

**SERVICE TAX ON COMPOSITE CONTRACTS
&
SERVICE TAX RULES, 1994**

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**TOPICS COVERED**

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INTRODUCTION TO COMPOSITE CONTRACTS

Composite contracts are essentially contracts in which two elements are involved, viz. sale of goods and services. Such contracts which are taxable as sale of goods and services are known as composite contracts.

There is a line of difference between taxation of composite contracts and double taxation of contracts. In the former, a certain portion/percentage of the composite contract is taxable as sale of goods and service tax is levied on another portion/percentage of the composite contract. However, in the latter Sales tax (VAT) and Service Tax are levied simultaneously on the entire value of the contract.

Below, is a brief discussion on following types of Composite Contracts, followed by issues in respective composite contracts;

- Works Contract Service including Construction Service
- Restaurants
- Outdoor Caterers
- Bundled Service by way of Supply of Food together with renting of premises



TAXATION ON WORKS CONTRACT **INCLUDING CONSTRUCTION SERVICE**

1. Taxability

1.1. Section 66E of the Finance Act, 1994 provides for list of declared services wherein clause (h) of the above section provides that the **service portion** in the execution of a works contract is made liable to service tax.

1.2. Thus, services element in a works contract is liable to tax

2. What is “works contract”

2.1. Works contract means a contract wherein

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

2.2. It is to be noted that in respect of movable property, only repair, maintenance, renovation, alteration is taxable. Any original work or any work other than those mentioned above in respect of movable property is not under coverage of service tax.



3. Valuation

3.1. Value of service portion in the execution of a works contract shall be

- equivalent to gross amount charged for works contract
- less value of transfer of property in goods involved in execution of said works contract and
- less VAT/Sales Tax.

3.2. Value of works contract service shall include, -

- labour charges for execution of the works;
- amount paid to a sub-contractor for labour and services;
- charges for planning, designing and architect's fees;



- charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- cost of consumables such as water, electricity, fuel used in the execution of the works contract;
- cost of establishment of the contractor relating to supply of labour and services;
- other similar expenses relating to supply of labour and services; and
- profit earned by the service provider relating to supply of labour and services

3.3. In case VAT or Sales Tax is paid on actual value of transfer of property in goods involved in execution of works contract, then such value adopted for payment of VAT to be taken as value of transfer of property for determining the value of works contract service as referred above.

3.4. If the value of service portion in the execution of a work contract has not been determined as above, then the person liable to pay service tax shall determine the service tax payable as under:

Works Contract	Service tax payable on
Execution of original works [#]	40% of the total amount * charged for the works contract
Maintenance or repair or reconditioning or restoration or servicing of any goods	70% of the total amount * charged for the works contract
Works contract, not covered above, including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property	70% ¹ of the total amount * charged for the works contract

“**original works**” means

- all new constructions;
- all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

¹ Substituted for 60% w.e.f. 1st October 2014 by Notification No. 11/2014-ST dated 11th July, 2014.



- erection, commissioning or installation of plant, machinery or equipment

* **“total amount”** means

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

3.5. CENVAT credit of duties or cess paid on any inputs shall not be taken, which are used in or in relation to the said works contract. However, CENVAT credit of duties or cess paid on Capital Goods and Input Service shall be available.

Example 1

Sr. No.	Particulars	Amount in Rs.
1	Gross amount received for Works Contract excl taxes	95,00,000
2	Fair market value of goods supplied by the service receiver excluding taxes	10,00,000
3	Amount charged by service receiver for 2	5,00,000
4	Total amount charged (1+2-3)	1,00,00,000
5	Value of service portion (40% of 4 in case of original works)	40,00,000

Example 2

Sr. No.	Particulars	Amount in Rs.
1	Gross amount received for Works Contract excl taxes	1,00,00,000
2	Fair market value of goods supplied by the service provider excluding taxes	25,00,000
3	Amount charged by service provider for 2	15,00,000
4	Total amount charged (1+2-3)	1,10,00,000



5	Value of service portion (40% of 4 in case of original works)	44,00,000
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As seen in the above example, the service provider has to discharge service tax liability on fair market value for the works contract. If the amount of works contract is not at fair market value, then such fair market value has to be arrived at by generally accepted accounting principles.

However, there are no accounting standards/ principle prescribed by ICAI to derive such fair market value.

4. Reverse Charge Mechanism:

- 4.1. Section 68(2) of the Finance Act, 1994 read with Rule 2(1)(d) of Service Tax Rules, 1994 provide that in case of certain types of services, the recipient is liable to pay tax and in other cases, both the provider of service and recipient of service are liable to pay tax on percentage basis as prescribed in Notification No. 30/2012 – ST, dated 20/06/2012.

Nature of service: Service portion in execution of works contract	
Service provider	Service Receiver
Any individual, Hindu Undivided Family or partnership firm whether registered or not, including association of persons, LLP located in taxable territory.	Business Entity registered as Body Corporate, located in the taxable territory.
50 %	50 %

5. Builder's and Developer's

5.1. Taxability

Section 66E of the Finance Act, 1994 provides for list of declared services wherein clause (b) of the above section provides that;

- construction of a complex, building, civil structure or a part thereof,
- including a complex or building intended for sale to a buyer, wholly or partly,
- except where the entire consideration is received after issuance of completion-certificate by the competent authority
- is liable to service tax.

Hence service portion in sale of any commercial or residential or any other property is leviable to service tax.

5.2. Abatement



- As the above value of above transaction includes value of goods, value of land and value of service, abatement to Builder's and Developer's has been provided vide Notification No. 26/2012-ST dated 20th June, 2012 to bring parity for taxing the transaction.
- Vide entry no. 12 of the said notification, abatement of 75% was provided in respect Construction of complex, building, civil structure or part thereof intended for a sale to a buyer subject to the condition;
 - Cenvat credit of Inputs has not been taken
 - Value of land in included in the amount charged from service receiver.
- W.e.f. 1st March, 2013 the rate of abatement was reduced from 75% to 70% in respect to high-end residential construction where carpet area exceeds 2000 sq.ft. **and** value charged exceeds Rs. 1 crore and in respect of Civil Construction.
- Now w.e.f. 8th May, 2013 rate of abatement of 70% has been set high-end residential construction where carper area is equal to or greater than 2000 sq.ft **or** value charged is equal to or greater than Rs.1 Crore.
- The summary of the above is provided below;

Description	% of Abatement
Construction of Residential units having carpet area of less than 2000 square feet and where the amount charged is less than Rs. 1 Crore	75%
Construction of Residential units having carpet area of 2000 or more than 2000 square feet or where the amount charged is Rs. 1 Crore or above	70%
Any other construction including commercial and industrial	70%

- The amount charged shall be the sum total of the amount charged for the service including the fair market value of all goods and services supplied by the recipient(s) in or in relation to the service, whether or not supplied under the same contract or any other contract, after deducting-



(i) the amount charged for such goods or services supplied to the service provider, if any; and

(ii) the value added tax or sales tax, if any, levied thereon:

- The fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles

6. Exemptions

In negative list regime most of the exemptions are part of one single mega exemption notification vide Notification no. 25/2012 –Service Tax, Dated 20th June, 2012. These Exemptions became effective from the 1st July 2012. Below are the exemptions available in respect of work contract service and Constructions services.

6.1. Services in relation to erection, construction, commissioning, installation, completion, fitting out, maintenance, repair, alteration or renovation provided to government / Local authority/ governmental authority [S. No. 12].

6.1.1. Services provided to the Government or local authority/ governmental authority by way of erection, construction, commissioning, installation, completion, fitting out, maintenance, repair, alteration or renovation of –

- A. a civil structure or any other original work meant predominantly for a non-industrial or non-commercial use or any other business or profession;
- B. a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
- C. a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
- D. canal, dam or other irrigation works;
- E. pipeline, conduit or plant for (i) water supply (ii) water treatment or (iii)sewerage treatment or disposal; or
- F. a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Finance Act.

Governmental authority² means an authority or a board or any other body;

(i) Set up by an Act of Parliament or a State Legislature; or

² Amended vide Notification 2/2014-ST dated 30-1-2014. Prior to that defined as "governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution.



(ii) Established by Government,
with 90% or more participation by way of equity or control,
To carry out any function entrusted to a municipality under article 243W of the
Constitution.

6.2. Services in relation to construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration w.r.t. certain services used by public at large [S. No. 13].

6.2.1. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,

- A. road, bridge, tunnel, or terminal for road transportation for use by general public;
- B. a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana
- C. building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
- D. pollution control or effluent treatment plant, except located as a part of a factory; or
- E. a structure meant for funeral, burial or cremation of deceased

6.2.2. Remark

6.2.2.1. The maintenance services provided w.r.t. services mentioned in (c) to (e) above was taxable till 30th June, 2012. Now the above entry exempt all the above said services provided.

6.2.2.2. In case of Roads, earlier, construction of all roads was excluded till 30th June, 2012. However the mega exemption exempts services in respect of road used by general public only. Thus any of the aforesaid services in relation to road in a residential complex or a factory, etc. will attract service tax.

6.2.2.3. Construction, repair, etc. of non commercial building such as schools, college, hospitals, charitable clinic, etc. was not leviable to service tax till 30th June, 2012. The mega exemption does not cover the above service.



6.3. Services in relation to erection, commissioning, installation, construction, w.r.t. certain specified purposes [S. No. 14].

6.3.1. Services by way of erection, construction, commissioning and installation of original works pertaining to,-

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

The term "single residential unit" means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.

6.3.2. Scenario prior to 1st July, 2012 in respect of above said services

- 6.3.2.1. Services in respect of airport, port and railways were all together excluded from the ambit of service tax by way of specific exclusion from the definition.
- 6.3.2.2. Services in respect of construction of complex services were exempt from service tax if the complex was having 12 or less units. The definition also excluded complexes used for personal use.

6.3.3. Remark

- 6.3.3.1. Till 30th June, 2012 services as specified in clause (a), constructions other than original work, repairs, alteration, restorations and maintenance was not leviable to tax. However under mega exemption the said services are taxable.
- 6.3.3.2. In respect of services mentioned in clause (b) - A millionaire using the services for construction of a bungalow for himself will not pay service tax whereas a common man buying a under construction flat which is not approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation,



Government of India/ having an area of more than 60 square meters even if approved by the above mentioned authority in a building having more than one unit will have to pay service tax.

6.3.3.3. Earlier construction of residential complex / building having less than 12 units were not leviable to service tax. Now, only those unit having an area of less than 60 square meters approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India are only exempt and it does not matter if the unit is less than 12 units and more than one unit.

6.4. Service provided by specified persons [S. No. 29(h)].

6.4.1. Services by Sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt.

7. Issues:

7.1. Reliable Limited offers works contract services to clients across India. Standard terms of the contract Reliable Limited executes with clients contains a clause for retention of certain percentage of the total contract value. The retention amount is in the nature of security towards the quality of goods and services provided by Reliable Limited. Typically the contracts provide for payment of the retention amount after a specified period (usually one to three years) from the date of completion of job.

Reliable Limited raises for gross amount including the retention amount and service tax on entire bill. Reliable Limited has sought your opinion on the point of taxation of the retention amount.

7.2. Whether flooring work, plastering, painting, glazing, carpentry, plumbing, interiors etc., done during the course of construction can be considered as original works for valuation purposes and pay tax on 40%?



In above case, service was completed as on 30th September, 2014. However, invoice has been issued in October 2014 and payment has been received in November 2014. What shall be the value on which service tax is payable?

7.3. M/s Fact Speed Elevators entered into contract for supply of lifts. They paid VAT on 80% of value of contract deeming it to be the value of material supplied in works contract and paid service tax on 20% of value of contract. Whether the value on which service tax has been discharged is as per provisions of Rule 2A of Service Tax (Determination of Value) Rules, 2006?

7.4. M/s Cannon India entered into two contracts, one for manufacture and sale of transmission towers and other for service contract i.e. erection commission and installation of tower. Whether M/s Cannon India can pay service tax in terms of Rule 2A of Service Tax (Determination of Value) Rules, 2006?

7.5. M/s Fine Constructors are engaged in providing Works Contract Service and have opted for Rule 2A(i) of Service Tax (Determination of Value) Rules,



2006. Accordingly, they have been discharging service tax on labour charges, charges for designing, planning etc, cost of consumables and profit on supply of labor and services. However, at the end of the project, M/s Fine Constructors have realized that they have actually incurred loss on the project and accordingly, the profit element on which service tax has been discharged, should not have been paid. Whether M/s Fine Constructors can adjust such excess service tax?

7.6. M/s Strong Constructors have been awarded a contract for construction and maintenance of canal (for the purpose of supply of drinking water) by Canal and Irrigation Co Ltd. (wholly owned by Govt. of Gujarat). The contract has been awarded on 01.12.2013. Whether service tax is leviable on the same?

A similar contract was also awarded to M/s Strong Constructors by Canal and Irrigation Co Ltd. on 01.03.2014. Whether service tax is leviable on the same?

7.7. M/s ABC Transporters are engaged in road transport of heavy machinery and equipments. Such machinery and equipment cannot enter cities through conventional routes due to space constraints at 'toll nakas' at outskirts of city. Accordingly, they obtain permission from local authorities for constructing a 'by-pass road'. Such permission is given subject to the condition that once the machinery/equipment passes through the bypass road, such bypass road shall be taken over by the local authority and made open for use by general public. Now, ABC Transporters has given contract for construction of such by-



pass road to M/s Mazboot Sadak Co. Ltd. ABC Transporters seek your opinion whether service tax shall be leviable on service provided by M/s Mazboot Sadak Co. Ltd?

7.8. Ishwar Charitable Trust is an entity registered under section 12AA of the Income Tax Act. The Trust is contemplating construction of a Hospital for welfare of public at large. The layout the hospital includes a Temple in the premises. Now the Trust seeks your opinion on the leviability of service tax on construction of Hospital and Temple within the premises of Hospital.

7.9. Whether the construction of three floor house by contractor is leviable to service tax?

7.10. M/s Gharwale Ltd. is engaged in business of developing empty plots and building complex of bungalows on such plots. They are owners of plot of approx 9000 sq.ft. They have sub-divided the entire plot in 9 equal parts, each measuring 1000 sq. ft on which they plan to construct single bungalows on 8 plots and remaining 1 plot would be dedicated towards common play area.



The entire complex would be having common water supply and sewage system. Whether such bungalows would be termed as single residential units or would they be part of a residential complex? Whether any exemption is available to M/s Gharwale Ltd.

7.11. M/s Reliable Constructors Ltd. have been awarded the composite contract in respect of construction of Mumbai Metro. Following is the scope of work of M/s Reliable Constructors Ltd.

- Piling Work and Construction of Pillars
- Erection and Installation of pre-fabricated concrete slabs
- Laying of tracks and overhead wiring on tracks
- Construction of Station
- Floor and wall tiling of Station, installation of electrical fittings in station

Whether service tax is leviable on the above work? If yes, on which portion of the works contract.

7.12. In the above work, M/s Reliable Constructors Ltd sub-contract the tiling and finishing work in respect of the Metro Station to M/s Tilers Ltd. The subcontract is also a composite contract. Whether service tax is leviable on Reliable Constructors Ltd. in respect of the Construction work of Mumbai Metro. Also whether service tax is leviable on service provide by M/s Tilers to M/s Reliable Constructors Ltd.?



7.13. What would be the answer in above case if M/s Tilers Ltd. are directly awarded the composite contract for tiling from Mumbai Metro?

7.14. Mr. Karodpati has purchased a flat from M/s Chalu Developers Ltd. Mr. Karodpati has specifically requested the developers to use Italian Marble in his flat instead of usual Kadappa Stones. The Italian Marble shall be supplied by Mr. Karodpati to the Developer.

The developer has sub-contracted the work of tiling to M/s Tilers Ltd. In terms of request of Mr. Karodpati, the developer has instructed M/s Tilers Ltd. to fix Italian Marble in the respective Flat. The Italian Marble shall be supplied by Mr. Karodpati to the developer, who shall then give the same to M/s Tilers Ltd. Cement and other material for fixing of tile shall be supplied by M/s Tilers Ltd. What shall be value chargeable to service tax on the transactions?

7.15. M/s Redevelopers Ltd. is redeveloping a society having 24 flats, each measuring 500 sq.ft. Under the agreement with society, M/s Redevelopers are



given right to redevelop the society totaling to 25000 sq.ft. Out of the above space, 24 flats each measuring 625 sq.ft, totaling to 15000 sq.ft. shall be allotted to members of society and M/s Redevelopers shall sell the balance flats to outside Parties. M/s Redevelopers shall also pay Rs. 5 Lacs as Rent Compensation, Rs. 10 lacs to each member of society as lump sum compensation. What shall be value chargeable to service tax under works contract?

7.16. XYZ Ltd. have been given the contract of construction of a commercial building by M/s. Kanjus Ltd. The terms of the contract specify the quality of material to be used, time limit for completion of contract, design specification. Now, after completion of contract, M/s. Kanjus Ltd. has demanded a renegotiation and asked price to be reduced to 85% of original contract value since the building design is not as per his specification and also that the work was completed 6 months after deadline. XYZ Ltd. had already raised RA Bills for 90% of the contract amount and paid service tax accordingly. They seek your opinion on adjustment on excess paid service tax on account of renegotiation by M/s Kanjus Ltd



TAXATION ON RESTAURANTS

1. Taxability

- 1.1. Section 66E(i) of the Finance Act, 1994 provides for list of declared services wherein the service portion in an activity wherein goods, being food or any other article of human consumption, supplied as part of activity is made liable to service tax.
- 1.2. Thus, services provided by restaurants or eating joints or mess by whatever name called, in relation to serving of food or beverages are liable to service tax.

2. Exemption

- 2.1. Notification No. 25/2012-ST, dated 20-6-2012 provides for exemption to all restaurants, eating joints, or a mess **other than those** having:
 - the facility of air conditioning or central air heating in any part of the establishment, at any time during the year and
 - a license to serve alcoholic beverages.
- 2.2. W.e.f. 1st April, 2013 the exemption will be available to only those restaurants, eating joints, or mess **other than those** having:
 - the facility of air conditioning or central air heating in any part of the establishment, at any time during the year.

3. Explanation of conditions relating to facility of air conditioning, central air heating and license to serve alcoholic beverages?

- 3.1. Facility of air conditioning
 - The restaurant can have the air conditioning facility in any part of the establishment.
 - The air conditioning facility can be at any time during the financial year.
 - The air condition can be of any kind i.e. central, window or split.
- 3.2. Facility of Central air heating
 - The restaurant having facility of central air heating cannot avail the benefit of exemption
 - The air heating facility should be centralised and not through individual machines.
- 3.3. License to serve alcoholic beverages



- The restaurant must having the license to serve alcoholic beverages is a pre condition for attracting service tax. It is not necessary that the receiver has to consume alcoholic beverages. However, w.e.f. 1st April, 2013 the condition to have a license to serve alcoholic beverages has been dispensed with.

4. Valuation

- 4.1. Rule 2(c) of Service Tax (Determination of Value) Rules, 2006 provides for the value of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant.
- 4.2. As per the said rule the service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of activity, at a restaurant will be 40% of the **total amount charged**.
- 4.3. **Total amount** means the sum total of the gross amount charged and the fair market value³ of all goods and services supplied in or in relation to the supply of food or any other article of human consumption or any drink (whether or not intoxicating), whether or not supplied under the same contract or any other contract, after deducting
- The amount charged for such goods or services and
 - The VAT or Sales Tax levied thereon.
- 4.4. Restaurants, etc. should not avail the Cenvat credit of duties paid on any specified goods. However, they can take Cenvat credit of duty paid on inputs and service tax paid on input services.
- 4.5. The aforesaid is tabulated below –

Particulars	Remarks
Service tax payable on	40%
Cenvat credit of duty paid on specified inputs	No
Cenvat credit of duty paid on other than specified inputs	Yes
Cenvat credit of duty paid on capital goods	Yes
Cenvat credit of service tax paid on input services	Yes

³ Fair Market Value of goods and services, so supplied, may be arrived at in accordance with the generally accepted accounting principles.



5. Clarification

5.1. It has been clarified by CBEC vide Circular No. 139/8/2011-TRU dated 10-5-2011 that the taxable services provided by a restaurant in other parts of the restaurant e.g. swimming pool, or an open area attached to the restaurant are also liable to service tax as these areas become extensions of the restaurant.

6. Constitutional Validity

6.1. Hon'ble Kerala High Court in case of Kerala Classified Hotels and Resorts Association V/s Union Of India [2013 (31) S.T.R. 257 (Ker.)] has interalia held that levy of service tax on Restaurant Service is beyond the legislative competence of Parliament as the same is covered by Entry 54 of List II of the Seventh Schedule of the Constitution which enable levy of sales tax on 'deemed sale' of food, etc..

6.2. Hon'ble Bombay High Court in case of Indian Hotels & Restaurant Association V/s Union of India [(2014) 44 taxmann.com 455 (Bombay)] has interalia held that as per Entry 97 in List I of Schedule VII of Constitution, Parliament may impose service tax and entry 54 in List II of Schedule VII of Constitution and article 366(29)(f), which enable levy of sales tax on 'deemed sale' of food, etc. cannot bar imposition of service tax on service rendered by a restaurant to any person.

7. Issues

7.1. In case of McDonalds or Subway, the patrons are required to adopt self service wherein the patron places his order at the cash counter, collects his order and then seats himself. In such a situation, the element of serving the patron (like in restaurant) is eliminated. Whether service tax is still leviable in such situation?

7.2. Malls have in-house food courts owned and maintained by the mall. The patron like in above case, are expected to place their orders at respective kiosk and serve themselves. What is the service tax implication in such case?



7.3. Restaurants having 'Drive-thru' or 'Home delivery' are merely selling the food items. The element of serving the customers is completely eliminated. Whether service tax is still leviable?

7.4. A birthday is being celebrated in a restaurant, where the cake is brought by the patrons and remaining food is ordered from the restaurant. The restaurant serves both food as well as cake. Whether service tax is leviable only on restaurant bill or restaurant bill and value of cake?

7.5. 70mm is a movie theatre wherein there is in-house food lounge. The movie theatre also offers services wherein their employees take order from patrons and serve their order to them at their respective seats. The price charged by 70mm for food items sold over the counter and served at seats is same. Whether service tax is leviable on either or both systems of supply of food to patrons? If yes, then value on which service tax is leviable?



- 7.6. M/s Nature's Ice-cream is an Ice cream Parlour. Patrons place and collect their order from counter and have the option to seat themselves in the ice-cream parlour to consume their ice-cream. Whether service tax is leviable on supply of ice-cream to patrons? If yes, then value on which service tax is leviable?



TAXATION ON OUTDOOR CATERERS

1. Taxability

- 1.1. Section 66E(i) of the Finance Act, 1994 provides for list of declared services wherein the service portion in an activity wherein goods, being food or any other article of human consumption, supplied as part of activity is made liable to service tax.
- 1.2. Thus, services provided by the outdoor caterers are liable to service tax.

2. Exemption

Sr. No. 19A of Notification No. 25/2012-ST, dated 20-6-2012 w.e.f. 22-10-2013 provides for exemption to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948, having the facility of air-conditioning or central air-heating at any time during the year.

3. Valuation

- 3.1. Rule 2(c) of Service Tax (Determination of Value) Rules, 2006 provides for the value of service portion involved in supply of food or any other article of human consumption or any drink as outdoor catering.
- 3.2. As per the said rule the service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of such outdoor catering will be 60% of the **total amount charged**.
- 3.3. **Total amount** means the sum total of the gross amount charged and the fair market value⁴ of all goods and services supplied in or in relation to the supply of food or any other article of human consumption or any drink (whether or not intoxicating), whether or not supplied under the same contract or any other contract, after deducting
 - The amount charged for such goods or services and
 - The VAT or Sales Tax levied thereon.
- 3.4. Restaurants, etc. should not avail the Cenvat credit of duties paid on any specified goods. However, they can take Cenvat credit of duty paid on inputs and service tax paid on input services.
- 3.5. The aforesaid is tabulated below –

⁴ Fair Market Value of goods and services, so supplied, may be arrived at in accordance with the generally accepted accounting principles.



Particulars	Remarks
Service tax payable on	60%
Cenvat credit of duty paid on specified inputs	No
Cenvat credit of duty paid on other than specified inputs	Yes
Cenvat credit of duty paid on capital goods	Yes
Cenvat credit of service tax paid on input services	Yes

4. **Issue:** M/s Sankalpa Pvt. Ltd. has organized a garba night for which it has taken ground on hire. M/s Sankalpa has also kept reserved a section in the ground for refreshments, where guests can pay and take refreshments. M/s Mitha Ji shall erect its stalls in the refreshment area and offer snacks and other refreshments to guests. M/s Mitha Ji wants to know whether they liable to pay service tax on the foods supplied/served to guests in Garba Night.



TAXATION ON BUNDLED SERVICE BY WAY OF SUPPLY OF FOOD, ETC. TOGETHER WITH RENTING OF PREMISES

1. Taxability

- 1.1. Banquet halls, etc. given on hire by hotels, restaurants, etc. along with supply of food, etc. were classified under Mandap-keeper services or Convention Services in the erstwhile provisions.
- 1.2. Currently, there is specific entry in the Notification No. 26/2012-ST, dated 20-6-2012 with respect to abatement for bundled services by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) together with renting of such premises.
- 1.3. Thus, any hotel, convention center, club, pandal or shamiana is providing any bundled services by way of supply of food or any other article of human consumption or any drink, in a premises together with renting of such premises it would be liable to service tax on such bundle of services.

2. Valuation

- 2.1. Notification no. 26/2012-ST, dated 20-6-2012 provides for abatement for the said services:
 - The abatement is allowed to the extent of 30% of the gross amount charged from the customer i.e. service tax payable is on 70% of the gross amount.
 - Service provider cannot avail Cenvat credit on specified inputs; however it can avail Cenvat credit of duty paid on capital goods and of service tax paid on input services.
- 2.2. The aforesaid is tabulated below –

Particulars	Remarks
Abatement	30%
Service Tax payable on	70%
Cenvat credit of duty paid on specified inputs	No
Cenvat credit of duty paid on other than specified inputs	Yes
Cenvat credit of duty paid on capital goods	Yes
Cenvat credit of service tax paid on input services	Yes



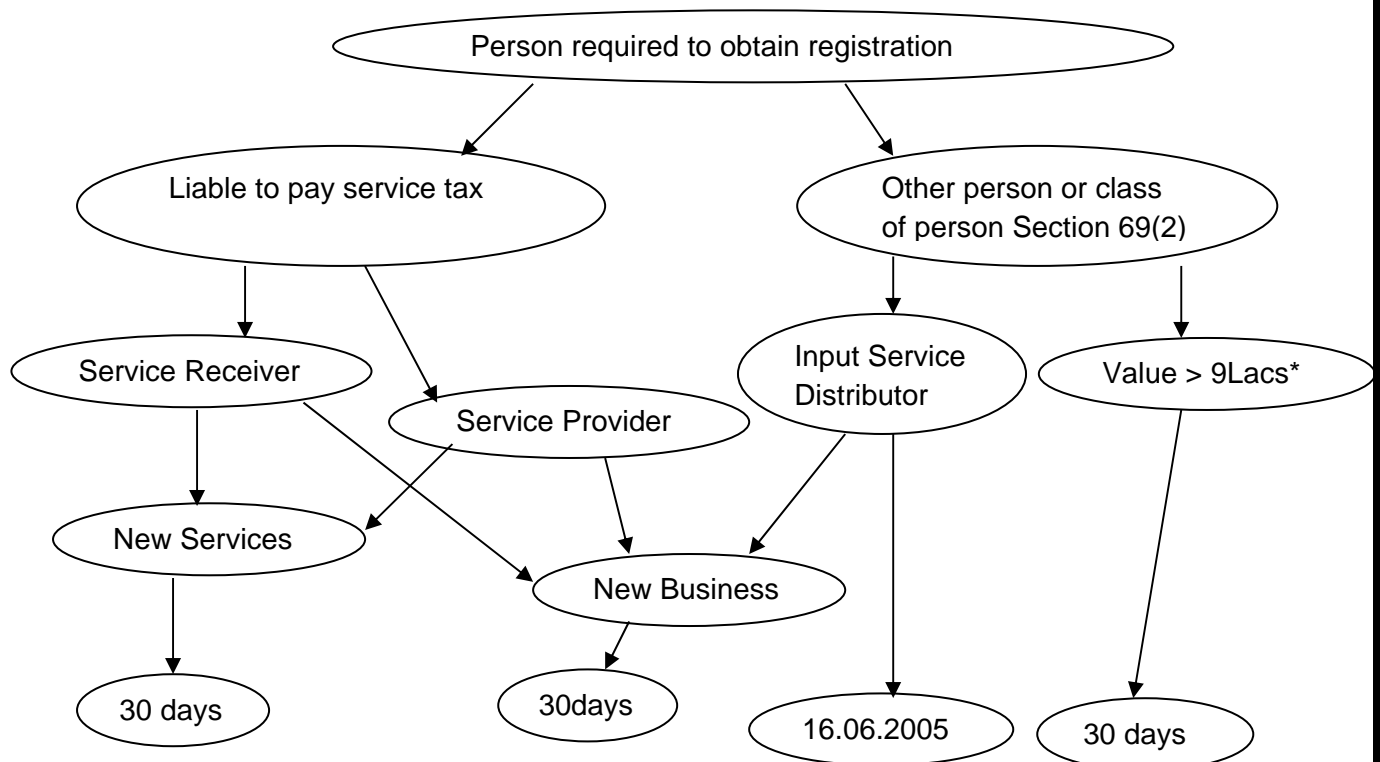
SERVICE TAX RULES 1994

1. REGISTRATION [Section 69, Rule 4 & Service Tax (Registration of special category of persons) Rules, 2005]

1.1. Person required to obtain registration and applicable time limit:

Section 69 of the Finance Act, 1994 read with rule 4 of Service Tax Rules, 1994 requires that every person liable to pay service tax must make an application for registration (in Form ST-1) to the Jurisdictional Superintendent of Central Excise / Service Tax. However, a relaxation has been provided in case of services pertaining to goods transport agencies, the date of application has been specified to be 31st March, 2005 even though service tax applicable on this service on 1st January, 2005.

The person required to obtain registration is summarised in the chart given below:



*9 Lacs⁵

⁵ Applicable from 1st April, 2008. Prior to that between 1st April, 2007 to 31st March, 2008 Value > 7 Lacs and between 16th June, 2005 to 31st March, 2007 value > 3 Lacs.



1.2. **MULTIPLE / CENTRALISED REGISTRATION** [Rule 4(2)]

Service tax registration is “qua premises” and not “qua assessee” unlike Income tax where single PAN is granted for all the premises. Separate application has to be made for registration of each premises from which taxable services are rendered. Even within single premises, if there are multiple firms, all of them have to be separately registered.

Where person liable to pay service tax (either provider or receiver⁶ of taxable service) from more than one premises and has a centralized billing systems or centralized accounting systems and such centralized billing systems or centralized accounting systems are located in one or more premises he may, at his option, register such premises or office where such centralized billing systems or centralized accounting systems are located.

1.3. **MULTIPLE SERVICES RENDERED** [Rule 4(4)]

If the same assessee provides more than one description of service, he may apply for single registration for all the description of services. Single application mentioning therein all the taxable services provided shall be sufficient. In case the assessee is already registered for one service but subsequently becomes liable for another description of service, then he has to get his certificate amended for the other description of service.

Post 30th June, 2012 after the introduction of Negative list, there were no category of services, however category-wise registration is required as per notification no. 48/2012-Service Tax, dated 30th November, 2012.

1.4. **CHANGES IN REGISTRATION CERTIFICATE** [Rule 4(5A)]

At the time of registration assessee submits various details to the department like address of the premises, name of the authorized persons, constitution of the assessee, name of the director/partner etc. If after granting of certificate any

⁶ Person liable to pay service tax u/s 68(2) is eligible for centralised registration - Maharashtra State Bureau of Text Books Production & Curriculum Research 2006 (4) S.T.R. 331 (Commr. Appl.). Consequent to this decision Rule 4(2) has been amended w.e.f. 2nd November, 2006 allowing service receiver who is liable to pay service tax may take centralised registration.



change happens in any details submitted by assessee in registration application then assessee has to mandatorily intimate such change to the Central Excise Officer within 30 days of the said change.

If there is any change in name or place of the applicant, the registration certificate should be sent for necessary amendment within 30 days from the change. Moreover, if the change in the place also results in a change in the jurisdiction, an additional request for the transfer of records should also be made.

Existing Service tax payer who does not have an Online User ID: Fill in a simple declaration form and submit to department. After receiving the same, department sends the email on the ID as given in declaration form. This email contains links to the site and a password and follow the procedure given in para 1.7 below.

1.5. TRANSFER OF BUSINESS [Rule 4(6)]

When a registered assessee transfers his business to another person than transferor shall surrender the registration certificate and the transferee shall obtain a fresh certificate of registration.

1.6. CHANGES IN LAW FROM TIME TO TIME

- 1.6.1. Upto 30th June, 2012 i.e. under positive regime the service tax registration was required to be applied for under various categories of services as prescribed under law.
- 1.6.2. W.e.f. 1st July, 2012 i.e. under negative list regime the service tax registration was required to be applied for only under one head i.e. Services other than negative list.
- 1.6.3. However, a Notification No. 48/2012 - Service Tax, dated on 30th November, 2012 was issued amending the Service Tax Rules, 1994 wherein Form ST-1 has been amended and again the erstwhile categories of services were introduced for the purpose of making application of service tax registration.
- 1.6.4. Further, letter bearing number F.No. 137/22/2012-Service Tax, dated 30th November, 2012 was issued seeking to amend Form ST-1 so as to enable



applicants seeking registration to choose the description of the service being provided by them.

- 1.6.5. A Circular was issued bearing number 165/16/2012 - ST, dated 20th November, 2012 wherein it is stated that where registrations have been obtained under the description 'All Taxable Services', the taxpayer should file amendment application online in ACES and opt for relevant description/s from the list of 120 descriptions of services given in the Annexure to the said Circular.

1.7. REGISTRATION WITH ACES:

Every person is required to register with ACES before proceeding to ACES.

Following types of persons needs registration with ACES:

- a. New Assessee
- b. Existing Assessee
- c. LTU Assessee
- d. Non Assessee

a. **New Assessee:**

In case of a new assessee, login to ACES at <http://www.aces.gov.in> and choose the Service Tax link and Submit the form "Registration with ACES", by furnishing a self-chosen user ID and e-mail ID. System checks for availability of the chosen User Id and generates a password. It will be sent to assessee e-mail from acesadmin@icegate.gov.in.

Login again and proceed with the registration with Service Tax, by filling in Form ST-1. For security reasons, change password immediately.

b. **Existing Assessee**

In case of an existing assessee, fresh registration need not be taken with the department. Assessee will have to only apply to department and get itself registered with ACES.

A mail will be sent from acesadmin@icegate.gov.in to your e-mail ID, as available in the existing registration data base, indicating a TPIN and password.



The mail will contain a hyperlink to the website, by clicking it you can proceed to register with ACES.

Many a times, assessee does not have PAN based service tax registration, in other words they are not registered under erstwhile system of SAP. In such a situation, ACES will not be able to send hyperlink to such assessee's. In such case, assessee can either register themselves as a new user or they can fill "Declaration form" with the concerned Jurisdictional office and obtain the hyperlink. On submission of "Declaration Form", ACES will send hyperlink containing TPIN (Temporary Personal Identification Number) and password. On receipt of such TPIN and password, existing user can register with ACES. The format of TPIN is t+9 digit number (e.g. t012345678)

Further, many a times, department do not have the correct or valid email ID of the assessee, in such a case, ACES would not be able to sent the hyperlink to the assessee though he is holding PAN based Service tax registration. In such a situation, assessee has to fill "Declaration Form" with the ACES and afterwards ACES will send the hyperlink to assessee.

c. Non-Assessee

This category of registration is given in ACES to any individual, firm or company, who are not assessees but who require to transact with the Central Excise or Service Tax Department, such as

- Merchant Exporter;
- Co-noticee;
- Refund Applicant other than registered taxpayers;
- Persons who have failed to obtain CE/ST registration as required under the law and against whom the Department has initiated proceedings and

Where such persons desire to seek non-assessee registration they have to follow the same steps as in the case of a new assessee.

In case the user wants to take such a registration for claiming any refund or rebate it is mandatory to provide a valid PAN. A Non-assessee registration can also be given by the designated officer of the Commissionerate. The non-assesseees are not required to file any tax returns.

**d. Large Tax Payer Unit (LTU) Client**

If assessee desires to opt for LTU scheme, submit the consent form to your jurisdictional LTU officer. It will be processed off-line and then uploaded to ACES.

All pending items of work will be transferred to the concerned LTU automatically and intimation will be sent.

If assessee is approved as an LTU client, and want to register a new unit, submit the registration application in ACES. The system will automatically attach the new unit with the concerned LTU on the basis of PAN details in the registration form.

If you are an existing LTU client, the process of registration is same as explained for existing assesses.

Note:

1. The user id once selected will be permanent and cannot be changed. However, it is desirable to frequently change passwords.
2. The user id should be of 6-12 alphanumeric characters, no special character such as !, @, #, \$, %, ^, &, *, +, -, or space except under score “_”.
3. Assesseees should note that the e-mail ID is furnished to the department in writing, and they will be responsible for all communications to and from this email ID. Currently, ACES provides for communication to one email ID only. After registration with the ACES, assesseees, on their own, can modify their registration details online.
4. Check bulk/spam folder periodically for any communication from ACES.

1.8. PROCEDURE TO BE FOLLOWED FOR ONLINE SERVICE TAX REGISTRATION

- a. After registering with Aces, Fill in the form ST-1 given on site. After filling the same, take a print out of ST-1 form and then submit the form and take the print out of E-acknowledgement receipt.



- b. Within fifteen days of such online submissions, submit these print outs along with all other documents as mentioned in E-acknowledgement. Failing to submit this within fifteen days may lead to cancellation of online application made earlier.
- c. After department receives the documents, it processes the application and a new registration certificate (Form ST-2) is send via email.
- d. Take the print out of Form ST-2 and get the stamp and signature from the jurisdictional Superintendent.

1.9. DOCUMENTS TO BE ATTACHED

All the documents including Form ST-1 shall be self-certified. In case of doubts in select cases, original documents may have to be presented for verification⁷.

List of documents that are required to be attached with Form ST-1 in case of centralised and de-centralised (single premises) registration is enclosed as Annexure.

In respect of registration of input service distributor, address of all the premises to which credit of input services is distributed or intended to be distributed along with attested copy of proof of address of all such premises to be attached.

1.10. CANCELLATION/SURRENDER OF REGISTRATION CERTIFICATE [Rule 4(7) & 4(8)]

Every registered assessee, who ceases to provide the taxable service for which he is registered, shall surrender his registration certificate immediately with concerned Superintendent of Central Excise. Certificate has to be surrendered online by filing the forms available at www.aces.gov.in. Following is the process for surrender of Form ST-2

- a. Fill in the form given online for surrender of registration certificate. After filling in the same, take a print of the form and then submit form online. Along with print out of Surrender Form ST-2, E-acknowledgement of

⁷ Ans 2.6 of FAQ issued by DGST on 5th March, 2009.



successful submission of the same shall be submitted to jurisdictional Superintendent along with following further documents;

- b. Declaration form;
- c. Original ST-2 certificate;
- d. Latest Income Tax return for three years;
- e. Latest copy of ST-3 return.

The above list of documents to be submitted is based on our practical experience.

After receiving the aforesaid documents and after ensuring that assessee has paid all monies due to government, concerned Superintendent of Central Excise shall cancel the registration.

2. ISSUE OF INVOICE/BILL/CHALLAN/CONSIGNMENT NOTE [Rule 4A & 4B]

2.1. ISSUE OF INVOICE/ BILL/ CHALLAN [Rule 4A]

With effect from 01.04.2005 service provider of taxable service shall issue Invoice within 30⁸ days from date of completion such taxable services or receipt of payment towards the value of such taxable service, whichever is earlier. In case of continuous supply of service, every person providing such taxable service shall issue an invoice, bill or challan, as the case may be, within 30 days of the date when each event specified in the contract, which requires the service receiver to make any payment to service provider, is completed⁹. The invoice, bill or, as the case may be, challan issued by service provider of taxable service shall be serially numbered and shall contain the following, namely:-

- (i) The name, address and the registration number of such person;
 - (ii) The name and address of the person receiving such taxable service;
 - (iii) Description and value of taxable service provided or to be provided;
- and¹⁰

⁸ Substituted for 14 days w.e.f. 1st April, 2012,

⁹ Substituted W.E.F. 1st April, 2011. prior to its substitution, Where any payment towards the value of taxable service is not received and such taxable service is provided continuously for successive periods of time and the value of such taxable service is determined or payable periodically, an invoice, a bill, or as the case may be, a challan shall be issued by a person providing such taxable service, within 14 days from the last day of the said period.

¹⁰ Prior to 1st July, 2012, the classification of service was also required to be disclosed.



(iv) The service tax payable thereon.

The invoice issued shall be sign by authorised person. Service tax, Education cess and Secondary and higher education cess shall also be shown separately on the invoice¹¹. It is mandatory to separately indicate the amount of Service Tax charged in the Bills/Invoices/Challans raised on the clients, as per Section 12A of the Central Excise Act, 1944 which is made applicable to Service Tax, under Sec.83 of the Finance Act, 1994. Such mention of the Service Tax amount in the Invoice / Bill / Challans, would also facilitate the service receiver to avail the CENVAT credit of the Service Tax paid on the input services¹². As per letter issued by Director General of service Tax to various trade organisations suggest that accounting code of taxable service provided also to be written on invoice.

2.2. ISSUE OF INVOICE/ BILL/ CHALLAN IN RESPECT OF BANKING & OTHER FINANCIAL SERVICES

Invoice, a bill or, as the case may be, challan and shall include any document i.e. advice issued by bank) should be issued within 45¹³ days. Invoice /bill/challan issued by banking company, Financial institution including NBFC is not require to be serially numbered and address of the person receiving the taxable service, but it should contain other information as mentioned in above paragraph.

2.3. ISSUE OF INVOICE/ BILL/ CHALLAN BY INPUT SERVICE DISTRIBUTOR

Input service distributor shall issue an invoice, a bill or, as the case may be, a challan signed by authorized person, for each of the recipient of the credit distributed, and such invoice, bill or, challan shall be serially numbered and shall contain the following, namely:-

¹¹ Ans 5.6 of FAQ issued by DGFT on 5th March, 2009.

¹² Ans 5.7 of FAQ issued by DGFT on 5th March, 2009.

¹³ Substituted for 14 days w.e.f. 1st April, 2012.



- (i) The name, address and registration number of the person providing input services and serial number and date of the invoice, bill or, as the case may be, challan
- (ii) The name and address of the said input service distributor
- (iii) The name and address of the recipient of the credit distributed
- (iv) The amount of credit distributed

2.4. ISSUE OF CONSIGNMENT NOTE

Goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall provide a consignment note which is serially numbered to the customer containing following details:

- (i) Name and address of Goods transport agency
- (ii) Name of the consignor and consignee
- (iii) Registration number of the goods carriage in which the goods are transported
- (iv) Details of goods transported
- (v) Details of the place of origin and destination
- (vi) Person liable for paying service tax whether consignor, consignee or the goods transport agency
- (vii) Gross weight of consignment

Small Consignments¹⁴: In respect of small consignments, where truck number is not known at the time of issue of consignment, an endorsement, i.e., “truck number not known” may be made on customers copy of consignment note, against the entry for truck no.

As and when the truck no. is known, the goods transport agency shall make an entry of trucks no. in their copy of consignment note to satisfy the requirements of said rule 4B and also for any future reference.

¹⁴ Circular No. 95//6/2007 ST Dated: 11th June, 2006, same has been also clarified in para 5.5 of Circular No. 97/8/2007 ST Dated: 23rd August, 2007.



Transshipment of goods¹⁵: In case of transshipment of goods, the goods transport agency would make entry of such transshipment, in their copy of consignment note.

For example, if goods moves from Delhi to Agra, and is transshipped there for further movement to Mumbai, the goods transport agency would mention in his copy of consignment note, against vehicle No. as “ (i) Delhi to Agra: Vehicle No.- XXX (ii)Agra to Mumbai: Vehicle No.- XXXX”.

This would satisfy the requirement of the said rule 4B.

3. PAYMENT OF SERVICE TAX [Section 68 and Rule 6]

3.1. DUE DATE OF PAYMENT OF SERVICE TAX [Rule 6(1)]

Service Tax to be paid on the provision of service or receipt of payment or issuance of invoice, whichever is earlier in terms the Point of Taxation Rules, 2011, during any calendar month is payable by the 5th of the month immediately following the said calendar month, however, ¹⁶[in case of E-payment, service tax is payable by the 6th of the month immediately following the said calendar month]. However, where the assessee is an individual or a proprietary firm or a partnership firm, service tax on the value of taxable services provided or payment is received or issuance of invoice service tax on payments received, whichever is earlier, for taxable service provided or to be provided during any quarter is payable by the 5th of the month immediately following the said quarter ¹⁷[and in case of E-payment by the 6th of the month immediately following the said quarter]. Service tax on the value of taxable services provided or payment is received or issuance of invoice whichever is earlier in terms the Point of Taxation Rules, 2011 during the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year.

¹⁵ Circular No. 95//6/2007 ST Dated: 11th June, 2006, same has been also clarified in para 5.5 of Circular No. 97/8/2007 ST Dated: 23rd August, 2007.

¹⁶ Inserted by the Service Tax (Fifth Amendment) Rules, 2007, w.e.f. 12th September, 2007.

¹⁷ Inserted by the Service Tax (Fifth Amendment) Rules, 2007, w.e.f. 12th September, 2007.



It has been clarified in answer 3.12 of the FAQ issued by DGST on 5th March, 2009 that where TDS has been deducted by the service receiver, in that case service tax shall be payable on the amount of TDS also.

3.2. **ADVANCE PAYMENT OF SERVICE TAX [Rule 6(1A)]**

From 1st March, 2008 facility of advance payment of service tax has been introduced and available to all the assessees.

The assessee who is paying service tax in advance should follow the following procedures:

- Intimate to the jurisdictional Superintendent of Central Excise within 15 days of such payment.
- Service tax paid in advance is allowed to be adjusted against service tax liability for the subsequent period. It is sufficient that such adjustment is disclosed in the periodical return to be filed.

3.3. **PAYMENT IN TR 6/GAR 7 CHALLAN [Rule 6(2)]**

Service tax has to be paid to the credit of the Central Government in Form **GAR 7¹⁸** into the **designated bank** only.

It has been clarified that payment of Service Tax into non-designated banks would amount to non-payment of Service Tax (Refer answer 3.7 of FAQ issued by DGST on 5th March, 2009), but in case of Shaman Marketing Research Association vs. Commissioner of Central Excise [153 ELT 231 (Mum CEGAT)] and Nisha Industrial Service Pvt Ltd. v Commissioner of Central Excise 2003 157 ELT 66 (Mum CEGAT) had taken liberal view and granted the credit of taxes paid into non designated bank.

Customer can effect payment from anywhere for the Commissionerate in which he is registered with, provided that particular bank is designated and authorized to collect revenue for that Commissionerate (Refer answer 3.20 of FAQ issued by DGST on 5th March, 2009).

¹⁸ Form GAR 7 has been issued by Pay & Account Office replacing Form TR6 yellow colour, but Rule 6(2) has not yet been changed and it still says that payment has to be made in Form TR-6 or any other manner prescribed by the CBEC.



The Form GAR 7 Challan is to be filled in single copy and tendered to the designated bank along with the payment of service tax. The CBEC has clarified vide circular no.58/7/2003-ST Dt. 20/05/2003 that where service tax has been paid using a wrong accounting code, the assessee need not pay the service tax again and where the assessee has paid service tax again, it is to be refunded. Such matter should be sorted out with the Pay & Account office. This circular has been withdrawn by Circular No. 97/8/2007 ST dated 23rd August, 2007.

It is mandatory for the service tax payer to mention correct assessee code on the GAR 7 challan.¹⁹

3.4. MANDATORY E-PAYMENT OF SERVICE TAX [Proviso to Rule 6(2)]

Following are monetary limits specified from time to time, for the purpose of mandatory E-payment of Service Tax.

From	To	Monetary Limits
01/10/2006	31/03/2010	Above 50 lakhs
01/04/2010	31/12/2013	Above 10 lakhs
01/01/2014	30/09/2014	Above 1 lakh
From 01/10/2014	--	Mandatory*, irrespective of amount paid in previous F.Y.

*The jurisdictional AC/DC may in certain cases allow an assessee to deposit the service tax manually (Through Cash/Cheque)

3.5. PAYMENT BY CHEQUE [Rule 6(2A)]

If the assessee deposits the service tax by cheque, the date of presentation of cheque to the bank designated by CBEC shall be deemed to be the date on which service tax has been paid, provided the cheque is not dishonored in the course of clearing.

¹⁹ Trade Notice No. 15/ST/2006, dated 15th November, 2006, issued by the Service Tax Commissioner, New Delhi.



3.6. ADJUSTMENT OF EXCESS SERVICE TAX PAID [Rule 6(3), 6(4A), 6(4B) and 6(4C)]

Service not wholly of partly provided or amount is renegotiated: Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract, the assessee may take the credit of such excess service tax paid by him, if the assessee.-

(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or

(b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued.

It has been clarified that in such cases of adjustment the assessee is required to file the details in respect of such *suo motu* adjustments done by him at the time of filing the service tax returns (Para 21.1 of Trade Notice No. 7/98-Service tax dated 13.10.1998 issued by Commissioner of Central Excise, Mumbai-I). Along with enclosure of documentary evidence for adjustment of such excess service tax paid. It is to be noted that rule 6(3) does not allow adjustment of excess payment of service tax *per se*, say due to clerical mistake etc. In such cases the assessee has to follow the procedure laid down in section 11B of Central Excise Act to claim the refund of excess tax paid.

Self adjustment of excess tax paid: Self-adjustment of excess service tax paid by assesseees is allowed subject to the following conditions:

- (i) Self-adjustment of excess credit is allowed on account of reasons other than interpretation of law, taxability, valuation or applicability of any exemption notification.
- (ii) Adjustment of excess paid service tax without any monetary limit²⁰.
- (iii) Adjustment can be made only in the succeeding month or quarter.
- (iv) No intimation required²¹.

²⁰ Prior to 1st April, 2012, Excess amount paid and proposed could have been adjusted upto Rs.200,000²⁰ for the relevant month or quarter



Adjustment of Property tax for payment of service tax under Renting of immovable property: Excess amount paid due to non-availment of deduction of property tax paid in terms of notification No.29/2012-ST, Dtd. 20th June 2012, from the gross amount charged for renting of the immovable property for the said period at the time of payment of service tax within one year from the date of payment of such property tax. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of fifteen days from the date of such adjustment. So there may be two situations:

- (i) Property Tax paid before or during the month or quarter in which rent for the relevant month or quarter is received, then, reduce the taxable value to the extend of property tax paid relevant to said month or quarter and then calculate the service tax on balance amount.
- (ii) Property Tax paid after the month or quarter in which rent for the relevant month or quarter is received or Property tax has not been adjusted from the assessable value, then, follow the procedure given in Rule 4C.

3.7. PROVISIONAL PAYMENT OF TAX [Rule 6(4), 6(5) and 6(6)]

Where an assessee is unable to correctly estimate the actual amounts of service tax payable for any month or quarter, the assessee may make a request in writing to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise (AC/DC), as the case may be, to make a payment on provisional basis and after receiving request AC/DC may allow the provisional payment of tax. In such cases, memorandum in form No. ST-3A shall be accompanied with the service tax return for the relevant period. After receiving memorandum in ST-3A, AC/DC is require to complete the assessment after calling further documents and records as he may consider necessary. Upon finalization of such assessment, if a liability of service tax arises, the differential amount be paid by the assessee. If he has paid excess amount he would be entitled to refund²².

²¹ Prior to 1st April, 2012, the details of self-adjustment had to be intimated to the Superintendent of Central Excise within a period of 15 days from the date of adjustment.

²² Ans 3.3 of FAQ issued by DGST on 5th March, 2009.



3.8. ROUNDING OF SERVICE TAX

As per section 37D of The Central Excise Act, which is also applicable to Service Tax and Circular No. ST-53/2/2003, Dated 27.03.2003, The Service tax amount payable is to be rounded off to the nearest rupee.

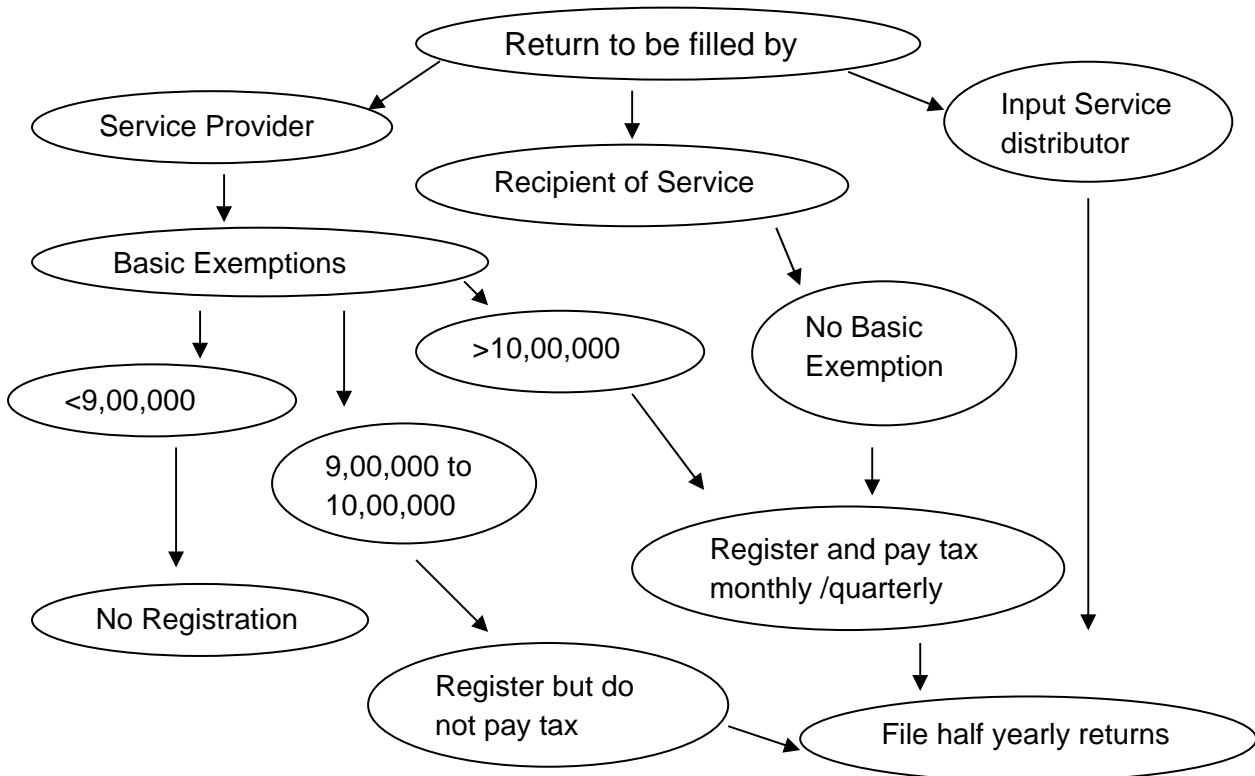
3.9. EXCESS OR WRONG COLLECTION OF SERVICE TAX [Section 73A and 73B]

Any amount collected in excess of service tax leviable or collected service tax which is not required to be collected to deposit the same with the Central Government and also provide authority to Central Excise Officer for recovery of such excess amount. This also enables the Central Government to collect interest on the amount referred to in Section 73A.

4. RETURNS [Section 70 & Rule 7]

4.1. PERSON REQUIRED TO FILE RETURN

Service tax returns are to be filled by various person or class of persons which has been explained by way of following chart:



9,00,000 or 10,00,000²³

²³ Applicable from 1st April, 2008. Prior to that between 1st April, 2007 to 31st March, 2008 7,00,000 or 8,00,000 and between 16th June, 2005 to 31st March, 2007 3,00,000 or 4,00,000 as the case may be.



4.2. FORMS AND DUE DATES

Returns have to be filed in Form ST-3 in triplicate on half yearly basis by the 25th of the month following the particular half-year.

DUE DATES FOR FILING OF SERVICE TAX RETURN

For the half year:	To be filed by:
1 st April to 30 th September	25 th October
1 st October to 31 st March	25 th April

Due to change in regime of taxation of services in F.Y. 2012-13, the period for which returns were to be filed and due dates for filing the same were changed.

Details of the same are below;

Period	Due date	Order No.
April 2012 to June 2012	25 th November, 2012	03/2012-ST
July 2012 to Sep 2012	30 th April, 2013	02/2013-ST
Oct 2012 to March 2013	10 th September, 2013	04/2013-ST

DUE DATES FOR FILING OF ISD RETURN

For the half year:	To be filed by:
1 st April to 30 th September	31 st October
1 st October to 31 st March	30 th April



4.3. PROCEDURE FOR FILING SERVICE TAX RETURN ONLINE

W.e.f. 1st October, 2011, every assessee shall file the service tax return electronically. There are two modes for filing return electronically – Online utility and Offline utility

Online utility

- a. Returns can be prepared and filed on line by selecting the 'Fill ST3' option under RET module after logging into the ACES.
- b. All validations are thrown up during the preparation of the return in this mode and the status of the return filed using the online mode is instantaneously shown by ACES.
- c. Confirmation for successful filing is generated immediately.
- d. If data for filing of return is not 100% ready, then also return can be prepare using this utility and saved on the site. After compiling the data assessee go to 'Complete ST3' option in 'Fill ST3' option in RET module and amend/complete the ST3 return saved but not submitted. After filling the return in totality assessee has to click submit button.

Offline utility

- a. Returns can also be prepared and filed off-line.
- b. Assessee may use Excel 2003 instead of Excel 2007 for the reason that Excel 2007 has higher security features and built in macros for checking and validating the file may not work effectively in excel 2007.
- c. Enable the Macros (if disabled) as per the following instructions, so that all the functionalities of e filing utility will work fine.
 1. On the Tools menu, Point to Macro, and then click Security.
 2. Click on either Medium or Low to select the 'Security Level'
 3. On the Trusted Publishers tab, select the Trust all installed add-ins and templates check box.
 4. Please make sure that your system date is correct.
- d. Downloads the Offline return preparation utility available at <http://www.aces.gov.in> (Under Download)



- e. Downloaded utility contains one Microsoft Excel file containing eight (8) work sheets to be filled in by the assessee. These eight work sheets are:
1. Instructions: This sheet provides various instructions to be followed at the time of filling up of return. Such instructions are in connection with Structure of utility for ST-3, Steps for filing return, filling of data in return, Generation of xml file and up-loading of xml file.
 2. Return: Initially when excel utility is downloaded; it will contain only two sheets viz. Instructions and Return. Once the data is filled in return sheet, other sheets i.e. sheet no. 3 to 8 will appear in the whole sheet. If assessee is providing more than one services only one return have to be compiled for all the services.
 3. Payable Service: In this sheet details have to compiled on the basis of service provider (SP) and service recipient (SR) in connection with the selected services. Further, details to be compiled in relation to Value of taxable services, Service tax payable and Gross amount charged have to be compiled. All Green fields in the sheets are areas where in details are to be filled. If assess is providing more than one services, separate details to be compiled for each services in different "Payable Service" sheet.
 4. Advance –Payment: Assessee can make advance payment of tax pursuant to Rule 6(1A) of Service tax Rules, 1994. In this sheet, all advance payment made during the period, have to be compiled. Challan number should contain 20 alpha numeric number consist of 1st 7 digit BSR Code number of bank followed by the date of submission of the challan in the form DDMMYYYY and further followed by a 5 digit running serial number, e.g. 12345672002201012345.
 5. Paid Service: In this sheet details as to Service tax, Education Cess, Secondary and Higher Education Cess and other amounts paid has to be filled.
 6. Challan – Service: In this sheet details of challans through which Service tax, Cess and other amounts paid by assessee during the half yearly period needs to be filled.



7. Cenvat: In this sheet details of Inputs Stage Input Credit needs to be filled. Further, details are not required to be filled if assessee is Input Service Distributor (ISD) or paying service tax by receiver of services under Reverse Charge Mechanism.
 8. Distributor: In this sheet detail of Cenvat Credit for Input Service Distributor (ISD) needs to be filled. Further, assessee have to certify the self declaration part in the sheet and then validate the return for up-loadation.
- f. The return preparation utility contains preliminary validations which are thrown up by the utility from time to time. Validate the file thereafter An XML file will be generated.
 - g. Logs in using the User ID and password.
 - h. Selects RET from the main menu and uploads the return.
 - i. Returns uploaded through this procedure are validated by the ACES before acceptance into the system which may take up to one business day. Assessee can track the status of the return by selecting the appropriate option in the RET sub menu. The status will appear as “uploaded” meaning under process by ACES, “Filed” meaning successfully accepted by the system or “Rejected” meaning the ACES has rejected the return due to validation error. The rejected returns can be resubmitted after corrections.
 - j. The Service Tax returns, however, can be revised once as per rules up to 90 days from the date of filing the initial return.
 - k. Both the ‘Original’ and the ‘Revised’ return can be viewed by the assessee online.

At present digital signature is not require for filing return electronically. There is no requirement to file return physically, once it is filed electronically.



4.4. REVISE RETURN [RULE 7B]²⁴

Assessee is allowed to rectify mistakes or omission and file revised return including CENVAT credit return within 90²⁵ days from the date of filing of the original return.

4.5. LATE FEE FOR DELAY IN FILING OF RETURN [Section 70] [Rule 7C]²⁶

Section 70 read with rule 7C of The Service Tax Rules, 1994 prescribes for a specified amount of late fee and not the penalty linked to period of delay for filing of return after the due date. The assessee is required to pay following amount of late fee depending upon the period of delay, but not exceeding Rs. 20,000/-²⁷.

S. No	No. of Days delay from due date for filing of service tax return	Late Fee in Rs.
1	From 1 st day up to 15 th day	500
2	From 16 th day Up to 30 th day	1000
3	Delay beyond 30 days	100/- per day

Late Fee as mentioned in Section 70 is not a penalty and the reference of Section 70 has not been given in Section 80. Section 80 provides that penalty shall not be imposed if assessee proves that there is a reasonable cause for delay. It means this late fee is mandatory.

Earlier the CBEC in master circular no 97/8/2007, dated 23rd August 2007 at para 6.1 mentions as under,

“Persons who are not liable to pay service tax (because of an exemption including turnover based exemption), are not required to file ST-3 return.”

With this amendment indirectly now an assessee registered under service tax department would be required to file Nil service tax return i.e. where the gross amount of service tax payable is Nil including turnover base exemption.

²⁴ Inserted by Service Tax (Amendments) Rules, 2007, w.e.f. 1st March, 2007.

²⁵ Previously it was 60 days w.e.f. 1st March, 2008 it has been increased to 90 days by Service Tax (Amendments) Rules, 2008.

²⁶ Inserted by Service Tax (Third Amendments) Rules, 2007, w.e.f. 12th May, 2007.

²⁷ Substituted for Rs. 2000/- w.e.f. 8th April, 2012



Earlier Commissioner of Service Tax, Ahmedabad had issued trade notice no 6/2007, dated 22nd May 2007, whereby it was clarified that returns shall be accepted by the jurisdictional Officers after the specified date for submission only on production of evidence of payment of late fee as prescribed.

However after the introduction of Finance Bill 2008 there is an amendment in section 7C of Service Tax Rules, 1994 which now provides the power to Central Excise Officer for reduction or waiver of penalty in case where the gross amount of service tax payable is NIL.

Thus there seems to be a contradiction between Trade notice and Rule 7C (as amended).

In the case of Suchak Marketing Pvt. Ltd. Vs. Commr. of Service Tax, Kolkota [2013 (30) STR 593 (Tri. – Kolkata)] **it was held that the assessing authority should have waived the late filing fee in event of non-filing of Nil returns as per proviso to Rule 7C.**

5. REFUND OF SERVICE TAX

Refund of Service Tax/ CENVAT credit can be claimed in terms of the following Rules and Notifications thereto;

- 5.1. Refund to Exporter of Service: Rule 6A(2) of Service Tax Rules, 1994 read with Notification No. 39/2012-ST
- 5.2. Manufacturer/ Service provider exporting goods/ service: Rule 5 of CENVAT Credit Rules, 2004 read with Notification No. 27/2012–CE(N.T.)
- 5.3. Service Provider covered under Reverse Charge: Rule 5B of CENVAT Credit Rules, 2004 read with Notification No.12/2014-CE(N.T.)
- 5.4. Service Provider located in SEZ: Notification No.12/2013-ST
- 5.5. Exporter of Goods (Trader): Notification No. 41/2012-ST

Detailed conditions and procedure for Refund/rebate application is provided in relevant Notifications, which may be referred.

Disclaimer:- The opinion and views expressed in these notes are those of the complier and are general in nature and may differ according to facts of the case. The ICAI or WIRC of ICAI or Nasik Branch of WIRC of ICAI does not necessarily concur with the same. While every care is taken to ensure the accuracy of the contents of this compilation, compiler or The ICAI or WIRC of ICAI or Nasik Branch of WIRC of ICAI is not liable for any inadvertent errors or any action taken on the basis of this notes.

ANNEXURE I

I. THE FOLLOWING DOCUMENTS ARE REQUIRED FOR NEW SINGLE PREMISE SERVICE TAX REGISTRATION (2 Copies)

1. Self attested copy of Address proof for premise / office shall be required. **One document for each category A & B is required.**

A	B
1. Landline Telephone Bill not older than 3 Months, or	<u>1. Self owned Property</u> Annual Tax payment receipt showing the Name and Address or Copy of sale deed etc. or
2. Electricity Bill not older than 3 Months, or	<u>2. Leased & Rented Property.</u> (I). Leave & License/Rent Agreement or Rent receipt of Registered Co. Op. Housing Society
3. Copy of Bank Account statement showing the name of the applicant and address of the premises, not older than 3 months.	A. The said agreement shall be for at least for a tenure of more than one year from the date of application for registration B. Further in case the rent amount payable is more than Rs.10 Lakh, the Service Tax Registration number of owner / lessor. (II). In case the leave & license agreement or rent receipt is not in the name of the applicant and the lessee is the related / associated person of the tenant / lessee, then following documents shall be required:

	<p>A. Rent agreement between original lessor and the applicant shall be produced</p> <p>B. Relationship between applicant and lessee / tenant</p> <p>C. No Objection Certificate for carrying out the business of applicant from the owner of the premises</p> <p>D. Photo ID Proof of the person giving NOC i.e. owner of the premises, and</p> <p>E. Annual rent payable by applicant to lessee / tenant and in case Annual rent is more than Rs. 10 Lakhs, the Service Tax Registration number of lessee / tenant</p>
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2. **Details of Directors/ Partners/ Proprietor** of any 3 Directors/ Partners who actively involved in running the affairs of the business :-

- (I) Self Attested copy of PAN Card
- (II) Address proof **Any one** of following :-
- Passport
 - Voter id card
 - Driving License
 - Bank passbook showing the name and address, along with Photo graph.

3. **Details of Authorized Signatory:-**

- (I) Self Attested copy of PAN Card
- (II) Address proof **Any one** of following :-
- Passport
 - Voter id card

- Driving License
 - Bank passbook showing the name and address, along with Photo graph.
- (III) Board Resolution in case if the Authorized Signatory is other than Director in case of company & Authorization from partner/ proprietor in case of others.

4. Self Certified copy of PAN Card of the applicant.

5. Details of Three Major Bank Accounts of the applicant.

- Name and Address of the Bank.
- Account Number.
- Photocopy of blank cancelled Cheque.

6. Self Attested copy of MOA and AOA or Partnership deed of the company / Firm.

7. Email ID & Telephone Number of the organization. (Only valid Email ID shall be given because all future correspondence by the department will be done through that e-mail id).

8. Brief activity of the firm and category of service under which registration is required.

Note: All documents send should be self certified.

II. DOCUMENTS REQUIRED FOR NEW CENTRALISED SERVICE TAX REGISTRATION (2 Copies)

1. All documents as above plus details as per Annexure II, III and IV

Note: Annexure III should be certified by the Company secretary or Chartered Accountant (Statutory or Internal).

ANNEXURE - II

INFORMATION WITH RESPECT TO BRANCHES WHICH ARE ALREADY REGISTERED WITH SERVICE TAX

1) Details of branches for which S.T. Registration has been taken (Please give the details in the table below)

Address of Branches	STC No. (Please also attach copy of ST-2)	Address of jurisdictional C.Ex./Service Tax Authorities (Commissionerate, Divn, Range)	Date of Registration	Date and Period for which last ST-3 return filed	Closing balance of CENVAT credit as per last ST-3 return filed (as per col. 5)
1	2	3	4	5	6

2) Details of SCN issued which are pending adjudication-

Address of Branches	STC No.	SCN No. & Date	Period covered	Issue in brief	Amount demanded (in Rs.)	Authority to whom SCN is answerable i.e. Commr., / ADC /JC/DC/AC/Supdt.
1	2	3	4	5	6	7

3) Whether any case is pending with Appellate Authorities/Court. If yes, provide following details with regard to each authority as mentioned below, in the prescribed format as under:

- a. Commissioner (Appeals),
- b. Tribunal,
- c. Settlement Commission,
- d. High Court,
- e. Supreme Court ,

Address of Branches	STC No.	Order No & Date appealed against	Authority and place where appeal is pending	Issue in brief	Amount demanded (showing duty & penalty separately)		Date of filing appeal	If filed with Stay Application, the Stay Order No. & date
					S. Tax	Penalty		
1	2	3	4	5	6		7	8

4) Details of cases which have been decided and where No appeal has been filed,

Address of Branches	STC No.	Order No & Date	Issue in brief	Amount confirmed (in Rs.)	Whether S. Tax/ interest/ penalty paid, if yes, the amount thereof
1	2	3	4	5	6

5) Whether audit has been conducted by Service Tax/Central Excise authorities of the concerned Branch. If yes, provide following details for all branches :

Address of Branches	STC No.	Whether Audited or not	If audited, period covered in Audit	If audited, Audit Report and Date (enclose copy)
1	2	3	4	5

6) Whether Audit has been conducted by CERA for the Branch?

If yes, provide following details Branch wise:

Address of Branches	STC No.	Whether Audited or not	If audited, period covered in Audit	Audit Report and Date (enclose copy)
1	2	3	4	5

7) Branch wise details of any investigations initiated against the said branch on the issue of Service Tax where search has taken place or statement has been recorded. Please furnish details..

ANNEXURE - III

QUESTIONNAIRE FOR CENTRALISED ACCOUNTING/BILLING

Please state Yes or No in the space provided for each of the Questions.

- | | Yes/No |
|---|--------|
| 1) Reasons for Centralized Registration: | |
| -Centralised Billing | _____ |
| -Centralised Accounting | _____ |
| 2) Whether bills or invoices are raised at branch office : | _____ |
| 3) Whether all bills or invoices relating to business of all branches are/would be raised at proposed Centralised Registration premises, | _____ |
| 4) (i) If the bills/invoices are raised at branches, whether these are/would be sent to proposed Centralized Registration premises for accounting purpose, | _____ |
| (ii) If yes, frequency of sending-Monthly/ Quarterly/
Half yearly/ Annually- | _____ |
| 5) Whether the following financial records/documents are/would be maintained and kept at proposed centralized office: | |
| i) All the sales invoices / receipts | _____ |
| ii) Debtors and Creditors ledgers | _____ |
| iii) General ledgers | _____ |
| iv) Journal Vouchers | _____ |
| 6) Whether you are having SAP/ERP or other similar accounting software whereby all accounting transaction, entered at branch level automatically get entered in the Central Server, (You may give brief write-up on basic features of said software) | _____ |
| 7) Whether CENVAT Credit taking documents including of branches are/would be kept at the centralized office or not: | _____ |
| 8) Please explain in brief the Accounting system followed by you to justify your claim that you are following Centralized Accounting system. | |

ANNEXURE-IV

UNDERTAKING

(on the letter head of applicant)

I/We, M/s. _____ (Name & Address) hereby undertake that on being acceptance of my / our application dated _____ for centralised registration in term of proviso to rule 4(2)(iii) of Service Tax Rules, 1994 read with section 69 of the Finance Act, 1994, I/We shall follow and comply with the below mentioned acts-

- i) I/ We agree that a proper branch wise record of all the bills/invoices/challans issued and contract entered into by each branch and the proper accounting of all the transaction shall be maintained at our proposed centralized registered office and will make available to the Department as and when called for;
- ii) I/ We agree that all the records namely invoices / bills / cenvat availment documents and other financial records for the past five years for all the branches would be kept at the centralized registered office;
- iii) I/ We shall provide all the documents and information relating to provision of output services, availment of cenvat credit and all other relevant financial or other records, at the time of audit and for any other enquiry.
- iv) I/ We agree that the service tax department, either through their local officers or from officers of other commissionerates may carry out audit at the branch level and for this purpose all records and documents and other necessary support to the audit staff would be provided by us;
- v) We would provide the information to the Department regarding the activities of the branches including financial information for the purpose of issue of Show Cause Notice or in regard to any enquiry by the Department within 15 days time of receipt of letter by the department;
- vi) I/We, after communication of granting of Centralized Registration, we shall surrender the single registration for all branches and intimate to the jurisdictional Divisional A.C./ D.C.-in-charge of proposed Centralized Registration within a period of two months;

- vii) We shall inform the amount of Cenvat Credit lying in balance as on the date of granting Centralized Registration for all branches within a period of 15 days to the jurisdictional Divisional A.C. /D.C. under whose jurisdiction the proposed Centralized Registration falls and seek permission for transfer of the same,
- viii) We also undertake that we do not have any objection for show cause notice to be adjudicated by the officers having jurisdictions over the Centralized Registered office, where SCN has been issued by and answerable to the Competent Authority having jurisdiction of any of our branches as declared in Annexure-II.
- ix) We agree to the condition that in case of non compliance of any of the above mentioned acts or condition or the provisions of the Service Tax law or rules, the Centralized Registration permission may be withdrawn by the department.

Place:

(Signature)

(Name of Partner/ Proprietor/ Director)

Date:

(Seal of company)