories thereof	-
285	94	Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like; prefabricated buildings	0.05
286	95	Toys, games and sports requisites; parts and accessories thereof	0.2
287	96	Miscellaneous manufactured articles	0.03
288	97	Works of art, collector's pieces and antiques	-

(Samar Nanda)  
Under Secretary to the Government of India  
F.No.354/66 /2011-TRU

Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Excise & Customs)

Circular No. 147/16/2011 - Service Tax

New Delhi, 21<sup>st</sup> October 2011

To

Chief Commissioners of Central Excise & Customs (All)

Chief Commissioners of Central Excise (All)

Director General of Central Excise Intelligence

Director General of Audit & DGST

Commissioners of Service Tax (All)

Madam/Sir

**Subject: Commercial construction/infrastructure development projects of road, airports, dams, tunnels etc, - levy of service tax on various service providers engaged / associated with such construction work - regarding;**

Reference is invited to the Circular No. 138/07/2011 - Service Tax dated 06.05.2011 wherein it was clarified that the services provided by the subcontractors / consultants and other service providers to the Works Contract Service (WCS) provider in respect of construction of Dams, Tunnels, Road, Bridges etc. are classifiable as per Section 65 A of the Finance Act, 1994 under respective sub clauses (105) of Section 65 of the Finance Act and are chargeable to service tax accordingly. Clarification has been requested as to whether the exemption available to the Works Contract Service providers in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., is also available to the sub-contractors who provide Works Contract Service to these main contractors in relation to those very projects.

2. The matter has been examined. Vide the circular referred above, it was clarified that when the service provider is providing WCS service in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc. and he in turn is receiving various services like Architect service, Consulting Engineer service, Construction of complex, Design service, Erection Commissioning or installation, Management, maintenance or repair etc., which are used by him in providing output service, then while exemption is available to the main contractor (as per Section 65 (zzzza) of the Finance Act), as regards the services provided by its subcontractors, the same are distinctly classifiable under the respective sub-clauses of section 65 (105) of the Finance Act, as per their description and that their taxability shall be decided accordingly. It is thus apparent that just because the main contractor is providing the WCS service in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., it would not automatically lead to the classification of services being provided by the sub-contractor to the contractor as WCS. Rather, the classification would have to be independently done as per the rules and the taxability would get decided accordingly.

3. However, it is also apparent that in case the services provided by the sub-contractors to the main contractor are independently classifiable under WCS, then they too will get the benefit of exemption so long as they are in relation to the infrastructure projects mentioned above. Thus, it may happen that the main infrastructure projects of execution of works contract in respect of roads, airports, railways, transport terminals, bridges tunnels and dams, is sub-divided into several sub-projects and each such sub-project is assigned by the main contractor to the various sub-contractors. In such cases, if the sub-contractors are providing works contract service to the main contractor for completion of the main contract, then service tax is obviously not leviable on the works contract service provided by such sub-contractor.

It is hoped that this clarifies the statutory position. The Circular may please be widely disseminated to the trade and field formations.

**Yours faithfully**  
**(Deepankar Aron)**  
**Director (Service Tax)**  
**CBEC, New Delhi**  
**F. No. 137/57/2011 - Service Tax**

G.S.R. (E).- In exercise of the powers conferred under clause (a) and clause (hhh) of sub-section (2) of section 94 of the Finance Act, 1994, the Central Government hereby makes the following rules for the purpose of collection of service tax and determination of rate of service tax, namely,-

**1. Short title and commencement.**-(1) These rules shall be called the Point of Taxation Rules, 2011.

(2) They shall come into force on the 1<sup>st</sup> day of April, 2011.

**2. Definitions.**- In these rules, unless the context otherwise requires,-

- (a) "Act" means the Finance Act, 1994 (32 of 1994);
- (b) "associated enterprises" shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961 (43 of 1961);
- (c) "continuous supply of service" means any service which is provided, or to be provided continuously, under a contract, for a period exceeding three months, or where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition;
- (d) "invoice" means the invoice referred to in rule 4A of the Service Tax Rules, 1994 and shall include any document as referred to in the said rule;
- (e) "point of taxation" means the point in time when a service shall be deemed to have been provided;
- (f) "taxable service" means a service which is subjected to service tax, whether or not the same is fully exempt by the Central Government under Section 93 of the Act;

**3. Determination of point of taxation.**- For the purposes of these rules, unless otherwise stated, 'point of taxation' shall be determined in the following manner, namely:-

- (a) a provision of service shall be treated as having taken place at the time when service is provided or to be provided; and
- (b) if, before the time specified in clause (a), the person providing the service issues an invoice or receives a payment, the service shall, to the extent covered by the invoice or the payment made thereof, be deemed to have been provided at the time the invoice was issued or the payment was received, as the case may be, whichever is earlier.

Explanation.- For the purposes of this rule, wherever any advance, by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

Explanation 2.- For the purposes of this rule, in respect of services taxable under section 66A of the Act, the point of taxation under clause (b) shall be the date on which the invoice is received, or the payment is made, as the case may be, whichever is earlier.

thereof, be deemed to have been provided at the time the invoice was issued or the payment was received, as the case may be, whichever is earlier.

Explanation.- For the purposes of this rule, wherever any advance, by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

Explanation 2.- For the purposes of this rule, in respect of services taxable under section 66A of the Act, the point of taxation under sub-rule (2) shall be the date on which the invoice is received, or the payment is made, as the case may be, whichever is earlier.

**7. Determination of point of taxation in case of associated enterprises.-** The point of taxation in respect of associated enterprises shall be the date on which the payment has been made, or invoice under rule 4A of the Service Tax Rules, 1994 has been issued, or the date of debit or credit in books of accounts of the person liable to pay service tax, whichever is earlier.

**8. Determination of point of taxation in case of copyrights, etc. .-** In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, the service shall be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect thereof, or an invoice is issued by the provider, whichever is earlier.

**9. Savings.-** Nothing contained in these rules shall be applicable in case of invoices issued prior to the date from which these rules become effective.

[F. No. 334/3/2011-TRU]

  
(SAMAR NANDA)

Under Secretary to the Government of India

**Circular No. 144/13/ 2011 - ST**

F.No.354/93/2011-TRU

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise and Customs

Tax Research Unit

North Block, New Delhi

18<sup>th</sup> July, 2011

To

Chief Commissioners of Central Excise and Service Tax (All),

Director General (Service Tax),

Director General (Central Excise Intelligence),

Director General (Audit),

Commissioners of Service Tax (All),

Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

**Subject: - Clarification on "Completion of service"- regarding.**

Representations requesting clarification on "completion of service" as provided under the Point of Taxation Rules, 2011 and Service Tax Rules, 1994 have been received from certain sections of service providers that in many situations it is not possible to issue invoices within 14 days of the completion of the service since the exact date of completion of service is difficult to identify. Instances have been given where after the task of providing the service may be physically accomplished, but certain other formalities are required to be completed from the client's end before an invoice can be issued.

2. These representations have been examined. The Service Tax Rules, 1994 require that invoice should be issued within a period of 14 days from the completion of the taxable service. The invoice needs to indicate inter alia the value of service so

# Point of time

- effective from 1.7.2011
- invoices to be raised within 14 days  
of the date of receipt.
- payment to be made. In quarterly basis.

1.7.2011

① Circulars. 18/2011  
25/2011  
28/2011

point of Donations.

52/14/2011

all projects

Sale

11.7.2011

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,  
SECTION 3, SUB-SECTION (i)]

Government of India

Ministry of Finance

Department of Revenue

New Delhi, 1<sup>st</sup> April, 2011

**Notification No.28/2011 - Service Tax**

G.S.R. (E).- In exercise of the powers conferred under clause (a) and clause (hhh) of sub-section (2) of section 94 the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), read with clause (c) of rule (2) of the Point of Taxation Rules, 2011(hereinafter referred to as the said rules), the Central Government hereby notifies that the provision of taxable services referred to in clauses (zzq), (zzzh), (zzzx), (zzzu) and (zzzza) of section 65(105) of the Finance Act, shall be treated as continuous supply of service, for the purpose of the said rules.

[F. No. 334/3/ 2011 - TRU]

(SAMAR NANDA)

Under Secretary to the Government of India



**2011 (21) S.T.R. 551 (Tri. - Bang.)**

IN THE CESTAT, SOUTH ZONAL BENCH, BANGALORE  
S/Shri P.G. Chacko, Member (J) and P. Karthikeyan, Member (T)

**MOHTISHAM COMPLEXES (P) LTD.**  
*Versus*  
**COMMISSIONER OF C. EX., MANGALORE**

Stay Order No. 798/2010, dated 1-10-2010 in Application No. ST/Stay/807/2010 in Appeal No. ST/1390/2010

**Stay/Dispensation of pre-deposit - Commercial or Industrial Construction service - Construction of Residential Complex service - Service tax not paid on construction undertaken through contractors prior to 1-7-2010 - Agreements indicating that Service tax liability placed on contractors - Contractors paid Service tax under Works Contract service availing composition scheme - Demand on taxable value part of which Service tax paid by contractors - Appellant contending that **builder** not a service provider before 1-7-2010 as per explanations inserted from 1-7-2010 - Advances received from prospective buyers and case not covered by said explanation - Deeming provision applicable prospectively from 1-7-2010 and **builder** not deemed to be service provider vis-a-vis prospective buyers in present case - Dispute prior to 1-7-2010 - Prima facie case against demand - Amount of Rs. 64 lakhs paid already - Pre-deposit waived - Recovery stayed - Section 35F of Central Excise Act, 1944 as applicable to Service tax vide Section 83 of Finance Act, 1994. [paras 1, 3, 5, 6]**

**Stay granted**

**CASE CITED**

Rohan **Builders** Ltd. v. Commissioner — 2009 (13) S.T.R. 56 (Tribunal) — *Referred*.....

**DEPARTMENTAL CLARIFICATION CITED**

C.B.E. & C. Circular No. 108/2/2009-S.T., dated 29-1-2009.....

REPRESENTED BY : Shri K.S. Ravi Shankar, Advocate, for the Appellant.  
Shri D.P. Nagendra Kumar, Jt. CDR, for the Respondent.

**[Order per : P.G. Chacko, Member (J)].** - In this application, the appellant seeks waiver of pre-deposit and stay of recovery in respect of service tax of over Rs. 8.71 Crores and equal amount of penalty. On a perusal of the records, we note that, for the period 16-6-2005 to 31-3-2008, the department demanded service tax from the appellant by show-cause notice dated 18-4-2007 alleging that they had provided 'Commercial or Industrial Construction' Service and 'Construction of Complex' Service during the above period but did not pay appropriate amount of service tax in respect of the construction works which were got done through their contractors. The works in question were undertaken in terms of agreements between the appellant-company and various beneficiaries (prospective buyers). In one category of transaction, the appellant purchased land and transferred possession thereof to others (contractors) who constructed commercial/residential buildings, which were subsequently disposed of by outright sale to the beneficiaries. In a second category, the appellant entered into agreements with land owners for construction of such buildings through contractors and the buildings were subsequently sold and the profits arising out of such sale were shared by the appellant and the land owners. In the third category, the appellant entered into "joint venture" agreements with land owners, and buildings were got constructed through contractors employed by the joint venture and these buildings were subsequently disposed by sale and the profits were shared. The impugned demand of service tax is on the land value plus cost of building materials plus labour charges and so-on. It appears from the relevant agreements that the liability to pay service tax was placed on the contractors. The contractors accordingly paid service tax at the compounded rate of 2.06% as applicable to "works contracts". The impugned demand of service tax is on a taxable value, on a part of which the contractors paid service tax. The demand is in terms of Section 65(105)(zzq) read with Section 65(25b) of the Finance Act, 1994 in respect of 'commercial complex' and in terms of Section 65(105)(zzzh) read with Section 65 (30a) of the Act in respect of 'residential complex'.

2. The demand of tax and the proposal to impose penalty were contested by the company and, in adjudication of the dispute, the learned Commissioner passed an order against the assessee, which was taken in

appeal to this Tribunal, which was disposed by a remand order dated 16-3-2009. The learned Commissioner was required to pass fresh order in adjudication of the dispute. Pursuant to the remand order of this Bench, the learned Commissioner also took up two subsequent show-cause notices dated 29-7-2008 and 21-10-2008 and, after hearing the assessee, passed a common order in adjudication of all the three show-cause notices. The challenge, mainly, is against the demand of service tax covered by the three show-cause notices.

3. After hearing the learned counsel for the appellant and the learned Jt. CDR for the Revenue, we note that the appellant has disowned tax liability inasmuch as the contractors paid appropriate service tax and there was no liability for the appellant to pay service tax on the same subject-matter prior to 1-7-2010. This plea is based on an *Explanation* added to sub-clause (zzq) and a similar *Explanation* added to sub-clause (zzzh) of clause (105) of Section 65 of the Finance Act, 1994. One of these explanations is reproduced below :-

"*Explanation.* - For the purposes of this sub-clause, the construction of a new building which is intended for sale, wholly or partly, by a **builder** or any person authorised by the **builder** before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the **builder** or the person authorised by the **builder** before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the **builder** to the buyer;]"

The above *Explanation* was added to sub-clause (zzq). The said sub-clause laid down that any service provided or to be provided to any person by any other person in relation to "commercial or industrial construction" would be a taxable service. As per sub-clause (zzzh), any service provided or to be provided by any person to any other person in relation to "construction of residential complex" would also be a taxable service. An explanation similar to the above was added to this sub-clause also. Both the *Explanations* came to be inserted with effect from 1-7-2010 by Section 76 of the Finance Act, 2010. The learned counsel has argued that, prior to the enactment of the above *Explanations*, a **builder** was not a service provider and that a **builder** could be deemed to be service provider only with effect from 1-7-2010 and, therefore, the demand of service tax on the appellant for the periods of dispute, which are admittedly prior to 1-7-2010 cannot be sustained in law. The learned counsel has also claimed support from Board's Circular No. 108/2/2009-S.T, dated 29-1-2009. The learned counsel has also emphasized the point that the department cannot demand service tax from the appellant in respect of a transaction, in relation to which the contractors paid service tax.

4. The learned Jt. CDR has argued that the aforesaid *Explanations* should be given retrospective effect inasmuch as, according to him, they are purely clarificatory of existing provisions. He has also claimed support from the Tribunal's decision in the case of *Rohan Builders Ltd. v. Commissioner of Service Tax, Bangalore* [2009 (13) S.T.R. 56 (Tri. - Bang.)] wherein the appellant-company was found to have undertaken development of property through contractors for construction of residential complex and it was held to have rendered taxable service defined under Section 65(105)(zzzh) read with Section 65(30a) of the Finance Act, 1994.

5. After considering the submissions, we have found substance in the legal plea made by the learned counsel. Learned Jt. CDR has fairly conceded the fact that, before completion of construction of building complex, advances were received by the appellant from the prospective buyers. Therefore it stands tacitly conceded that the present case is not covered by the clause given in parenthesis in the text of the *Explanation*. In other words, the present case is covered by the situation envisaged in the main part of the *Explanation*, thereby meaning that the appellant as a **builder** cannot be deemed to be service provider vis-a-vis prospective buyers of the buildings. The deeming provision would be applicable only from 1-7-2010. Our attention, has also been taken to the texts of certain other *Explanations* figuring under Section 65(105). In some of these *Explanations*, there is an express mention of retrospective effect. Therefore, there appears to be substance in the learned counsel's argument that the deeming provision contained in the explanation added to Section 65(105)(zzq) and (zzzh) of the Finance Act, 1994 will have only prospective effect from 1-7-2010. Apparently, prior to this date, a **builder** cannot be deemed to be service provider providing any service in relation to industrial/commercial or residential complex to the ultimate buyers of the property. Admittedly, the entire dispute in the present case lies prior to 1-7-2010. The appellant has made out *prima facie* case against the impugned demand of service tax and the connected penalty. We also take note of the fact that the appellant paid an amount of over Rs. 64 lakhs, which stands appropriated towards the impugned demand of tax. It is also pertinent to mention that their contractors also paid service tax on a part of the taxable value.

6. In the aforesaid circumstances, there shall be waiver of pre-deposit and stay of recovery in respect of the amount of service tax and penalty. The stay application is allowed.

(Pronounced and dictated in the open court)

*intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorized by the builder before the grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer".*

4. Representations have been received from trade requesting clarification particularly for advance payments for services of Construction of Residential Complex rendered after 1-7-2010 and also for service tax collected by builders even where no liability exists. It is hereby clarified that-

(a) Where services of construction of Residential Complex were rendered prior to 1-7-2010 no Service Tax is leviable in terms of para 3 of Boards Circular number 108/02/2009-S.T., dated 29-1-2009. The Service of Construction of Residential Complex would attract service tax from 1-7-2010. Despite no service tax liability, if any amount has been collected by the builder as "Service Tax" for Services rendered prior to 1-7-2010, the same is required to be deposited by the builder to the Service tax department. Builder can not retain the amount collected as Service Tax.

(b) For services rendered after 1-7-2010 for which payment has been or is made after 1-7-2010, service tax is leviable and builder is liable to deposit the service tax to the service tax department. The only exception to this is provided within the parenthesis ( ) in the "Explanation" in para 3.

(c) For services rendered after 1-7-2010 for which payment was made prior to 1-7-2010, service tax has been exempted by the Govt. based on documentary evidence vide notification no. 36/2010-S.T., dated 28-6-2010 as amended. Therefore, this benefit can be availed by builders on the basis of documentary evidence.

#### **5. Authority competent to issue completion certificate**

As regards authority competent to issue completion certificate, the MOF has issued Service Tax (Removal of Difficulties) Order, 2010 effective from 1-7-2010 vide M.F. (D.R.) Order No. 1/2010, dated 22-6-2010 stating that the expression 'authority competent' includes besides any Government authority-

(i) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(ii) chartered engineer registered with the institution of Engineers (India); or

(iii) licensed surveyor of the respective local body of the city or town or village or development or planning authority:

who is authorized under any law for the time being in force, to issue a completion certificate in respect of residential or commercial or industrial complex, as a per condition for its occupation.

6. All the Trade Associations and Chamber of Commerce and Industries are requested to bring the contents of this trade facility to the notice of the members of the association.

**F.No. VGN(30)80/Trade Notice/10/ Pune, the 15 th Feb, 2011**

**B.SVASUDEV  
COMMISSIONER  
C.EX&S.Tax**

*[Commissioner of Central Excise , Pune-III, Trade Facility No. 1/2011, dated 15-2-2011]*

29-Apr-11

**2010 (19) S.T.R. 336 (A.P.)**

IN THE HIGH COURT OF JUDICATURE FOR ANDHRA PRADESH AT HYDERABAD  
Goda Raghuram and Noushad Ali, JJ.

**TRENT LTD.**  
*Versus*  
**UNION OF INDIA**

W.P.M.P. No. 15963 of 2010 in W.P. No. 12681 of 2010, decided on 7-6-2010

**Renting of Immovable Property service - Challenge to imposition of Service tax - Pleas that (i) renting did not add any value, (ii) it encroached on legislative power of State under Entry 49 of List II of Constitution of India, covering "taxes on lands and buildings" and hence Parliament was not competent to levy it, and (iii) its levy with retrospective effect was arbitrary - HELD : Contentions eminently arguable and plea about retrospective effect was prima facie on more substantial ground - Pending the writ petition, Department directed not to initiate coercive steps for recovery of Service tax for retrospective period - For prospective period from 1-4-2010, assessee found liable to pay the Service tax, but subject to outcome of their petition - Section 66(105)(zzzz) of Finance Act, 1994. [para 3]**

**Stay partly granted**

**CASE CITED**

Home Solution Retail India Ltd. v. Union of India — 2009 (14) S.T.R. 433 (Del.) = 2009 (237) E.L.T. 209 (Del.) — Referred.....

REPRESENTED BY : Shri S. Niranjan Reddy, for the Petitioner.  
Shri A. Rajasekhar Reddy, SC, for the Respondent.

[Order]. - In the writ petition Section 65(90a) read with Section 65(105)(zzzz) of the Finance Act, 1994, as amended by the Finance Act, 2007, Finance Act, 2008 and Finance Act, 2010 are impeached, *inter alia* as inconsistent with the provisions of Articles 14, 246 and 265 of the Constitution of India.

2. The petitioner is a company incorporated under the provisions of the Companies Act, 1956 and is in the business *inter alia* of running retail stores by taking shops/premises on rent or on licence. It is principally aggrieved by the provisions of Section 66(105)(zzzz) as amended by the Finance Act, 2010, whereby *inter alia* the renting of immovable property is brought within the ambit of a service and made liable to tax under the provisions of the service tax matrix of the Finance Act, 1994, as now amended.

3. Sri S. Niranjan Reddy, learned counsel for the petitioner, would urge several contentions to buttress the grounds of challenge to the impugned provisions, including that the renting of immovable property *per se* would not constitute any value addition falling within the lubric of service and that the provisions of Section 65(105)(zzzz) are inconsistent with the *ratio legis* of the service tax provisions of the Finance Act, 1994. Alternatively, it is contended that the Parliament does not have legislative competence to levy service tax by an artificial expansion of the concept of service so as to entrench (sic) into the core of the legislative power of the state under entry 49 of List II of VII Schedule to the Constitution of India which reads "Taxes on lands and buildings". It is also contended on behalf of the petitioners that a learned Division Bench of the Delhi High Court in the judgment dated 18-4-2009 in *Home Solution Retail India Ltd. v. Union of India and others* in W.P.(C) No. 1659 of 2008 [2009 (14) S.T.R. 433 (Del.) = 2009 (237) E.L.T. 209 (Del.)] and batch had observed *inter alia* (while interpreting the provisions of Section 65(105)(zzzz), as these provisions stood prior to the amendment by the Finance Act, 2010), that the renting of immovable property for use in the course of or furtherance of business of commerce by itself cannot constitute service; and therefore, the legislative dynamics *qua* the provisions of the Finance Act, 2010, would not be a valid exercise as a validating legislation to remove the substratum of the ratio of the judgment of the Delhi High Court. Sri Niranjan Reddy would also contend that the provisions of Section 65(105)(zzzz) have been given retrospective efficacy *qua* Section 77 of the Finance Act, 2010 by purporting to be in the nature of validation of action taken under sub-clause (zzzz) of clause (105) of Section 65 and that such retrospective operationalisation of a taxing provision is arbitrary, independent of the question whether the Parliament had the legislative competence to enact Section 65(105)(zzzz) as enacted in the Finance Act, 2010.

4. The generic contentions urged on behalf of the petitioner, briefly adverted to above, are eminently arguable though we are not *prima facie* satisfied to an extent warranting interdiction of the operation of the provisions of Section 65(105)(zzzz) in so far as their prospective application is concerned. The challenge as to the retrospectivity

**2010 (19) S.T.R. 336 (A.P.)**

IN THE HIGH COURT OF JUDICATURE FOR ANDHRA PRADESH AT HYDERABAD  
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*W.P.M.P. No. 15963 of 2010 in W.P. No. 12681 of 2010, decided on 7-6-2010*

**Renting of Immovable Property service - Challenge to imposition of Service tax - Pleas that (i) renting did not add any value, (ii) it encroached on legislative power of State under Entry 49 of List II of Constitution of India, covering "taxes on lands and buildings" and hence Parliament was not competent to levy it, and (iii) its levy with retrospective effect was arbitrary - HELD : Contentions eminently arguable and plea about retrospective effect was prima facie on more substantial ground - Pending the writ petition, Department directed not to initiate coercive steps for recovery of Service tax for retrospective period - For prospective period from 1-4-2010, assessee found liable to pay the Service tax, but subject to outcome of their petition - Section 66(105)(zzzz) of Finance Act, 1994. [para 3]**

**Stay partly granted**

**CASE CITED**

Home Solution Retail India Ltd. v. Union of India — 2009 (14) S.T.R. 433 (Del.) = 2009 (237) E.L.T. 209 (Del.) — *Referred*.....

REPRESENTED BY :           Shri S. Niranjan Reddy, for the Petitioner.  
  Shri A. Rajasekhar Reddy, SC, for the Respondent.

**[Order].** - In the writ petition Section 65(90a) read with Section 65(105)(zzzz) of the Finance Act, 1994, as amended by the Finance Act, 2007, Finance Act, 2008 and Finance Act, 2010 are impeached, *inter alia* as inconsistent with the provisions of Articles 14, 246 and 265 of the Constitution of India.

2. The petitioner is a company incorporated under the provisions of the Companies Act, 1956 and is in the business *inter alia* of running retail stores by taking shops/premises on rent or on licence. It is principally aggrieved by the provisions of Section 66(105)(zzzz) as amended by the Finance Act, 2010, whereby *inter alia* the renting of immovable property is brought within the ambit of a service and made liable to tax under the provisions of the service tax matrix of the Finance Act, 1994, as now amended.

3. Sri S. Niranjan Reddy, learned counsel for the petitioner, would urge several contentions to buttress the grounds of challenge to the impugned provisions, including that the renting of immovable property *per se* would not constitute any value addition falling within the lubric of service and that the provisions of Section 65(105)(zzzz) are inconsistent with the *ratio legis* of the service tax provisions of the Finance Act, 1994. Alternatively, it is contended that the Parliament does not have legislative competence to levy service tax by an artificial expansion of the concept of service so as to entrench (sic) into the core of the legislative power of the state under entry 49 of List II of VII Schedule to the Constitution of India which reads "Taxes on lands and buildings". It is also contended on behalf of the petitioners that a learned Division Bench of the Delhi High Court in the judgment dated 18-4-2009 in *Home Solution Retail India Ltd. v. Union of India and others* in W.P.(C) No. 1659 of 2008 [2009 (14) S.T.R. 433 (Del.) = 2009 (237) E.L.T. 209 (Del.)] and batch had observed *inter alia* (while interpreting the provisions of Section 65(105)(zzzz), as these provisions stood prior to the amendment by the Finance Act, 2010), that the renting of immovable property for use in the course of or furtherance of business of commerce by itself cannot constitute service; and therefore, the legislative dynamics *qua* the provisions of the Finance Act, 2010, would not be a valid exercise as a validating legislation to remove the substratum of the ratio of the judgment of the Delhi High Court. Sri Niranjan Reddy would also contend that the provisions of Section 65(105)(zzzz) have been given retrospective efficacy *qua* Section 77 of the Finance Act, 2010 by purporting to be in the nature of validation of action taken under sub-clause (zzzz) of clause (105) of Section 65 and that such retrospective operationalisation of a taxing provision is arbitrary, independent of the question whether the Parliament had the legislative competence to enact Section 65(105)(zzzz) as enacted in the Finance Act, 2010.

4. The generic contentions urged on behalf of the petitioner, briefly adverted to above, are eminently arguable though we are not *prima facie* satisfied to an extent warranting interdiction of the operation of the provisions of Section 65(105)(zzzz) in so far as their prospective application is concerned. The challenge as to the retrospectivity

of the provisions, in our considered view and *prima facie* is on more substantial grounds.

5. On the *prima facie* analysis above, the respondents are directed, pending further orders in this application or in the writ petition, not to initiate any coercive steps for recovery of the service tax on the renting of immovable property by the petitioners, on the basis of the provisions of Section 65(105)(zzzz) as amended by the Finance Act, 2010, for the period 1-6-2007 to 1-4-2010. Petitioner shall, however, be liable to pay the applicable service tax as per the provisions of Section 65(105)(zzzz), for the period subsequent to 1-4-2010 but subject to the result of the writ petition, notice.

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[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY. PART II, § 3, SUB-SECTION (i)]

Government of India  
 Ministry of Finance  
 (Department of Revenue)

New Delhi, the 22<sup>nd</sup> Ju

**Notification No. 29/2010 - Service Tax**

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 3 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Government, on being satisfied that it is necessary in the public interest so to do hereby makes the following further amendment in the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 1/2006-Service Tax, dated the 1st March 2006, G.S.R. 115(E), dated the 1st March, 2006, with effect on and from the 1st day of 2010, namely :-

In the said notification, in the Table, after S. No. 7 and 10 and the entries relating the following S. No 7(a) and 10(a) and entries shall be inserted, namely:-

(1)	(2)	(3)	(4)
"7(a).	(zzq)	Commercial or Industrial Construction	This exemption shall not apply in cases where the services provided are only completion and finishing in relation to building or civil structure, referred to clause (c) of clause (25b) of section 65 of the Finance Act. Explanation.- The gross amount charged shall include the value of goods and materials supplied or provided or used in providing the taxable service by the service provider. This exemption shall not apply in cases where the land has been separately recovered from the buyer or his representative.
"10(a).	(zzzh)	Construction of Complex	This exemption shall not apply in cases where the services provided are only completion and finishing in relation to residential complex, referred to in sub-clause (b) of clause (30a) of section 65 of the Finance Act. Explanation.- The gross amount charged shall include the value of goods and materials supplied or provided or used in providing the taxable service by the service provider. This exemption shall not apply in cases where the land has been separately recovered from the buyer or his representative.

[F. No. 334/03/20

(K.S.V.V)  
Under Secretary to the Government

**Note.-** The principal notification No.1/2006-Service Tax, dated the 1<sup>st</sup> March 2006 published vide number G.S.R.115(E), dated the 1<sup>st</sup> March, 2006 and last amended notification No.09/2010-Service Tax dated the 27<sup>th</sup> February, 2010, published vide G.S.R.153(E), dated the 27<sup>th</sup> February 2010.

F. No. 137/68/2010 – CX. 4  
 Government of India  
 Ministry of Finance  
 Department of Revenue  
 (Central Board of Excise & Customs)  
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New Delhi, the 20<sup>th</sup> September 2010

To

The Chief Commissioners of Central Excise and Service Tax (ALL),  
 The Director General of Service Tax  
 The Director General of Audit  
 The Director General of Central Excise Intelligence,  
 The Commissioners of Service Tax (ALL)

Madam/Sir,

**Subject: Powers of adjudication of Central Excise Officers in Service Tax cases – instructions  
 – regarding  
 \*\*\*\*\***

Attention is invited to Board's Circular No. 80/1/2005 – ST dated 10.05.2005 and No. 97/8/2007 dated 23.08.2007 (para12.2) which specifies uniform monetary limits for adjudication of cases under section 73 and section 83 A of the Finance Act, 1994. At present adjudication powers in Service Tax cases have been delegated upto the level of Assistant Commissioners and Superintendents were not vested with any authority to adjudicate cases. The Board has decided to confer the power of adjudication on Superintendents for cases involving service tax upto Rs. 1 lakh in a show cause notice, except in respect of issues relating to taxability of services, valuation of services and cases involving extended period. Accordingly the monetary limits for adjudication of cases has been revised vide Notification No. 48/2010 – Service Tax dated 8<sup>th</sup> September 2010.

2. The revised monetary limits are as follows:

Table I

Sr. No.	Central Excise Officer	Amount of service tax or CENVAT credit specified in a notice for the purpose of adjudication under Section 83A
(1)	(2)	(3)
(1)	Superintendent of Central Excise	Not exceeding Rs. one lakh (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation.)
(2)	Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise	Not exceeding Rs. five lakhs (except cases where Superintendents are empowered to adjudicate.)
(3)	Joint Commissioner of Central Excise	Above Rs. five lakhs but not exceeding Rs. fifty lakhs
(4)	Additional Commissioner of Central Excise	Above Rs. twenty lakhs but not exceeding Rs. fifty lakhs
(5)	Commissioner of Central Excise	Without limit.

The revised monetary limits for the purpose of adjudication under section 73 are as specified as below,-

Table – II

Sr. No.	Central Excise Officer	Amount of Service Tax or CENVAT credit specified in a
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(1)	(2)	(3)
(1)	Superintendent of Central Excise	notice for the purpose of adjudication. Not exceeding Rs. one lakh (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation.)
(2)	Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise	Not exceeding Rs. five lakhs (except cases where Superintendents are empowered to adjudicate.)
(3)	Joint Commissioner of Central Excise	Above Rs. five lakhs but not exceeding Rs. fifty lakhs
(4)	Additional Commissioner of Central Excise	Above Rs. twenty lakhs but not exceeding Rs. fifty lakhs
(5)	Commissioner of Central Excise	Without limit.

3. In respect of the above powers of adjudication conferred on the Superintendents, it is clarified as under,-

- (i) The Superintendents would be competent to decide cases that involve Service Tax and / or CENVAT credit upto Rs. one lakh in individual show cause notices.
- (ii) They would not be competent to decide cases that involve taxability of services, valuation of services, eligibility of exemption and cases involving suppression of facts, fraud, collusion, willful mis-statement etc.
- (iii) They would be competent to decide cases involving wrong availment of CENVAT credit upto a monetary limit of Rs. one lakh.
- (iv) The jurisdictional Commissioners of Central Excise may redistribute the pending cases in the Commissionerate based on above factors. It is further clarified that notwithstanding this revision, in all cases, where the personal hearing has already been completed, orders will be passed by the officer before whom the hearing has been held. Such orders should normally be issued within a month of the date of completion of the personal hearing.
- (v) It may also be noted that the age-wise pendency of cases as shown in the Monthly Technical Report should be reported based on the date of issuance of show cause notice and not on the basis of transfer of cases to the new Adjudicating Authority. The jurisdictional Commissioners should ensure that the work of re-allocation of the pending cases, issuance of corrigendum to the Show Cause Notices, transfer of relevant files and records etc, should be completed in a time-bound manner at the most within a month. A compliance report in this regard should be sent to the Chief Commissioner by the Commissioner, who in turn, should submit the details to the DGST by 30<sup>th</sup> September 2010. DGST will consolidate and submit a report to the Board by 15.10.2010 to the effect that all the work regarding re-allocation of cases has been completed.

4. The contents of this circular may be suitably brought to the notice of the field formations and the Trade.

5. Hindi version will follow.

(Himanshu Gupta)  
Commissioner (Service Tax)  
CBEC, New Delhi

F.No.354/141/2010-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
(Tax Research Unit)  
\*\*\*\*\*

North Block, New Delhi,  
21<sup>st</sup> September, 2010.

To

Director General (Service Tax),  
Director General (Central Excise Intelligence)  
Director General (Audit)  
Chief Commissioner of Central Excise and Service Tax (All)  
Commissioner of Central Excise and Customs (All)  
Commissioner of Central Excise and Service Tax (All)  
Commissioner of Service Tax (All)

Madam/Sir,

Subject: New services notified through the Finance Act 2010 (14 of 2010) and classification under the Export of Services Rules 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006— regarding

It has been brought to the notice of the Board that the service tax payers have raised doubts in determining the Export/Import of the new services introduced vide the Finance Act 2010(14 of 2010), as they have not been notified under the respective categories of services enlisted under the Export of Services Rules 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.

2. It is to inform that as all the new services notified through the Finance Act 2010 (14 of 2010) falls in category (iii) of clause (3) of services listed in the Export of Services Rules 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, (residual category), no notification regarding individual classification was issued.

3. Trade Notice/Public Notice may be issued accordingly.

Yours faithfully,

(Prashant Kumar)  
Under Secretary (TRU)

F.No.354/141/2010-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
(Tax Research Unit)  
\*\*\*\*\*

North Block, New Delhi,  
24<sup>th</sup> August, 2010.

To

Director General (Service Tax),  
Director General (Central Excise Intelligence)  
Director General (Audit)  
Chief Commissioner of Central Excise and Service Tax (All)  
Commissioner of Central Excise and Customs (All)  
Commissioner of Central Excise and Service Tax (All)  
Commissioner of Service Tax (All)

adam/Sir,

Subject: Service tax on on-going works contracts entered into prior to 01.06.2007 – regarding –

It has been brought to the notice of the Board that the following confusions/disputes prevail with respect to long term works contracts which were entered into prior to 01.06.2007 (when the taxable service, namely, Works contract came into effect) and were continued beyond that date:

- (i) While prior to the said date services like Construction; Erection, commissioning or installation; Repair services were classifiable under respective taxable services even if they were in the nature of works contract, whether the classification of these activities would undergo a change?
- (ii) Whether in such cases of continuing contracts, the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 under Notification No. 32/2007-ST dated 22/05/2007 would be applicable?

2. The matter has been examined. As regards the classification, with effect from 01.06.2007 when the new service 'Works Contract' service was made effective, classification of aforesaid services would undergo a change in case of long term contracts even though part of the service was classified under the respective taxable service prior to 01.06.2007. This is because 'works contract' describes the nature of the activity more specifically and, therefore, as per the provisions of section 65A of the Finance Act, 1994, it would be the appropriate classification for the part of the service provided after that date.

3. As regards applicability of composition scheme, the material fact would be whether such a contract satisfies rule 3 (3) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007. This provision casts an obligation for exercising an option to choose the scheme prior to payment of service tax in respect of a particular works contract. Once such an option is made, it is applicable for the entire contract and cannot be altered. Therefore, in case a contract where the provision of service commenced prior to 01.06.2007 and any payment of service tax was made under the respective taxable service before 01.06.2007, the said condition under rule 3(3) was not satisfied and thus no portion of that contract would be eligible for composition scheme. On the other hand, even if the provision of service commenced before 01.06.2007 but no payment of service tax was made till the taxpayer opted for the composition scheme after its coming into effect from 01.06.2007, such contracts would be eligible for opting of the composition scheme.

4. The Board's previous Circular No. 98/1/2008-ST dated 04.01.2008 and the ratio of judgement of the High Court of Andhra Pradesh in the matter of M/s. Nagarjuna Construction Company Limited vs. Government of India (2010 TIOL 403 HC AP ST) are in line with the above interpretation.

5. Trade Notice/Public Notice may be issued accordingly.

Yours faithfully,

(J.M. Kennedy)  
Director (TRU)  
Tel: 011-23092634

F.No.354/119/2010-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Tax Research Unit

New Delhi

North Block,

16 th August 2010

To

Chief Commissioners of Central Excise and Service Tax (All),  
Director General (Service Tax),  
Director General (Central Excise Intelligence),  
Director General (Audit),  
Commissioners of Service Tax (All),  
Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

Subject: Service tax on commercial training and coaching – clarification whether 'donation' is 'consideration' – regarding.

A representation has been received seeking clarification whether donations and grants-in-aid received from different sources by a charitable Foundation imparting free livelihood training to the poor and marginalized youth, will be treated as 'consideration' received for such training and subjected to service tax under 'commercial training or coaching service'.

2. The matter has been examined. The important point here is regarding the presence or absence of a link between 'consideration' and taxable service. It is a settled legal position that unless the link or nexus between the amount and the taxable activity can be established, the amount cannot be subjected to service tax. Donation or grant-in-aid is not specifically meant for a person receiving such training or to the specific activity, but is in general meant for the charitable cause championed by the registered Foundation. Between the provider of donation/grant and the trainee there is no relationship other than universal humanitarian interest. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training.
4. Trade Notice/Public Notice may be issued to the field formations accordingly
5. Please acknowledge the receipt of this circular. Hindi version follows.

(J. M. Kennedy)  
Director, TRU  
Tel: 011-23092634

F.No.332/13/2010-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Tax Research Unit

North Block, New Delhi  
10<sup>th</sup> August 2010

To

Chief Commissioners of Central Excise and Service Tax (All),  
Director General (Service Tax),  
Director General (Central Excise Intelligence),  
Director General (Audit),  
Commissioners of Service Tax (All),  
Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

**Subject: Service tax on commission received by Primary Dealers dealing in Government Securities – regarding.**

A representation has been received seeking clarification whether service tax is leviable on the underwriting commission received by the Primary Dealers for the auction of Government Securities.

2. The matter has been examined. Underwriting service is taxable by virtue of section 65 (105) (z) of the Finance Act, 1994. In the definition of taxable service, two technical terms are mentioned, namely 'underwriting' and 'underwriter'. The term 'underwriting' [section 65 (117) of the Finance Act, 1994] has the meaning assigned to it in clause (g) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993, which reads as follows:

*"underwriting means an agreement with or without conditions to subscribe to the securities of a body corporate when the existing shareholders of such body corporate or the public do not subscribe to the securities offered to them."*

3. The term "underwriter" as in section 65(116) of the Finance Act, 1994, has been borrowed from rule 2 (f) of the Securities and Exchange Board of India (Underwriters) Rules, 1993, which reads as follows:

*"underwriter means a person who engages in the business of underwriting of an issue of securities of a body corporate."*

It is thus clear that under the above definitions 'underwriter' or 'underwriting' is about dealing in securities of a body corporate.

4. The related issue requiring resolution is whether dealing in government securities amounts to dealing in securities of a body corporate, particularly since government securities are issued by the Reserve bank of India, which is a 'body corporate' in terms of section 3 (2) of the RBI Act, 1934.

5. Government securities are sovereign securities having zero default risk. Reserve Bank of India only manages the issue and also auction of Government Securities on behalf of the Government of India. In effect, Primary Dealers registered with the RBI (as opposed to registration with the Securities Exchange Board of India) deal in Government Securities, issued by the RBI on behalf of the Government of India, as a part of the central Government's market borrowing program. The general practice is that the RBI invites bids from the Primary Dealers, who in their bids indicate the amount to be underwritten and the underwriting fee expected by them. RBI examines these bids and decides the amount to be underwritten and underwriting fee to be paid to a Primary Dealer. Underwriting Fee is also known as Underwriting Commission in common parlance. Thus the conclusion drawn is that government securities are not securities of a body corporate.

6. As the service tax law stands today, service tax liability does not arise on Underwriting Fee or Underwriting Commission received by the Primary Dealers during the course of the dealing in Government Securities.

7. Trade Notice/Public Notice may be issued to the field formations accordingly.

8. Please acknowledge the receipt of this circular. Hindi version follows.

(J. M. Kennedy)  
Director, TRU  
Tel: 011-23092634



Circular No.125/7/2010 - ST

F.No.354/35/2010-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Tax Research Unit

.....

North Block, New Delhi

30<sup>th</sup> July, 2010

To

Chief Commissioners of Central Excise and Service Tax (All),  
Director General (Service Tax),  
Director General (Central Excise Intelligence),  
Director General (Audit),  
Commissioners of Service Tax (All),  
Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

**Subject: Services provided by state governments under Centrally Sponsored Schemes (CSS)  
-- regarding.**

In the recent past, instances have come to the notice of the Board, where field formations have demanded service tax from State governments or their departments/ agencies, for providing certain services under the centrally sponsored schemes (CSS). To cite an illustration, in the case of the centrally sponsored National Biogas and Manure Management Program operating under Ministry of New and Renewable Energy, State government agencies were involved in setting up of bio-gas plants in villages. Certain expenses incurred by the State governments or their departments/ agencies during the course of setting up of such bio-gas plants were reimbursed by the central government by way of a grant under the CSS. Jurisdictional service tax authorities demanded service tax from the State government department/agency, saying that the reimbursements received by the concerned State government department/agency (as service provider) are nothing but consideration for installation and commissioning service received from the central government (service receiver).

2. Implicit in this service tax demand is an assumption that the relationship between Central government and the State government is an equivalent of a relationship between principal and the agent. This assumption is questionable as under administrative arrangement, State governments are bound to implement the centrally sponsored schemes on receipt of a grant. The fact that State governments are implementing agencies for the Central government within the framework of CSS does not make them service providers. Consequently, Central government cannot be taken as service receiver. Grant released by the Central government under a centrally sponsored scheme cannot be presumed as consideration for providing a taxable service.

3. Levy and collection of service tax on State government agencies/departments implementing CSS under a central grant, is not legally tenable and therefore in such cases service tax should not be demanded.

4. Trade Notice/Public Notice may be issued to the field formations.

5. Please acknowledge receipt of this Circular. Hindi version follows.

(J. M. Kennedy)  
Director (TRU)  
Tel: 011-23092634

*Dr. Shantia Reddy*

Notification  
No.23/2009 – Service Tax

New Delhi, the 7<sup>th</sup> July, 2009

G.S.R. (E).- In exercise of the powers conferred by sections 93 and 94 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following rules further to amend the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, namely:-

1. (1) These rules may be called the Works Contract (Composition Scheme for Payment of Service Tax) Amendment Rules, 2009.  
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, in rule 3,-
  - (A) in sub-rule(1), for the Explanation, the following Explanation shall be substituted, namely:-

“Explanation.-For the purposes of this sub-rule, gross amount charged for the works contract shall be the sum,-

    - (a) including-
      - (i) the value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise; and
      - (ii) the value of all the services that are required to be provided for the execution of the works contract;
    - (b) excluding-
      - (i) the value added tax or sales tax as the case may be paid on transfer of property in goods involved; and
      - (ii) the cost of machinery and tools used in the execution of the said works contract except for the charges for obtaining them on hire:  
Provided that nothing contained in this Explanation shall apply to a works contract, where the execution under the said contract has commenced or where any payment, except by way of credit or debit to any account, has been made in relation to the said contract on or before the 7<sup>th</sup> day of July, 2009.”;
  - (B) after sub-rule(3), the following sub-rule shall be added, namely :-

“(4). The option under sub-rule (3) shall be permissible only where the declared value of the works contract is not less than the gross amount charged for such works contract.”.

[F.No.334/13/2009-TRU]

(Prashant Kumar)  
Under Secretary to the Government of India

Note:- The principal rules were notified vide notification No.32/2007,-Service Tax, dated the 22<sup>nd</sup> May, 2007 and published vide number G.S.R.378(E), dated the 22<sup>nd</sup> May, 2007 and amended vide notification No.7 /2008-Service Tax, dated the 1<sup>st</sup> March, 2008, published vide No. G.S.R. 151 (E), dated the 1<sup>st</sup> March, 2008.

G.S.R. (E).- In exercise of the powers conferred by sections 93 and 94 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following rules further to amend the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, namely:-

1. (1) These rules may be called the Works Contract (Composition Scheme for Payment of Service Tax) Amendment Rules, 2009.  
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- (A) in sub-rule(1), for the Explanation, the following Explanation shall be substituted, namely:-

“Explanation.-For the purposes of this sub-rule, gross amount charged for the works contract shall be the sum,-

- (a) including-
  - (i) the value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise; and
  - (ii) the value of all the services that are required to be provided for the execution of the works contract;
- (b) excluding-
  - (i) the value added tax or sales tax as the case may be paid on transfer of property in goods involved; and
  - (ii) the cost of machinery and tools used in the execution of the said works contract except for the charges for obtaining them on hire:

Provided that nothing contained in this Explanation shall apply to a works contract, where the execution under the said contract has commenced or where any payment, except by way of credit or debit to any account, has been made in relation to the said contract on or before the 7<sup>th</sup> day of July, 2009.”;

- (B) after sub-rule(3), the following sub-rule shall be added, namely :-
  - “(4). The option under sub-rule (3) shall be permissible only where the declared value of the works contract is not less than the gross amount charged for such works contract.”.

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F. No. 345/ 17 /2008-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Tax Research Unit  
\*\*\*\*\*

New Delhi, the 23<sup>rd</sup> February, 2009.

**Subject: Reference from Commissioner Nashik seeking clarification in respect of levy of service tax on Repair/ renovation/ widening of roads – Regarding.**

Representations have been received by the Board pointing out divergent practices being followed by field formations with regard to levy of service tax on maintenance and repair of roads.

2. Commercial or industrial construction service [section 65(105) (zzq)] specifically excludes construction or repairs of roads. However, management, maintenance or repair provided under a contract or an agreement in relation to properties, whether immovable or not, is leviable to service tax under section 65(105) (zzg) of the Finance Act, 1994. There is no specific exemption under this service for maintenance or repair of roads etc. Reading the definitions of these two taxable services in tandem leads to the conclusion that while construction of road is not a taxable service, management, maintenance or repair of roads are in the nature of taxable services, attracting service tax.

3. The next issue requiring resolution is the types of activities that can be called as 'construction of road' as against the activities which should fall under the category of maintenance or repair of roads. In this regard the technical literature on the subject indicate that the activities can be categorized as follows,-

(A) Maintenance or repair activities:

- I. Resurfacing
- II. Renovation
- III. Strengthening
- IV. Relaying
- V. Filling of potholes

(B) Construction Activities:

- I. Laying of a new road
- II. Widening of narrow road to broader road (such as conversion of a two lane road to a four lane road)

*III.* Changing road surface ( graveled road to metalled road/ metalled road to blacktopped/ blacktopped to concrete etc)

4. The cases may be decided/ revenue should be protected based on the above classification. Suitable Trade and Public notices may be issued for information of the trade and field formations.

5. Receipt of this Circular may please be acknowledged.

6. Hindi Version will follow.

Yours faithfully,

(Unmesh Sharad Wagh)  
Under Secretary (TRU)

**Circular No. 108/02/2009 – ST**

F. No. 137/12/2006-CX.4  
 Government of India  
 Ministry of Finance  
 Department of Revenue  
 Central Board of Excise and Customs  
 \*\*\*

New Delhi, dated 29<sup>th</sup> January 2009**Subject: Imposition of service tax on Builders - regarding**

\*\*\*\*\*

Construction of residential complex was brought under service tax w.e.f.01.06.2005. Doubts have arisen regarding the applicability of service tax in a case where developer / builder/promoter enters into an agreement, with the ultimate owner for selling a dwelling unit in a residential complex at any stage of construction (or even prior to that) and who makes construction linked payment. The 'Construction of Complex' service has been defined under Section 65 (105)(zzzh) of the Finance Act as "any service provided or to be provided to any person, by any other person, in relation to construction of a complex". The 'Construction of Complex' includes construction of a 'new residential complex'. For this purpose, 'residential complex' means any complex of a building or buildings, having more than twelve residential units. A complex constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex intended for personal use as residence by such person has been excluded from the ambit of service tax.

2. A view has been expressed that once an agreement of sale is entered into with the buyer for a unit in a residential complex, he becomes the owner of the residential unit and subsequent activity of a builder for construction of residential unit is a service of 'construction of residential complex' to the customer and hence service tax would be applicable to it. A contrary view has been expressed arguing that where a buyer makes construction linked payment after entering into agreement to sell, the nature of transaction is not a service but that of a sale. Where a buyer enters into an agreement to get a fully constructed residential unit, the transaction of sale is completed only after complete construction of the residential unit. Till the completion of the construction activity, the property belongs to the builder or promoter and any service provided by him towards construction is in the nature of self service. It has also been argued that even if it is taken that service is provided to the customer, a single residential unit bought by the individual customer would not fall in the definition of 'residential complex' as defined for the purposes of levy of service tax and hence construction of it would not attract service tax.

3. The matter has been examined by the Board. Generally, the initial agreement between the promoters / builders / developers and the ultimate owner is in the nature of 'agreement to sell'. Such a case, as per the provisions of the Transfer of Property Act, does not by itself create any interest in or charge on such property. The property remains under the ownership of the seller (in the instant case, the promoters/builders/developers). It is only after the completion of the construction and full payment of the agreed sum that a sale deed is executed and only then the ownership of the property gets transferred to the ultimate owner. Therefore, any service provided by such seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of 'self-service' and consequently would not attract service tax. Further, if the ultimate owner enters into a contract for construction of a residential complex with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because this case would fall under the exclusion provided in the definition of 'residential complex'. However, in both these situations, if services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax.

4. All pending cases may be disposed of accordingly. Any decision by the Advance Ruling Authority in a specific case, which is contrary to the foregoing views, would have limited application to that case only. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned.

(Gautam Bhattacharya)  
 Commissioner (Service Tax)

# From the desk of Mukesh Raj

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## Entries tagged as 'Service tax on sale of residential unit'

### Imposition of service tax on Builders - Clarification

January 31, 2009 · [1 Comment](#)

Sale of Residential Houses: CBEC Clarified that - any service provided by a seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of 'self-service' and consequently would not attract service tax.

Circular No. 108/02/2009

F. No. 137/12/2006-CX.4

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise and Customs

New Delhi, dated 29th January 2009

Construction of residential complex was brought under service tax w.e.f.01.06.2005. Doubts have arisen regarding the applicability of service tax in a case where developer / builder/promoter enters into an agreement, with the ultimate owner for selling a dwelling unit in a residential complex at any stage of construction (or even prior to that) and who makes construction linked payment. The 'Construction of Complex' service has been defined under Section 65 (105)(zzzh) of the Finance Act as "any service provided or to be provided to any person, by any other person, in relation to construction of a complex". The 'Construction of Complex' includes construction of a 'new residential complex'. For this purpose, 'residential complex' means any complex of a building or buildings, having more than twelve residential units. A complex constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex intended for personal use as residence by such person has been excluded from the ambit of service tax.

2. A view has been expressed that once an agreement of sale is entered into with the buyer for a unit in a residential complex, he becomes the owner of the residential unit and subsequent activity of a builder for

construction of residential unit is a service of 'construction of residential complex' to the customer and hence service tax would be applicable to it. A contrary view has been expressed arguing that where a buyer makes construction linked payment after entering into agreement to sell, the nature of transaction is not a service but that of a sale. Where a buyer enters into an agreement to get a fully constructed residential unit, the transaction of sale is completed only after complete construction of the residential unit. Till the completion of the construction activity, the property belongs to the builder or promoter and any service provided by him towards construction is in the nature of self service. It has also been argued that even if it is taken that service is provided to the customer, a single residential unit bought by the individual customer would not fall in the definition of 'residential complex' as defined for the purposes of levy of service tax and hence construction of it would not attract service tax.

3. The matter has been examined by the Board. Generally, the initial agreement between the promoters / builders / developers and the ultimate owner is in the nature of 'agreement to sell'. Such a case, as per the provisions of the Transfer of Property Act, does not by itself create any interest in or charge on such property. The property remains under the ownership of the seller (in the instant case, the promoters/builders/developers). It is only after the completion of the construction and full payment of the agreed sum that a sale deed is executed and only then the ownership of the property gets transferred to the ultimate owner. Therefore, any service provided by such seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of 'self-service' and consequently would not attract service tax. Further, if the ultimate owner enters into a contract for construction of a residential complex with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because this case would fall under the exclusion provided in the definition of 'residential complex'. However, in both these situations, if services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax.

4. All pending cases may be disposed of accordingly. Any decision by the Advance Ruling Authority in a specific case, which is contrary to the foregoing views, would have limited application to that case only. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned.

F. NO. 137/12/2006-CX.4

(Gautam Bhattacharya)

Commissioner (Service T

**Categories:** [Service Tax](#)

**Tagged:** [Service Tax](#), [service tax on property](#), [Service tax on sale of residential unit](#)

## **Service tax liability on construction and sale of residential units**

**May 14, 2008 · [3 Comments](#)**

The recent advance ruling in the case of Harekrishna Developers has revived an issue which was settled by the Department about a year ago, after significant deliberations. The ruling holds that a real estate developer, who charges a booking amount from his customers, constructs on his own and then sells residential units to these customers is liable to service tax under the category of residential complex construction services. Before discussing the ruling, it is relevant to consider the background of the controversy regarding service taxability of builders under residential complex construction services.

These services were first brought in the service tax net with effect from June 16, 2005. The issue of charging service tax on builders/developers selling residential units first cropped up when the Director General of Service Tax (DGST) issued a circular in this regard, based on the Supreme Court's judgment in the K. Raheja Developers case. In this case, the Apex Court had held that where a builder/ developer sells a flat under construction for a consideration to be received in installments, such a transaction is a works contract and hence chargeable to VAT. The notable point is that this case was unrelated to service tax. However, based on the ratio of the above case, the DGST issued a circular stating that as sales of residential units amounted to works contracts and since works contracts also involved services, such contracts were chargeable to service tax under the heading of



residential complex construction services.

The above DGST circular was challenged in a writ in the Bombay High Court. While the case was pending with the Court, the CBEC issued a clarification stating that where the builder, promoter or developer builds a residential complex, having more than 12 residential units, by engaging a contractor for construction of such a residential complex, the contractor would be liable to pay service tax on the gross amount charged for the construction services provided to the builder under 'construction of complex' service. The circular also stated that if no other person was engaged for the construction work and where the builder undertook construction work on his own, then in the absence of the service provider and service recipient situation, the question service taxation of such contracts did not arise.

Though the above circular was not very clear in its language, it was nevertheless interpreted in a positive sense by trade and industry and also by the Government insofar no demands were thereafter raised on builders of residential complexes and the litigation in the Bombay High Court also did not proceed. To wind up the controversy, the Government last year brought in a new category of taxable service namely 'works contract services' under the service tax net. This category included within its purview, works contracts relating to residential complex construction services as well. Further, in order to remove any doubts on the appropriate classification of the service, the Department clarified that if a contract was that of works in nature, it would be covered under the new category. There is thus no longer any doubt on service taxability of works contracts.

The advance ruling has however revived the controversy for the past periods. The ruling holds that since the words 'in relation to' are used in the definition of taxable service, construction and other incidental and allied activities are covered therein and hence the sale of a residential unit, for which the purchaser book the unit in advance, would be covered under this category. In this regard the Authority has observed that though in one sense, the developer can be said to be constructing the residential unit on his own account and not on behalf of the customer, yet the developer did everything to honour his commitment to the customer from whom he had received valuable consideration. Thus an agreement to sell a 'to be built unit' would attract service tax while an outright sale of an already built unit would not attract the tax.

Another point made by the Authority is that the clarification issued by the CBEC lacks clarity in terms of its intent and cannot be interpreted to mean that developers are not liable to pay service tax. Further, as to the issue of classification of a service with respect to two contending categories of residential complex services and works contract services, the Authority observed that as per Section 65A, the most appropriate category to classify the service in question is 'residential complex construction service', irrespective of the fact that the service could also be brought within ambit of 'works contract services'.

The ruling is thus majorly based on the representations of the Department against its own circulars. This has created confusion and has also given rise to the issue of whether the Department could so represent against its own clarifications. While the ruling has limited force in terms of its applicability, the Department has apparently started issuing show cause notices based thereon. The matter therefore needs to be immediately addressed for the past periods through issuance of appropriate clarifications.

S Madhavan

The author is Leader, Indirect Tax Practices, Pricewater houseCoopers. Views expresses are his own.

**Categories:** Service Tax



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Service tax on sale of new houses to go



[Banks get service tax relief on deposit insurance premium](#)

Finally some good news for buyers of residential property as well as the slack Central Board of Excise and Customs (CBEC) has done away with service tax on sale of new residential u has been issued by CBEC on Thursday.



[Fears of service tax on banks for insuring deposits eased](#)

This means that a house priced at Rs 10 lakh, which used to attract Rs 20,000 construction value of Rs 6 lakh, will now be saved.

According to realtor Vijay Shah, the abolition of service tax combined with fe will infuse some demand in the slacking realty market.

It was with effect from June 1, 2005, that the Central government had decided of 3.5% on the construction cost of new residential units.



[Service Tax exemption on SEZ supplies](#)

Based on the earlier interpretation, CBSE was treating any residential scheme residential complex liable for service tax payment as it considered the sale as developer or promoter to the buyer.



[Impact of service tax cut](#)

Following various litigations and controversies, members of CBEC board hav agreement to sell' between the developer and buyer cannot be termed as servi not attract service tax.



[General, assembly elections block committee's road to GST](#)

The notification states: "The initial agreement between the promotersbuilders owner is in the nature of agreement to sell'. Such a case as per provisions of th does not create any interest in or charge on such property. The property remai seller (in this case developer)."

"It is only after completion of the construction and full payment of the agreed executed and the ownership of the property gets transferred to the ultimate ow

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

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

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

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

	<p>service tax under section 65(105)(zzze) read with section 65(25a) of the Finance Act, 1994?</p>	<p>is defined as "dedicated to a general public purpose, usually for the benefit of needy people who cannot pay for the benefits received" [Black's Law Dictionary].</p> <p>Whether a club or association is engaged in activity having objectives which are of a charitable nature or not is to be determined purely on the basis of the facts and circumstances of the case.</p>
<p>076.02 / 23.08.07</p>	<p>Services provided by a resident welfare association to its members under club or association service [section 65(105)(zzze)] is exempted from service tax vide notification No.8/2007-Service Tax, dated 01.03.07, subject to the condition that the total consideration received from an individual member by the said association for providing the said services does not exceed three thousand rupees per month.</p> <p>Whether a resident welfare association registered as a co-operative society with the Registrar of Co-operative Societies is entitled for the benefit of service tax exemption under notification No.8/2007-Service Tax, dated 01.03.2007 or not?</p>	<p>A resident welfare association, even if it is registered as a co-operative society with the Registrar of Co-operative Societies, is eligible to avail of exemption from levy of service tax vide notification No.8/2007-Service Tax, dated 01.03.2007 provided the following conditions are satisfied, namely:-</p> <p>(i) The exemption is available for the services specified under section 65(105)(zzze) of the Finance Act, 1994 and provided or to be provided by the association to its members.</p> <p>(ii) The sole criterion for membership of the resident welfare association is the residential status of a person in a residential complex or locality i.e., membership of the association is restricted to the residents of the complex or locality.</p> <p>(iii) The value of total consideration received from an individual member by the association for providing the services does not exceed Rs.3,000/- per month.</p>
<p>079.01 / 23.08.07</p>	<p>Whether service tax is liable under construction of complex service [section 65(105)(zzzh)] on builder, promoter, developer or any such person,-</p> <p>(a) who gets the complex built by engaging the services of a separate contractor, and</p> <p>(b) who builds the residential complex on his own by employing direct labour?</p>	<p>(a) In a case where the builder, promoter, developer or any such person builds a residential complex, having more than 12 residential units, by engaging a contractor for construction of the said residential complex, the contractor in his capacity as a taxable service provider (to the builder / promoter / developer / any such person) shall be liable to pay service tax on the gross amount charged for the construction services under 'construction of complex' service [section 65(105)(zzzh)].</p> <p>(b) If no other person is engaged for construction work and the builder / promoter / developer / any such person undertakes construction work on his own without engaging the services of any other person, then in such cases,-</p> <p>(i) service provider and service recipient relationship does not exist,</p>

		(ii) services provided are in the nature of self-supply of services. Hence, in the absence of service provider and service recipient relationship and the services provided are in the nature of self-supply of services, the question of providing taxable service to any person by any other person does not arise.
<b>086.01 / 23.08.07</b>	An international journey commencing from an Indian airport involves stopover / transfer at intermediate airports outside India before reaching the destination (say Mumbai-Dubai-London-New York).  Whether service tax would be liable in such case on the value indicated in the ticket for the entire journey or only on that part of the value attributable to the first sector (Mumbai-Dubai) of the journey?	Aim of the passenger is to travel from Mumbai to New York. Actual destination of the international journey is the criterion to decide the value of the service (in this case, New York). Stopover / transfer at intermediate airports, being merely incidental and part of the main journey, is of no relevance or consequence for levy of service tax under section 65(105)(zzzo) read with section 66.  Service tax in such cases is leviable on the total consideration of a single composite service relating to the entire journey. i.e., value indicated on the ticket for the entire journey.
<b>086.02 / 23.08.07</b>	An international journey (say Delhi-Mumbai-London) includes travel in a domestic sector (Delhi – Mumbai) as part of the international journey.  Whether service tax is liable on the value of whole journey or after excluding the value attributable to the domestic sector from the total value of the ticket?	In this case, the journey is a single composite journey. The aim of the passenger is to travel from India to a place outside India. Part of the travel in the domestic sector cannot be segregated from the single journey. Service tax is, therefore, leviable on the total value of the ticket treating the domestic sector as integral part of the international journey without excluding the value attributable, if any, to travel in the domestic sector.
<b>086.03 / 23.08.07</b>	An international journey commences from an airport outside India and completed at an airport outside India but including a sector wherein the passenger disembarks and subsequently embarks at an Indian airport as part of international journey (say Sydney-Mumbai-Dubai-Singapore-Sydney).  Whether service tax is liable for Mumbai-Dubai sector only or on the total value of the ticket?	In this case, the journey being a single one and the aim of the passenger is not to travel from India to a place outside India, service tax is not leviable under section 65(105) (zzzo).
<b>086.04 / 23.08.07</b>	Whether ticket issued outside India for an international journey commencing from India (say Delhi-London) is liable to service tax?	Service tax is payable by the service provider, namely aircraft operator, for the taxable service provided. Place of purchase/ issue of ticket is of no relevance or consequence to determine the levy of service tax under section 65(105)(zzzo) read with

## ANNEXURE

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

048	Business auxiliary service [Section (105)(zzb)]
049	Commercial coaching or training [Section (105)(zzc)]
050	Erection, commissioning or installation [Section (105)(zzd)]
051	Franchise [Section (105)(zze)]
052	Internet café [Section (105)(zzf)]
053	Management, maintenance or repair [Section (105)(zzg)]
054	Technical testing and analysis [Section (105)(zzh)]
055	Technical inspection and certification [Section (105)(zzi)]
056	Foreign exchange broker [Section (105)(zzk)]
057	Other port [Section (105)(zzi)]
058	Airport [Section (105)(zzm)]
059	Transport of goods by aircraft [Section (105)(zzi)]
060	Business exhibition [Section (105)(zzo)]
061	Transport of goods by road [Section (105)(zvp)]
062	Commercial or industrial construction [Section (105)(zzq)]
063	Intellectual property [Section (105)(zvr)]
064	Opinion poll [Section (105)(zvs)]
065	Outdoor caterer [Section (105)(zvi)]
066	Programme producer [Section (105)(zvu)]
067	Survey and exploration of mineral [Section (105)(zvv)]
068	Pandal or shamiana [Section (105)(zvw)]
069	Travel agent [Section (105)(zvx)]
070	Forward contract [Section (105)(zvy)]
071	Transport of goods other than water through pipeline or other conduit [Section (105)(zzz)]
072	Site formation and clearance, excavation and earthmoving and demolition and such other activities [Section (105)(zza)]
073	Dredging [Section (105)(zzb)]
074	Survey and map-making [Section (105)(zzc)]
075	Cleaning activity [Section (105)(zzd)]
076	Club or association [Section (105)(zze)]
077	Packaging activity [Section (105)(zzf)]
078	Mailing list compilation and mailing [Section (105)(zzg)]
079	Construction of complex [Section (105)(zzh)]
080	Registrar to an issue [Section (105)(zzi)]
081	Share transfer agent [Section (105)(zzj)]
082	Automated teller machine operations, maintenance or management [Section (105)(zzk)]
083	Recovery agent [Section (105)(zvl)]
084	Sale of space or time for advertisement [Section (105)(zzm)]
085	Sponsorship [Section (105)(zvn)]
086	Transport of passenger embarking in India for international journey by air [Section (105)(zvo)]
087	Transport of goods in containers by rail [Section (105)(zvp)]
088	Support services of business or commerce [Section (105)(zzq)]
089	Auctioneers [Section (105)(zvr)]
090	Public relations [Section (105)(zvs)]
091	Ship management [Section (105)(zzt)]
092	Internet telephony [Section (105)(zzu)]
093	Transport by cruise ship [Section (105)(zzv)]
094	Credit card, debit card, charge card or other payment card [Section (105)(zzw)]
095	Mining [Section (105)(zzz)]
096	Renting of immovable property [Section (105)(zzz) ]

097	Services involved in the execution of works contract [Section (105)(zzzza)]
098	Development and supply of content [Section (105)(zzzb)]
099	Asset management service by individuals [Section (105)(zzzc)]
100	Design services [Section (105)(zzzd)]
996	Services provided from outside India and received in India
997	Export of Services
998	Valuation of taxable services
999	Miscellaneous

(G.G. Pai)  
Under Secretary (Tax Research Unit)



22/5/07  
16/5/07

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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(Department of Revenue)New Delhi, the 22<sup>nd</sup> May, 2007  
1 Jyaishta, 1929 (Saka)**Notification No. 32/2007-Service Tax**

G.S.R. (E)— In exercise of the powers conferred by sections 93 and 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.— (1) These rules may be called the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007.  
(2) They shall come into force with effect from the 1<sup>st</sup> day of June, 2007.

2. Definitions.— In these rules, unless the context otherwise requires,-

(a) "Act" means the Finance Act, 1994 (32 of 1994);

(b) "section" means the section of the Act;

(c) "works contract service" means services provided in relation to the execution of a works contract referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act;

(d) words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. (1) Notwithstanding anything contained in section 67 of the Act and rule 2A of the Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to two per cent of the gross amount charged for the works contract.

*Explanation.* - For the purposes of this rule, gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid on transfer of property in goods involved in the execution of the said works contract.

(2) The provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

(3) The provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract.

[F. No. B1/7/2007-TRU]

(G.G. Par)  
Under Secretary to the Government of India

SD + IC

F. No. 137/12/2006-CX.4  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs

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New Delhi, dated 29<sup>th</sup> January 2009

**Subject: Imposition of service tax on Builders - regarding**

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Construction of residential complex was brought under service tax w.e.f.01.06.2005. Doubts have arisen regarding the applicability of service tax in a case where developer / builder/promoter enters into an agreement, with the ultimate owner for selling a dwelling unit in a residential complex at any stage of construction (or even prior to that) and who makes construction linked payment. The 'Construction of Complex' service has been defined under Section 65 (105)(zzzh) of the Finance Act as "any service provided or to be provided to any person, by any other person, in relation to construction of a complex". The 'Construction of Complex' includes construction of a 'new residential complex'. For this purpose, 'residential complex' means any complex of a building or buildings, having more than twelve residential units. A complex constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex intended for personal use as residence by such person has been excluded from the ambit of service tax.

2. A view has been expressed that once an agreement of sale is entered into with the buyer for a unit in a residential complex, he becomes the owner of the residential unit and subsequent activity of a builder for construction of residential unit is a service of 'construction of residential complex' to the customer and hence service tax would be applicable to it. A contrary view has been expressed arguing that where a buyer makes construction linked payment after entering into agreement to sell, the nature of transaction is not a service but that of a sale. Where a buyer enters into an agreement to get a fully constructed residential unit, the transaction of sale is completed only after complete construction of the residential unit. Till the completion of the construction activity, the property belongs to the builder or promoter and any service provided by him towards construction is in the nature of self service. It has also been argued that even if it is taken that service is provided to the customer, a single residential unit bought by the individual customer would not fall in the definition of 'residential complex' as defined for the purposes of levy of service tax and hence construction of it would not attract service tax.

3. The matter has been examined by the Board. Generally, the initial agreement between the promoters / builders / developers and the ultimate owner is in the nature of 'agreement to sell'. Such a case, as per the provisions of the Transfer of Property Act, does not by itself create any interest in or charge on such property. The property remains under the ownership of the seller (in the instant case, the promoters/builders/developers). It is only after the completion of the construction and full payment of the agreed sum that a sale deed is executed and only then the ownership of the property gets transferred to the ultimate owner. Therefore, any service provided by such seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of 'self-service' and consequently would not attract service tax. Further, if the ultimate owner enters into a contract for construction of a residential complex with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because this case would fall under the exclusion provided in the definition of 'residential complex'. However, in both these situations, if

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services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax.

4. All pending cases may be disposed of accordingly. Any decision by the Advance Ruling Authority in a specific case, which is contrary to the foregoing views, would have limited application to that case only. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned.

(Gautam Bhattacharya)  
Commissioner (Service Tax)  
CBEC, New Delhi

F. No. 137/12/2006-CX.4  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
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services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax.

4. All pending cases may be disposed of accordingly. Any decision by the Advance Ruling Authority in a specific case, which is contrary to the foregoing views, would have limited application to that case only. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned.

(Gautam Bhattacharya)  
Commissioner (Service Tax)  
CBEC, New Delhi

F. No. 137/12/2006-CX.4  
 Government of India  
 Ministry of Finance  
 Department of Revenue  
 Central Board of Excise and Customs  
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New Delhi, dated 29<sup>th</sup> January 2009

**Subject: Imposition of service tax on Builders - regarding**

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4. All pending cases may be disposed of accordingly. Any decision by the Advance Ruling Authority in a specific case, which is contrary to the foregoing views, would have limited application to that case only. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned.

(Gautam Bhattacharya)  
 Commissioner (Service Tax)  
 CBEC, New Delhi

**Circular No.96/7/2007-ST**  
New Delhi, the 23<sup>rd</sup> August, 2007

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

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

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

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

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

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

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

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

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

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

9. **CODING SYSTEM:**

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

996 – Services provided from outside India and received in India.  
997 – Export of Services

[http://www.servicetax.gov.in/circular/st-circular07/st\\_circ\\_96-2k7.htm](http://www.servicetax.gov.in/circular/st-circular07/st_circ_96-2k7.htm)

04-Sep-07

998 – Valuation of taxable services.

999 – Miscellaneous purposes.

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

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

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



23.08.07	qualified engineer can be considered as 'consulting engineer' [section 65(31)] and service provided by such self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering is liable to service tax under consulting engineer service [section 65(105)(g)]?	professionally qualified engineer, whether or not employing others for assistance.  Services provided by such self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering is liable to service tax under consulting engineer service [section 65(105)(g)].
010.01 / 23.08.07	Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses / MNCs, who come to the institutes for recruiting candidates through campus interviews. Whether services provided by such institutions in relation to recruitment of manpower are liable to service tax under 'manpower recruitment or supply agency' service [section 65(105)(k)]?	'Manpower recruitment or supply agency' is defined as "any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to a client" [section 65(68)].  Educational institutes such as IITs and IIMs fall within the definition of 'manpower recruitment or supply agency', and service tax is liable on services provided by such institutions in relation to campus recruitment under section 65(105)(k).
010.02 / 23.08.07	Business or industrial organisations engage services of manpower recruitment or supply agencies for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks.  Whether service tax is liable on such services under manpower recruitment or supply agency's service [section 65(105)(k)]	In the case of supply of manpower, individuals are contractually employed by the manpower recruitment or supply agency. The agency agrees for use of the services of an individual, employed by him, to another person for a consideration. Employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual.  Such cases are covered within the scope of the definition of the taxable service [section 65(105)(k)] and, since they act as supply agency, they fall within the definition of "manpower recruitment or supply agency" [section 65(68)] and are liable to service tax.
012.01 / 23.08.07	"Mandap" is defined as any immovable property as defined in section 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor coverings therein let out for a consideration for organizing any official, social or business function. [section 65(66)]  "Mandap keeper" is defined as a person who allows temporary occupation of a mandap for a consideration for organising any official, social or business function [section 65(67)].  Whether hotels / restaurants letting out their halls, rooms etc. for social, official or	Halls, rooms etc. let out by hotels / restaurants for a consideration for organising social, official or business functions are covered within the scope of "mandap" [section 65(66)], and such hotels and restaurants are covered within the scope of "mandap keeper" [section 65(67)].  Accordingly, service tax is leviable on services provided by hotels and restaurants in relation to letting out of halls, rooms, etc. for organizing any official, social or business function under mandap keeper service [section 65(105)(m)].

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

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

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

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

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

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

	from the total value of the ticket?	without excluding the value attributable, if any, to travel in the domestic sector.
<b>086.03 / 23.08.07</b>	An international journey commences from an airport outside India and completed at an airport outside India but including a sector wherein the passenger disembarks and subsequently embarks at an Indian airport as part of international journey (say Sydney-Mumbai-Dubai-Singapore-Sydney).  Whether service tax is liable for Mumbai-Dubai sector only or on the total value of the ticket?	In this case, the journey being a single one and the aim of the passenger is not to travel from India to a place outside India, service tax is not leviable under section 65(105) (zzzo).
<b>086.04 / 23.08.07</b>	Whether ticket issued outside India for an international journey commencing from India (say Delhi-London) is liable to service tax?	Service tax is payable by the service provider, namely aircraft operator, for the taxable service provided. Place of purchase/ issue of ticket is of no relevance or consequence to determine the levy of service tax under section 65(105)(zzzo) read with section 66. Service tax is leviable as long as the passenger embarks in India for an international journey, in any class other than economy class.
<b>086.05 / 23.08.07</b>	Whether service tax is liable on the total value of the ticket or only half the value of the ticket in the case of round trip / return ticket (say Delhi-London-Delhi)?	Service tax is leviable on the total value of the ticket.
<b>097.01 / 23.08.07</b>	Whether CENVAT credit of duty paid on capital goods and service tax paid on input services can be taken by a service provider who opts to pay an amount equivalent to two per cent. of the gross amount charged for the works contract instead of paying service tax at the rate specified in section 66, under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, notified vide notification No.32/2007-Service Tax dated 22.05.07?	Rule 3(2) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 provides that the provider of taxable service opting to pay service tax under the composition scheme is not entitled to take CENVAT credit of duty on inputs, used in or in relation to the said works contract, under the provisions of the CENVAT Credit Rules, 2004.  There is no restriction under notification No.32/2007-Service Tax dated 22.05.07 to take CENVAT credit of duty paid on capital goods and service tax paid on input services.
<b>999.01 / 23.08.07</b>	Sovereign/public authorities perform functions assigned to them under the law in force, known as "statutory functions". For example, · Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments; · Regional Transport Officers (RTO) issue fitness certificate to motor vehicles; · Directorate of Boilers inspects and issues certificates for boilers; or · Explosive Department inspects and	Activities assigned to and performed by the sovereign / public authorities under the provisions of any law are statutory duties. The fee or amount collected as per the provisions of the relevant statute for performing such functions is in the nature of a compulsory levy and are deposited into the Government account.  Such activities are purely in public interest and are undertaken as mandatory and statutory functions. These are not to be treated as services provided for a



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

provider does not alter the taxability of the service provided.

## ANNEXURE

Three digit Code	Taxable Service / Others
001	Stock broker [Section (105)(a)]
002	Telecommunication Service [Section (105)(zzzx)]
003	General insurance [Section (105)(d)]
004	Advertising agency [Section (105)(e)]
005	Courier agency [Section (105)(f)]
006	Consulting engineer [Section (105)(g)]
007	Custom house agent [Section (105)(h)]
008	Steamer agent [Section (105)(i)]
009	Clearing and forwarding agent [Section (105)(j)]
010	Manpower recruitment agent [Section (105)(k)]
011	Air travel agent [Section (105)(l)]
012	Mandap keeper [Section (105)(m)]
013	Tour operator [Section (105)(n)]
014	Rent-a-cab scheme operator [Section (105)(o)]
015	Architect [Section (105)(p)]
016	Interior decorator [Section (105)(q)]
017	Management or Business consultant [Section (105)(r)]
018	Chartered accountant [Section (105)(s)]
019	Cost accountant [Section (105)(t)]
020	Company secretary [Section (105)(u)]
021	Real estate agent [Section (105)(v)]
022	Security agency [Section (105)(w)]
023	Credit rating agency [Section (105)(x)]
024	Market research agency [Section (105)(y)]
025	Underwriter [Section (105)(z)]
026	Scientific or technical consultancy [Section (105)(za)]
027	Photography [Section (105)(zb)]
028	Convention [Section (105)(zc)]
029	On-line information and database access or retrieval [Section (105)(zh)]
030	Video tape production [Section (105)(zi)]
031	Sound recording [Section (105)(zj)]
032	Broadcasting agency or organization [Section (105)(zk)]
033	Insurance auxiliary services concerning general insurance business [Section (105)(zl)]
034	Banking and other financial services [Section (105)(zm)]
035	Port [Section (105)(zn)]
036	Authorized service station [Section (105)(zo)]
037	Beauty treatment [Section (105)(zq)]
038	Cargo handling [Section (105)(zr)]
039	Cable operator [Section (105)(zs)]
040	Dry cleaning [Section (105)(zt)]
041	Event management [Section (105)(zu)]
042	Fashion designing [Section (105)(zv)]
043	Health club and fitness [Section (105)(zw)]
044	Life insurance in relation to risk cover [Section (105)(zx)]
045	Insurance auxiliary services concerning life insurance business [Section (105)(zy)]
046	Rail travel agent [Section (105)(zz)]
047	Storage and warehousing [Section (105)(zza)]
048	Business auxiliary service [Section (105)(zzb)]
049	Commercial coaching or training [Section (105)(zzc)]

050	Erection, commissioning or installation [Section (105)(zzd)]
051	Franchise [Section (105)(zze)]
052	Internet café [Section (105)(zzf)]
053	Management, maintenance or repair [Section (105)(zzg)]
054	Technical testing and analysis [Section (105)(zzh)]
055	Technical inspection and certification [Section (105)(zzi)]
056	Foreign exchange broker [Section (105)(zzk)]
057	Other port [Section (105)(ztl)]
058	Airport [Section (105)(zzm)]
059	Transport of goods by aircraft [Section (105)(znn)]
060	Business exhibition [Section (105)(zno)]
061	Transport of goods by road [Section (105)(znp)]
062	Commercial or industrial construction [Section (105)(znp)]
063	Intellectual property [Section (105)(znr)]
064	Opinion poll [Section (105)(zns)]
065	Outdoor caterer [Section (105)(znt)]
066	Programme producer [Section (105)(znu)]
067	Survey and exploration of mineral [Section (105)(znv)]
068	Pandal or shamiana [Section (105)(znw)]
069	Travel agent [Section (105)(znx)]
070	Forward contract [Section (105)(zny)]
071	Transport of goods other than water through pipeline or other conduit [Section (105)(znn)]
072	Site formation and clearance, excavation and earthmoving and demolition and such other activities [Section (105)(znn)]
073	Dredging [Section (105)(znn)]
074	Survey and map-making [Section (105)(znn)]
075	Cleaning activity [Section (105)(znn)]
076	Club or association [Section (105)(znn)]
077	Packaging activity [Section (105)(znn)]
078	Mailing list compilation and mailing [Section (105)(znn)]
079	Construction of complex [Section (105)(znn)]
080	Registrar to an issue [Section (105)(znn)]
081	Share transfer agent [Section (105)(znn)]
082	Automated teller machine operations, maintenance or management [Section (105)(znn)]
083	Recovery agent [Section (105)(znn)]
084	Sale of space or time for advertisement [Section (105)(znn)]
085	Sponsorship [Section (105)(znn)]
086	Transport of passenger embarking in India for international journey by air [Section (105)(znn)]
087	Transport of goods in containers by rail [Section (105)(znn)]
088	Support services of business or commerce [Section (105)(znn)]
089	Auctioneers [Section (105)(znn)]
090	Public relations [Section (105)(znn)]
091	Ship management [Section (105)(znn)]
092	Internet telephony [Section (105)(znn)]
093	Transport by cruise ship [Section (105)(znn)]
094	Credit card, debit card, charge card or other payment card [Section (105)(znn)]
095	Mining [Section (105)(znn)]
096	Renting of immovable property [Section (105)(znn)]
097	Services involved in the execution of works contract [Section (105)(znn)]
098	Development and supply of content [Section (105)(znn)]
099	Asset management service by individuals [Section (105)(znn)]
100	Design services [Section (105)(znn)]
996	Services provided from outside India and received in India
997	Export of Services

998	Valuation of taxable services
999	Miscellaneous

(G.G. Pai)  
Under Secretary (Tax Research Unit)

**Circular No.96/7/2007-ST**  
New Delhi, the 23<sup>rd</sup> August, 2007

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

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

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

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

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

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

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

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

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

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

9. **CODING SYSTEM:**

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

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

999 – Miscellaneous purposes.

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

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

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

	'consulting engineer' [section 65(31)] and service provided by such self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering is liable to service tax under consulting engineer service [section 65(105)(g)]?	not employing others for assistance.  Services provided by such self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering is liable to service tax under consulting engineer service [section 65(105)(g)].
<b>010.01 / 23.08.07</b>	Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses / MNCs, who come to the institutes for recruiting candidates through campus interviews. Whether services provided by such institutions in relation to recruitment of manpower are liable to service tax under 'manpower recruitment or supply agency' service [section 65(105)(k)]?	'Manpower recruitment or supply agency' is defined as "any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to a client" [section 65(68)].  Educational institutes such as IITs and IIMs fall within the definition of 'manpower recruitment or supply agency', and service tax is liable on services provided by such institutions in relation to campus recruitment under section 65(105)(k).
<b>010.02 / 23.08.07</b>	Business or industrial organisations engage services of manpower recruitment or supply agencies for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks.  Whether service tax is liable on such services under manpower recruitment or supply agency's service [section 65(105)(k)]	In the case of supply of manpower, individuals are contractually employed by the manpower recruitment or supply agency. The agency agrees for use of the services of an individual, employed by him, to another person for a consideration. Employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual.  Such cases are covered within the scope of the definition of the taxable service [section 65(105)(k)] and, since they act as supply agency, they fall within the definition of "manpower recruitment or supply agency" [section 65(68)] and are liable to service tax.
<b>012.01 / 23.08.07</b>	"Mandap" is defined as any immovable property as defined in section 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor coverings therein let out for a consideration for organizing any official, social or business function. [section 65(66)]  "Mandap keeper" is defined as a person who allows temporary occupation of a mandap for a consideration for organising any official, social or business function [section 65(67)].  Whether hotels / restaurants letting out their halls, rooms etc. for social, official or business functions fall within the definition	Halls, rooms etc. let out by hotels / restaurants for a consideration for organising social, official or business functions are covered within the scope of "mandap" [section 65(66)], and such hotels and restaurants are covered within the scope of "mandap keeper" [section 65(67)].  Accordingly, service tax is leviable on services provided by hotels and restaurants in relation to letting out of halls, rooms, etc. for organizing any official, social or business function under mandap keeper service [section 65(105)(m)].

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



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

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

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

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