

FREQUENTLY ASKED QUESTIONS ON SERVICE TAX

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The department came out with an FAQ in December 2007 on service tax covering the various aspects under service tax. In this article we shall take a look at some of the more important aspects and the points to be noted with regard thereto in the form of our comments. The reader is also advised to refer the detailed FAQ (downloadable from the website www.cbec.gov.in) as this article covers only those aspects which are normally relevant from an assessee's point of view. In this article, the discussions covered by FAQ are given in italics with additional comments from the authors being inserted as felt necessary/ appropriate.

1. Can recipient of service be also asked to pay service tax?

In certain cases Government may shift the liability of payment of service tax to the receiver of service. As a measure of administrative convenience. It is often referred to as 'reverse charge' in common language.

Comments: - The taxing of recipient of service is a concept being followed in service tax in cases of certain services like GTA, insurance auxiliary and sponsorship activities. It has also been used for services received from the non resident w.e.f. 18.4.2006. However this concept is still not clear among the assesseees and in many cases, the assesseees go wrong even today as the concept and scheme of payment is complicated and even the advisors/ departmental officers have not really understood them. Under this circumstances, the liability to pay service tax rests on the person who receives the service rather than the person who provides the same would only lead to widespread confusion and demand with increasing corrupt practices. Non provision of the basic Rs. 10 lakhs exemption to such service receiver also appears to be inequitable. When a service provider has the exemption then as to why the service receiver (who is made liable) should not be provided the same is not known.

2. How to decide whether Service Tax is payable by a person?

A. If you are engaged in providing service to your customer, please check: -

(i) Whether the service rendered by you is falling under the scope of any of the taxable Service?

(ii) Whether there is a general or specific exemption available for the category of service provided under any notification?

(iii) Whether you are entitled to the value based exemption available for small service Providers?

(iv) Whether the service charges were received for the services provided or to be provided?

In case the service provided by a person falls within the scope of the taxable services and if such service is not fully exempted, the service tax is payable on the value of the taxable service received subject to the eligible abatements, if any

Comments: - The assessee should first of all find out whether there is a service and whether he/she is a service provider and whether receiver of service covered in the definition as set out. All this is possible only if he is able to classify the services properly. This is an area where many assesseees go wrong. The concept of service provider, receiver and taxable service varies from one category of service to another. Moreover, the various categories do not provide for a levy from the same date as they have been introduced over a period of time and not all at once. Consequently there have been cases where the assesseees have wrongly classified services and been held liable for prior periods under other heads.

As far as exemptions are concerned, the specific exemption, which may be available to the assessee, depends on the category of the service provided. As far as general exemption is concerned, there is an exemption of Rs. 10 lakhs for small service providers from value of taxable services subject to certain conditions being satisfied. This would be available across all services except those with regard to which the assessee is liable as a service receiver.

The service provider who wishes to opt for exemption should however ascertain his position as far as cenvat credits availability is concerned as credits are normally denied where abatements are sought. Thus a cost-benefit analysis may be required to arrive at the right option.

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

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

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

c. Please note that the value based exemption for small scale service providers under Notification No.6/2005 ST dated 01.03.2005 effective from 01.04.2005 is not admissible to such recipients of taxable services.

Comments: - The specified categories where the receiver of service is liable to pay service tax rather than the service provider, are as follows –

- Goods transport Agency service
- Sponsorship service
- Business auxiliary service of distribution of mutual fund by a mutual fund distributor
- Insurance auxiliary service by an insurance agent
- *Import of service from abroad (from 18.4.2006 only)*

In these cases, the benefit of small service providers exemption of Rs. 10 lakhs would not be available to the person (service receiver) who pays the tax. But once the amount of tax has been paid, the payer can avail credit of the amount of tax paid where the service received qualifies as an input service in accordance with the Cenvat Credit Rules 2004.

3. What is the rate of Service Tax?

At present, the rate of Service Tax is 12%, payable on the "gross value of taxable service". In addition to this, Education Cess/ Secondary & Higher Education Cess is payable at the rate of **2% and 1%** on the Service Tax amount.

Comments: The works contractors have a special rate of 2 % + cess of 0.06 % applicable to them and on AITA Agents the facility of payment on the gross fare is allowed.

4. What is meant by "value of taxable service"?

i. Normally, the "value of taxable service" means, the gross amount received by the service provider for the taxable service provided or to be provided by him. Section 67 of the Finance Act, 1994 read with Service Tax (Determination of Value) Rules, 2006, has to be followed to arrive at the taxable value.

ii. For certain services, a specified percentage of abatement is allowed from the gross amount collected for rendering the services, subject to the conditions, inter alia, that CENVAT Credit has not been availed by the service provider and cost of goods sold in the process of providing the subject service is not deducted in terms of Notification No. 12/2003-Service Tax dated 20.6.2003.

iii. There is also a composition scheme for 'works contract service', where the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to 2% of the gross amount charged for the works contract.

The gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, paid on transfer of property in goods involved in the execution of the said works contract.

Comments: - The gross amount charged for service is being taxed at present including the amounts reimbursed by the service receiver on account of expenses incurred by the service provider in the course of providing the service. Going by the present scheme, the question of deduction being claimed for expenses incurred would arise if the service provider incurs the expenses as a pure agent of the service receiver. One would have to refer the aforesaid rules for studying the conditions to be satisfied.

Where there is an abatement scheme available for the particular category of service, the same would be calculated at the specified rate from the gross amount charged and the conditions specified in the notification (1/2006 Service Tax as amended) would have to be met. The service tax would then be payable on an amount which is equal to Gross amount minus abatement.

In case of works contract the service provider should first of all ensure that his service falls under that category. For this the work undertaken should involve transfer of property in goods during the execution of work. Where the composition benefit is opted for, the question that can arise is whether education cess and secondary education cess is payable (on the amount of 2% calculated on gross amount less VAT/sales tax paid). In the authors' view the assessee would be better off paying the amount with the applicable cess. Moreover, the credit of excise duty paid on inputs used in the work would not be available in such a case.

The alternative in case of works contract would be to pay service tax at the normal rate and avail credit of excise duty paid on the inputs. In the humble opinion of the authors, the service receiver can even examine a scenario where the materials are purchased by him and given to the contractor who avails credit of the same and then charges service tax on the gross amount including value of materials supplied. This option maybe useful where the receiver of the service is eligible to avail the set off.

5. What is meant by registration? Who should apply for registration under Service Tax?

Every person providing a taxable service of value exceeding Rs.9 lakhs, is required to register with the central excise or service tax office having jurisdiction over the office of such service provider. In case a recipient is liable to pay service tax, registration is required by him. There is also provision for centralised registration. The 'Input Service Distributors' is

optional for those who provide services from several locations to be able to avail the Cenvat credit incurred in those locations.

Comments: - The application for registration is to be made within 30 days from the date of providing taxable service. The registration is to be granted within 7 days from the date of submission of application failing which the registration is deemed to have been granted. The centralized registration facility would enable a multi locational service provider to register his head office/unit which maintains the records, does the accounting and makes payment for the input services received, rather than registering all his units. The service provider who wishes to distribute the credit of service tax on input service received; to manufacturing units or units providing taxable service can opt for Input Service Distributor route. This would entail maintaining proper records at the distributing unit by way of registers and raising of challans / bills on the unit to which credit is to be distributed.

The service provider is supposed to have only one Registration Certificate and additions are to be made on the same RC on account of provision of additional services. In case of multiple locations also the same number is provided with an extension number.

6. Is PAN allotted by the Income Tax Department a must for obtaining Service Tax Registration?

Having PAN is essential because the Service Tax Registration number is generated based on the PAN issued by the Income Tax Department. However, in the absence of PAN, a temporary Service Tax registration number would be issued for assesseees who are not having PAN at the time of filing the application (ST-1) for Service Tax registration till such time they obtain PAN. Once the PAN is obtained, the Service Tax assessee should obtain the PAN - based Service Tax Registration number.

7. Whether a service provider can make payment of Service Tax and file returns before the grant of registration by the proper officer?

No. However, service provider should apply well in advance to obtain registration, which is normally granted within 7 days of filing of application. Since service tax is payable once in a month or quarter, an assessee gets sufficient time for registration.

Comments: - The assesseees generally do not follow this concept and opt for registration at a later date as a result of which they have to incur additional costs by way of interest. Many a time they wake up only after a departmental investigation / audit of customer has been carried out or

a demand note / SCN issued seeking reasons for non-payment of service tax for prior periods. The ideal approach would be to stay in touch with the latest amendments so that one can take the necessary action sooner rather than later.

8. How to pay Service Tax?

You may pay service tax by G.A.R.7 (previously known as TR6 Challan which was yellow in colour) in the specified branches of the designated banks. The details of such Banks and branches may be obtained from the nearest Central Excise Office/Service Tax Office. Service Tax can also be paid electronically, called e-payment facility.

9. When is Service Tax required to be paid?

For individual or a proprietary or partnership firm – Quarterly -by the 5th day of the month following each quarter and by the 6th day of the month following each quarter if the duty is deposited electronically through internet banking.

For all other categories (Company, Society, Trust etc.) - Monthly - by the 5th day of the succeeding month and by the 6th day of the succeeding month if the duty is deposited electronically through internet banking;

Exception: For the **month of March or quarter ending March**, all assesseees have to pay by 31st of March of the Calendar year (Rule 6(1) of the STR, 1994).

E payment date is 6th of the subsequent month.

10. Whether the payment of Service Tax is to be made for the billed amount or for the value received?

The Service Tax for a particular period is payable on the amount / value of taxable service received during that period and not on the gross amount billed to the client. If the charges for the taxable service have been received in advance prior to rendering of the services, the Service Tax is payable even if the services are yet to be provided by them (Section 67 and Rule 6(1) of the STR, 1994).

Comments: - One of the reasons assesseees have difficulties in service tax compliance is the fact that service tax has to be paid on receipt basis rather than on billing. This means even on receipt of advances, service tax has to be paid and in case the service is not provided (wholly or partially), the service tax paid in excess has to be adjusted in subsequent period. This calls for proper tracking of receipts and correlation of the same with billing and unless this is done, one can never be sure as to the correctness of the tax amount paid. This is one issue faced by the

construction industry and it is not uncommon to find cases of payments having been made earlier on billing basis.

11. When payment is made by a client to an assessee after deducting his Income Tax liability under the Tax deduction at source (TDS) provision, whether the Service Tax liability of the assessee is only towards the amount actually received from that client or tax is to be paid on the amount including the Income Tax deducted at source also?

Service Tax is to be paid on the gross value of taxable service, which is charged by a Service Tax assessee for providing a taxable service. Income tax deducted at source is includible in the charged amount. Therefore, service Tax is payable on the gross amount including the amount of Income Tax deducted at source.

Comments: - This seems reasonable keeping in mind the definition of “gross amount charged” as per section 67.

12. What is the interest rate applicable on delayed payment of Service Tax?

Every person, liable to pay the service tax in accordance with the provisions of section 68 or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest @13% per annum. Interest is payable for the period from the first day after the due date till the date of payment of any defaulted service Tax amount.

Comments: The rate earlier was 15% and earlier to that 24% and 18%. The present rate of 13% is w.e.f. 10.9.2004.

13. What are the penal consequences if the Service Tax is not paid or paid late?

A mandatory penalty, not less than Rs.200/- per day or @2% of such tax per month, whichever is higher, shall be imposed by the adjudicating authority. However, the penalty amount payable shall not exceed the amount of service tax payable.

14. Up to what time in a day the e-Payments can be made?

e-Payment can be made 24 hours a day using Internet banking service of Bank. Payment made up to 8 pm will be accounted on the same day. However payments effected after 8 pm will only be included in next working day's scroll by the Focal point Branch.

15. Does the Internet banking service give any receipt/confirmation for the e-Payment?

Yes, on successful payment the Internet banking user gets a Cyber Receipt for the Tax payment, which he can save or print for his record.

16. When to file returns?

ST-3 Return is required to be filed twice in a financial year – half yearly.

Return for half year ending 30th September and 31st March are required to be filed by 25th October and 25th April, respectively.

Comments: - The assessee should remember that the requirement to file returns is not only with regard to the service provider but also the service receiver who is required to pay tax apart from the Input Service Distributor who seeks to distribute credits. The returns shall also be accompanied by the tax payment challans.

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

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

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

There are no specified records which have to be maintained by a Service Tax assessee. The records including computerized data, if any, which are being maintained by an assessee on his own or as required under any other law in force, such as Income Tax, Sales Tax etc. are acceptable for the purpose of Service Tax. However, it is important to note that a list of all such accounts maintained by an assessee including the memorandum received from the branch offices shall be furnished to the Superintendent of Central Excise at the time of filing the Return (ST-3) for the first time.

Comments: - The assessee should note that certain basic details like break up of service tax collected and payable on taxable services provided and service tax amount paid on input services received should be clearly evident so that service tax compliance does not suffer. Proper segregation of service tax amounts along with the tracking of value of receipts with amounts billed will go a long way in easing up the process of filing of returns.

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

Issue of Invoice / Bill / Challan by a Service Tax assessee is mandatory as per Rule 4A of the STR, 1994. The same should be issued within 14 days from the date of completion of taxable service or receipt of payment towards the service, whichever is earlier. However, if the service is provided continuously for successive periods of time and the value of such taxable service is determined or payable periodically, the Invoice/Bill/Challan shall be issued within 14 days from the last day of the said period (Proviso to Rule 4A (1) of the STR 1994).

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

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

- i. Serial number.*
- ii. Name, address and registration no. of the service provider.*
- iii. Name and address of the service receiver.*
- iv. Description, classification and value of taxable service being rendered.*
- v. The amount of Service Tax payable (Service Tax and Education cess should be shown separately)*

Comments: - The assessee should exercise due care in indicating the description of the service being provided on the bill/invoice so as to avoid classification issues with the department. Where the prescribed particulars are not available, there could be a possibility of the credit of service tax being denied to the receiver of such service.

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

- i. Yes. Where an assessee has paid to the credit of the Government in respect of a taxable service, which is not so provided by him, either wholly or partially for any reason, the assessee may adjust the excess Service Tax so paid by him (calculated on a pro-rata basis) against his Service Tax liability for the subsequent period, if the assessee has refunded the value of taxable service and the Service Tax thereon to the person from whom it was received (Rule 6(3) of the STR, 1994).*
- ii. Further, assesses having centralised registration who paid excess amount of Service Tax, on account of non-receipt of details regarding the receipt of gross amount for the services at his other premises or offices, may adjust such excess amount against the Service Tax liability for*

the subsequent period and furnish the details of such adjustment to the Jurisdictional Superintendent of Central Excise/ Service Tax within 15 days from the date of such adjustment (Rule 6(4A) of the STR, 1994).

iii. In all other cases of excess payment, refund claims have to be filed with the Department. The refund claims would be dealt as per the provisions of Section 11B of the Central Excise Act, 1944, which is made applicable to Service Tax under Section 83 of the Finance Act 1994.

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

Comments: - Rule 6(4A) of Service Tax Rules 1994 as amended is silent regarding any reference to an assessee having centralized registration. Thus this adjustment in our opinion should also be possible for assessees not opting for centralized registration provided the conditions specified in Rule 6(4B) are satisfied. The adjustment would be subject to a maximum of rupees fifty thousand and should not arise from issues relating to interpretation of law, taxability, classification, valuation or applicability of exemption notification. In other words the scope for adjustment is quite narrow and arithmetical in nature.

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

Service Tax is payable on amount realized. In given situation, the amount so realized from the client would be treated as gross amount inclusive of Service Tax and accordingly the value of taxable service and the Service Tax liability are worked out. i.e if amount received is Rs. 1000/- including service tax, determine tax amount by reverse calculation. ($1000/1.1236 = \text{Rs. } 890$ approx would be the value to be subjected to service tax)

23. What are the conditions for availment of the exemption from Service Tax by the small scale service providers?

Some of the important conditions for availment of the exemption are as follows: -

- If the aggregate value of taxable services rendered by the service provider from one or more premises exceeds rupees eight lakhs in the preceding financial year, the service provider is not eligible for the exemption for the current year.*

- *The exemption shall apply to the aggregate value of all taxable services and from all premises and not separately for each premise or each service.*
- *The benefit of the exemption shall not apply to taxable services rendered by a person under a brand name or trade name whether registered or not, of another person.*
- *The exemption shall not apply to persons who are other than the service providers, but liable to pay Service Tax under Sec.68 (2) of the Act.*
- *The provider of the taxable service shall avail the CENVAT credit only on such inputs or input services received, on or after the date on which the service provider starts paying Service Tax, and used for the provision of taxable services for which Service Tax is payable.*
- *CENVAT Credit of Service Tax paid on any input services, under Rule (3) or Rule (13) of the CENVAT Credit Rules 2004, used for providing the services under the above exemption, is not admissible for persons availing the above exemption.*
- *CENVAT Credit under Rule (3) of the said Rules, is not admissible on the capital goods which are received in the premises of the service provider during the exemption period.*
- *An amount equivalent to the CENVAT Credit taken, if any, in respect of the inputs lying in stock or in process as on the date on which the provider of taxable service starts availing the exemption should be paid; the balance credit amount, if any, shall lapse.*

Comments: The question as to availment of credit of excise duty paid on capital goods is something to be studied when these are purchased prior to opting for payment of service tax. At that time the conditions for abatement if any claimed would also have to be examined. As far as inputs are concerned the credit on inputs lying in stock is available. Input services used for providing the services on which service tax is payable (after exhausting the exemption) should be allowed even if the same were paid for in the previous period.

24. Is the exemption for small scale service providers compulsory?

Service Tax assessees have the option not to avail the above exemption and pay Service Tax on the taxable services. However, such option once exercised in a financial year shall not be withdrawn during the remaining part of such financial year.

Comments: - The assessee should be careful here before opting for the exemption especially where there is adequate input/input service credits at his disposal. Where credits are available, it would be better to go under the normal scheme of paying by utilizing the credits. A service exporter may find this route useful as he can also examine the refund /rebate option for credits,

which he is not able to utilize subject to Cenvat Credit Rules 2004/Export of Service Rules 2005 being adhered to.

25. Is there any exemption from payment of Service Tax if the receiver/provider of the service is the Central/State Government organization and Public Sector Undertakings?

No. There is no such exemption. All service providers, including the Central / State Government Organisations and the Public sector undertakings rendering the specified taxable service, are liable to pay Service Tax.

If a Government Department (sovereign)/public authorities performs any mandatory or statutory function under the provisions of any law and collect any fees, such activity shall be treated as activity purely in public interest and will not be taxable.

If such authority performs a service, which is not in the nature of statutory activity, for a consideration, the same shall be taxable.

However, the taxable services provided by a Banking company or a financial institution including a non banking financial company, or any other body corporate or any other person, to the Government of India or the Government of a State, in relation to collection of any duties or taxes levied by the Government of India or the Government of a State, are exempted from the payment of Service Tax. (Notifn.No.13/2004-ST dated 10.09.2004).

Comments: - In this regard manufacturers who are assessed under Central Excise Act should remember that there are certain exemptions with regard to manufacturing / job work undertaken for specified projects with the example being that of defense / scientific research related projects for specified establishments/ institutions. This would apply if the activity undertaken generally amounts to manufacture under Excise law. Where the same does not amount to manufacture, the transaction could be liable under service tax under the category of Business Auxiliary Service. Could such R&D activity be said to be sovereign function is doubtful. Demands for service tax on such projects have been made.

26. What are the penal provisions for various contraventions of the Service Tax Law?

The Penal provisions for various contraventions of the Service Tax Law are as follows: -

i. Non registration or delayed registration: An amount Rs. 1000/- could be imposed as penalty under sec 77 of the Act.

ii. Non payment or delayed payment of service tax - A mandatory penalty, not less than Rs.200/- per day or @2% of such tax per month, whichever is higher, shall be imposed by the

adjudicating authority. However, the penalty amount payable shall not exceed the amount of service tax payable.

iii. Non-filing / delayed filing of returns: A mandatory penalty has been prescribed under Rule 7C of the Service Tax Rules, 1994, as well as an amount not exceeding One Thousand Rupees could be imposed as penalty under sec 77 of the Act.

iv. Contravention of any of the provisions of the Act or the Rules made thereunder for which no provisions for penalty are available: An amount not exceeding Rs.1000/- is liable to be imposed as penalty under Sec.77 of the Act.

v. Suppression of the value of taxable services: Penalty to an extent ranging from 100% to 200% of the Service Tax which was not levied or paid or erroneously refunded, can be imposed on any person, if such short levy or short payment or erroneous refund is by reason of fraud collusion, willful mis-statement, suppression of facts; or contravention of the Act or the rules made thereunder with an intent to evade payment of Service Tax. Such liability towards penalty would be in addition to the Service Tax amount evaded or erroneously refunded and the interest thereon (Section 78 of the Act).

vi. Reduced Penalty in respect of Sl. no. (v): If the Service Tax amount as determined by the competent authority is paid within 30 days from the date of communication of the order, along with interest, the amount of penalty liable to be paid shall only be 25% of the Service Tax amount so determined. The benefit of reduced penalty equivalent to 25% of the said Service Tax is available only if such lesser penalty amount is also paid within the aforesaid period (First and second proviso to Section 78).

Comments: - For delay in filing the returns, the late fees cannot exceed Rs. 2000 as per section 70. Moreover, where the fees as stipulated under Rule 7C is paid for such delayed filing, the proceeding in respect of such delayed submission shall be deemed to have concluded. Moreover, for the purposes of calculating the penalty under section 78, where the amount of service tax is increased or reduced by the Commissioner (Appeals), Tribunal or Court, the interest and the penalty shall also be adjusted accordingly. Section 80 also provides for non levy of penalty in case of reasonable cause existing for such failure.

27. Why show cause notices are issued by the Department?

When any amount is demanded as service tax or other dues from any person under the Finance Act, 1994 and rules made thereunder and/or any person is liable to penalty under the said Act/Rules, notices are issued in the interest of natural justice to enable such person to understand the charges and defend his case before an adjudicating officer.

Comments: - The time limit is one year from the relevant date applies for this purpose unless the non-levy or short-levy or erroneous refund is on account of fraud, collusion, willful mis-statement or suppression of facts or contravention of provisions with the intent to evade payment of tax in which case the time limit could be upto five years from the relevant date.

28. Can show cause notice be waived?

Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him and inform the Central Excise Officer of such payment in writing. In such a case show cause notice will not be issued.

Comments: In most of the cases where assesses have been promised no penalty by the investigation/ preventive and have paid the demand with interest, they at times face penal action.

29. What is CENVAT Credit Scheme with reference to Service Tax assesseees?

The CENVAT credit Rules, 2004 which was introduced with effect from 10.9.2004 provides for availment of the credit of the Service Tax / Central Excise duties paid on the input services / inputs / capital goods. Such credit amount can be utilized towards payment of Service Tax by an assessee on their output services. In fact, such credit availed by a manufacturer can also be utilised for discharging their liability towards Service Tax and / or Central Excise duties.

Comments: - This scheme of cross-sectional credit was introduced only with effect from 10.09.04 and with regard to the earlier period, the old set of rules under Excise and Service Tax would apply. There may be a scenario where a manufacturer also happens to be a service provider and in such a scenario, he would be filing both excise returns as well as service tax returns. He would be required to have detailed records showing clearly the credits that he wishes to offset against his service tax liability and the credits he wishes to utilize for the purpose of discharging his liability under Central Excise. Where he happens to be an exporter of services he would have the additional advantage of utilizing the credits for meeting liability under Excise. If no exempted goods are manufactured, it is ideal that service tax credit are only utilised for excise duty payments.

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

Duties paid on the inputs, capital goods and the Service Tax paid on the 'input' services can be taken as credit. Education Cess paid on the Excise duty and Service Tax can also be taken as credit. However, the credit of Education Cess availed can be utilized only for payment of Education cess relating to output service. The interest and penalty amounts cannot be taken as credit.

Comments: - The assessee would have to refer Rule 3 of Cenvat Credit Rules 2004 for this purpose and this would be common to both manufacturers as well as service providers. As far as the rule is concerned, there would be no restriction on the cross-utilisation of education cess. I.e education cess on excisable goods and taxable services can be utilized either for payment of education cess on excisable goods or education cess on taxable services. The same thing goes for SHE cess. The cess credit cannot be used for payment of basic service tax of 12%. The interest and penalty will have to be paid in cash.

31. What are the documents prescribed for availment of the CENVAT Credit?

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

- (i) Invoice issued by the manufacturers and his depot/ consignment agents*
- (ii) Invoice issued by the Importer and his depot/consignment agents*
- (iii) First stage and Second stage dealer registered with the Central Excise Department*
- (iv) Bill of Entry*
- (v) Invoice/Bill/Challan issued by the provider of input Services*
- (vi) Invoice/Bill/Challan issued by the Input Service distributor.*
- (vii) Certificate issued by the Appraiser of Customs in respect of the goods imported through Foreign Post Office.*
- (viii) A Challan evidencing payment of service tax by a person liable to pay service tax in the service category of auxiliary insurance, goods transport, recipient of service from a foreign country and sponsorship [Refer sub-clauses (iii), (iv), (v) and (vii) of rule 2(1)(d) of STR, 1994].*

Comments: - A circular issued recently has relaxed the norms with regard to bill/challan to be issued by banks. The receiver of service should ensure that the document evidences payment of service tax and quantifies the amount involved.

32. Whether it is necessary to avail credit only after making payment against the bill / invoice / challan in respect of input services?

Credit of Service Tax on the input services can be availed, only after making payment of the amount indicated in the invoice / bill/challans. This is necessary because, the input service provider will be paying the Service Tax to the Govt. only after he realizes the payment, as the payment of Service Tax is only upon realization. The above requirement is not applicable in respect of credit of duties paid on inputs and capital goods.

Comments: - The service provider/manufacturer should thereby ensure that he can link the credits to the proof of having paid the charges to the input service provider along with the service tax amount. This reference could be to payment entry or the payment voucher.

33. Who is an “Input Service Distributor”?

An office of the manufacturer or provider of output service who receives invoices for the procurement of input services and issues invoices for the purpose of distributing the credit of Service Tax paid to such manufacturer or provider of output service is an “Input Service Distributor”. The credit of the tax amount so distributed to various places shall not exceed the total Service Tax amount contained in the original invoice / bill.

Comments: - The assessee should note that credit of service tax attributable to service used in a unit manufacturing exempted goods (exclusively) or exclusively providing exempted services cannot be distributed. The distribution is only with regard to service tax paid on input services and not of excise duty on inputs or capital goods. This facility is useful for those service provider who provide the service at various locations where expenditures exist where service tax is paid.

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

i. Separate accounts are to be maintained for the receipt, consumption and inventory of input and input service meant for providing taxable output service and for use in the exempted services. Credit should be taken only on that quantity of input / input services which are used for the service on which Service Tax is payable.

ii. If separate accounts are not maintained, the provider of output service shall utilize credit only to extent of an amount not exceeding 20% of the amount of service tax payable on taxable output service. For example, if Service Tax liability for a specific period is Rs. 1000/- and there is a credit of Rs. 500/- available with them, the credit can be utilized only to the extent of Rs. 200/- and the balance Service Tax liability (i.e. Rs.1000-200=800/-) has to be paid in cash /

cheque. The remaining credit can be carried forward and used for the subsequent period in a similar manner.

iii. However, an option is available to general insurance service providers providing taxable as well as exempted insurance schemes and do not maintain separate input / input services credit accounts to utilise CENVAT credit proportionate to the inputs and input services used in providing taxable services. The scheme is optional and is effective from 1st April, 2007.

Refer Rule 6(3) of CENVAT Credit Rules, 2004 for further details.

Comments: - There may be a scenario where the service provider also happens to be a manufacturer in which case in addition to providing taxable and exempted services he may also be having excisable goods being manufactured. In such a scenario, he should first of all analyse the input services being received and find out whether any of them happen to fall under the categories specified under Rule 6(5) of CCR 2004, in which case, the full credit of service tax paid on such input services would be available (unless used exclusively for exempted activity). The remainder of the input services might have to be segregated to find out the ones used exclusively for exempted activity in which case, no credits would be available. There may be services received common to both manufacturing and provision of output services (other than the ones covered above) in which case it may not be possible to apply the 20% criterion. This might then have to be split up on an equitable basis in order to ascertain the credits admissible. W e f 1.4.2008 the availment of credit itself has been restricted in the lines of VAT on proportionate basis. A formulae has been prescribed which would have to be adopted to arrive at the non admissible credits.

35. What is Export of Services? Whether export of services is exempted from Service Tax?

What constitute export of service is defined in the Export of Service Rules, 2005. The Export of taxable services is not liable for Service Tax payment. (Export of Service Rules, 2005).It maybe noted that export of services are not exempted services and the restriction in Rule 6 are not applicable to exports.

36. What constitutes export of services?

The Export of Services, Rules, 2005 specifies 3 categories of cross border transaction of services and conditions that will be construed as export of services in cases of:

i. Specified services, which are provided in relation to immovable properties situated outside India

- ii. Specified services which are provided partly outside India*
- iii. The remaining taxable services, barring a few exceptions, when provided in relation to business or commerce, to a recipient located outside India, and when such services are provided not in relation to business or commerce, it should be provided to a recipient located outside India at the time of provision of such service. However, where such recipient has commercial establishment or any office relating thereto, in India, such taxable services provided shall be treated as export of service only when order for provision of such service is made from any of his commercial establishment or office located outside India.*
- iv. Further condition to be met for a service to constitute export are –*
 - i. Such service is provided from India and used outside India; and*
 - ii. Payment for such service provided outside India is received by the service provider in convertible foreign exchange.*

Thus, each transaction has to be seen individually to ascertain if it constitutes export of services, fulfilling the requisite parameters.

Comments: - The service provider should be careful in classifying the services he/ she provides as some of the services could be governed by performance based criterion whereas others may be governed by recipient based criterion for determining whether the service has been really exported or can be regarded as not having been exported at all. The absence of the delivery clause can be noted here as the same was done away with in this year's budget. As far as performance based criterion is concerned, even part performance outside India will warrant treatment of the service as having been performed outside India. The exporter of service can examine the benefits pertaining to refunds in tune with Rule 5 of Cenvat Credit Rules 2004 or rebate under Rule 5 of Export of Service Rules 2005. Exporters of goods would also be entitled to refund of service tax paid on specified input services used for such exports.

37. What is the statutory provision regarding taxing of services provided from outside India and received in India?

Section 66A of the Finance Act, 1994, inserted with effect from 18.4.2006, provides that where any taxable service is provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and is received by a person who has his place of business, fixed establishment, permanent address or usual place of residence, in India, such service shall be taxable service.

Comments: This clarification should put to rest a number of SCNs issued for the previous periods.

38. Is the recipient of service liable to pay tax for the services rendered from abroad by Non resident?

The recipient of service shall be liable to pay tax if the provider of service do not have any established business or a fixed establishment in India. However, a person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country (including India).

Comments: The non resident may have a branch which is acceptable. But if he were to have an agent who assist him in some manner, whether such person would be considered as having a business establishment is not clear? The receivers of service would then contend that the agent is in India and therefore if at all there is any liability the same would be on the provider.

39. Where provider of the service has his business establishments in more than one country, which country should be treated as the country from which service is provided?

If the provider of the service (from outside India) has his business establishments in more than one country, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.

40 What will be 'usual place of residence' of a body corporate?

Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted.

41. What constitutes import of services?

The Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 specifies 3 categories of cross border transaction of services and conditions that will be construed as import of services, namely, -

- i. Specified services which are provided in relation to immovable properties situated in India*
- ii. Specified services which are provided partly in India*
- iii. The remaining taxable services, barring a few exceptions, when provided in relation to business or commerce, to a recipient located in India.*

Thus, each transaction has to be seen individually to ascertain if it constitutes import of services, fulfilling the requisite parameters.

Comments: - Similar to the categorization under Export of Service Rules 2005, even the determination of the liability on the services received from abroad would depend to a certain extent on the classification of the service. Care has to be taken where a change in classification would mean a change from performance-based criterion to recipient based one. In case of performance-based criterion being applicable, even part performance of the service in India will warrant treatment of the same as having been performed in India. The valuation would be the same as applicable to services provided in India. Moreover, the services received cannot be regarded as output service for the purpose of availing credit. In other words, the tax has to be paid in cash and the amount paid can be availed as cenvat credit where the definition of “input service” as laid down in the Cenvat Credit Rules 2004 is satisfied. Where the service is generally in relation to immovable property, the same would be taxed if the immovable property were situated in India.