3.1 Conceptual Framework

A tax is a non penal, yet compulsory transfer of resources from the private to the public sector levied on the basis of predetermined criteria without reference to specific benefit received.

Tax is not only a medium to collect revenue rather a nations tax system also plays an important role to drive the economy. Tax system is a reflection of its communal values or the values of those in power. To create a system of taxation, a nation must make choices regarding the distribution of the tax burden who will pay taxes and how much they will pay and how the taxes collected will be spent. As per “Adim Smith” (the 1st economist to develop a list of canons of taxation) following principles should be followed in designing of a good tax system:-

- Canon of Equity
- Canon of Certainty
- Canon of Convenience
- Canon of Economy
- Canon of Productivity
- Canon of Elasticity
- Canon of Flexibility
- Canon of Simplicity
- Canon of Diversity
3.2 Type of Taxes

Revenue from taxes is collected through direct and indirect taxes. Direct and indirect taxes can be understood through following:-

Direct Tax: A direct tax is one which is demanded from the very person who is intended or desired should pay it. Income tax, professional tax are example of direct tax. The tax is paid by the person concerned without any hope of shifting the incidence to other person. It is therefore, levied on the person who ultimately bears the burden of it.

Indirect Tax: - are those which are demanded from one person on the expectation and intention that he shall indemnify himself at the expense of another such are the excise customs and service tax. The tax is levied on goods and services and not on income or profits. The incidence of tax is carried by the commodity/service to the actual point of consumption

3.3 History of Service tax in India

There was no tax on services in India before 1994, for the 1st time it was introduced in the year 1994 by the Finance Act, 1994 and thereby journey of taxation of services began by selective taxation of just three services on July 1, 1994. And now it has become a new focus area for revenue officials.

Regulation of Service Tax:-

In India, there is no separate act for levy and collection of Service-Tax, it is regulated and administrated by the Central Excise Department. And for this purpose, section 83 of the act provides that certain specified sections of the Central Excise Act, 1944 will apply in relation to service tax as they apply in relation to excise duty.
Scope of Service Tax:-

However unlike the Central Excise Act which extends to the whole of India including the State of Jammu & Kashmir, the provisions relating to service tax do not extend to the State of Jammu & Kashmir but only to the rest of India. Therefore services provided within the territorial limits of the State of Jammu & Kashmir are excluded from the purview of levy of Service Tax, irrespective of whether the person rendering the services is residing within or outside the state.

Finance Act 2001:-

The service tax net has been widened by the Finance Act, 2001 which extends levy of Service Tax to new services rendered in relation to scientific testing and consultancy, photography, convention, telegraph telex, facsimile, online information and database access or retrieval, video tape production, sound recording, broadcasting insurance auxiliary activity, banking and other financial services, port and automobile service or repair.

Finance Act 2012:- By Finance Act 2012, a radical change has been made by introducing negative list of services. Thus from 1/07/2012 onwards service tax is payable on all the services rendered in taxable territory except the services specified in Negative List.
3.4 Constitutional power of taxation in India

India has a well-developed tax structure with a three-tier federal structure, which is based between the Central, State, and the local government organisation. Our constitution states no one has the right to levy taxes on individuals except with the authority of law. Article 246 (SEVENTH SCHEDULE) of the Indian constitution distributes the legislative powers including taxation, between the parliament and the state legislature. The seventh schedule contains three lists—Union List, State List, and Concurrent List.

Thus authority of law refers to a valid law satisfying the following criteria:-

(i) Parliament or legislature must have competence to legislate.

(ii) The law must be validly enacted by following the prescribed procedure. To illustrate, for introduction of any money Bills in Lok Sabha, prior concurrence of President of India is necessary.

(iii) The law must specify the rate of levy, though there is no harm to delegate the actual quantum of collection to executive authority through subordinate legislation.

(iv) The law must be simple, clear, and transparent.
Taxing power is restricted to the various entries in the Union list, Concurrent list and State List. **These entries are not ‘Powers of legislation but fields of legislation.**

Relevant taxing provisions are listed below:

**List I-Union List**

<table>
<thead>
<tr>
<th>Sl. No. in the list</th>
<th>Text of the entries</th>
</tr>
</thead>
<tbody>
<tr>
<td>82.</td>
<td>Taxes on income other than agricultural income.</td>
</tr>
<tr>
<td>83.</td>
<td>Duties of Customs including export duties.</td>
</tr>
<tr>
<td>84.</td>
<td>Duties of excise on tobacco and other goods manufactured or produced in India except:-</td>
</tr>
<tr>
<td></td>
<td>(a) Alcoholic liquors for human consumption.</td>
</tr>
<tr>
<td></td>
<td>(b) Opium, Indian hemp and other narcotic drugs and narcotics;</td>
</tr>
<tr>
<td></td>
<td>but including medical and toilet preparations containing alcohol or any substance included in sub paragraph (b) of this entry.</td>
</tr>
<tr>
<td>85.</td>
<td>Corporation tax.</td>
</tr>
<tr>
<td>86.</td>
<td>Taxes on the capital value of the assets, exclusive of agricultural land, of individu-</td>
</tr>
<tr>
<td></td>
<td>als and companies, taxes on the capital of companies.</td>
</tr>
<tr>
<td>87.</td>
<td>Estate duty in respect of property other than agricultural land</td>
</tr>
<tr>
<td>88.</td>
<td>Duties in respect of succession to property other than agricultural land.</td>
</tr>
<tr>
<td>89.</td>
<td>Terminal taxes on goods or passengers, carried by railway, sea or air, taxes on rail-</td>
</tr>
<tr>
<td></td>
<td>way fares and freights.</td>
</tr>
<tr>
<td>90.</td>
<td>Taxes other than stamp duty in respect on transactions in stock exchanges and futu-</td>
</tr>
<tr>
<td></td>
<td>res markets.</td>
</tr>
</tbody>
</table>
91. Rates of stamp duty in respect of bills of exchange, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

92. Taxes on sale or purchase of newspapers and on advertisement published thereon.

92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase taken place in the course of interstate trade or commerce.

92B. Taxes on the consignment of goods where such consignment takes place in the course of inter-state trade or commerce.

97. Any other matter not enumerated in list II or list III including any tax not mentioned in either of those lists.

---

**List II- State list**

<table>
<thead>
<tr>
<th>Sl. No in the list</th>
<th>Text of the entries</th>
</tr>
</thead>
<tbody>
<tr>
<td>18.</td>
<td>Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.</td>
</tr>
<tr>
<td>45.</td>
<td>Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.</td>
</tr>
<tr>
<td>46.</td>
<td>Taxes on agricultural income.</td>
</tr>
<tr>
<td>47.</td>
<td>Duties in respect of succession to agricultural land.</td>
</tr>
<tr>
<td>49.</td>
<td>Taxes on lands and buildings.</td>
</tr>
<tr>
<td></td>
<td>Description</td>
</tr>
<tr>
<td>---</td>
<td>-------------</td>
</tr>
<tr>
<td>50.</td>
<td>Taxes on mineral rights subject to any limitations imposed by parliament by law relating to minerals development.</td>
</tr>
<tr>
<td>51.</td>
<td>Duties of excise on the following goods manufactured or produced in the state and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:-(a) Alcoholic liquors for human consumption; (b) Opium, Indian hemp and other narcotic drugs and narcotics; But not including medicinal and toilet preparation containing alcohol or any substance included in sub para (b) of the entry.</td>
</tr>
<tr>
<td>52.</td>
<td>Taxes on the entry of goods into a local area for consumption, use or sale therein.</td>
</tr>
<tr>
<td>53.</td>
<td>Taxes on the consumption or sale of electricity.</td>
</tr>
<tr>
<td>54.</td>
<td>Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of list I.</td>
</tr>
<tr>
<td>55.</td>
<td>Taxes on advertisement other than advertisement published in the newspapers and advertisements broadcasted by radio or television.</td>
</tr>
<tr>
<td>56.</td>
<td>Taxes on goods and passenger carried by road or on inland waterways.</td>
</tr>
<tr>
<td>57.</td>
<td>Taxes on vehicles, weather mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of list III.</td>
</tr>
<tr>
<td>58.</td>
<td>Taxes on animals and boats.</td>
</tr>
<tr>
<td>59.</td>
<td>Tolls</td>
</tr>
<tr>
<td>60.</td>
<td>Taxes on professions, trades, calling and unemployment.</td>
</tr>
<tr>
<td>61.</td>
<td>Capitation taxes.</td>
</tr>
<tr>
<td>62.</td>
<td>Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.</td>
</tr>
</tbody>
</table>
63. Rates of Stamp Duty in respect of documents other than those specified in the provision of list I with regard to rates of stamp duty.

64. Offences against laws with respect to any of the matters in this list.

66. Fees in respect of any of the matters in this list, but not including fees taken in any court.

### List III- Concurrent List

<table>
<thead>
<tr>
<th>Sl. No. In the list</th>
<th>Text of the entries</th>
</tr>
</thead>
<tbody>
<tr>
<td>43.</td>
<td>Recovery in a state of claims in respect of taxes and other public demands, including arrears of land revenue and sum recoverable as such arrears, arising outside that State.</td>
</tr>
<tr>
<td>44.</td>
<td>Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.</td>
</tr>
<tr>
<td>47.</td>
<td>Fees in respect of any of the matters in this list, but not including fees taken in any court.</td>
</tr>
</tbody>
</table>
The service tax is levied under Entry 97 of the Union List by the Central Government. The service tax levy can be understood more clearly by following hierarchy:

Chapter V of the Finance Act 1994
↓
Constitution of India
↓
Article no 246 (7th Schedule)
↓
Union List
↓
Entry No. 97 (Residual Power)

The legality of the said provisions were challenged before the High Courts and Supreme Courts by the interested parties alleging inter alia that the levy was in excess of the constitutional provisions, that it was discriminatory, that it was not in conformity with the provisions in Article 14 etc. The courts have upheld the levy as is evident from the following cases:

(1) Addition Advertising v. Union of India[2006(2) S.T.R. 228 (Guj.)]
(2) V. Shanmughavel v. CCE, Chennai-II[2006(2) S.T.R. 466(Mad.)]
(3) Advertising Club. V. CCE, Chennai [2006(2) S.T.R. 457 (Mad.)]
(4) Kerala Colour Lab Association v. U.O.I [2006(2) S.T.R. 554 (Ker.)]
3.5 Taxing powers and Constitutional restrictions

Apart from the limitation imposed by the entries as enumerated supra, the taxing power is further limited by restrictions and prohibitions imposed in certain Articles of the constitution.

(i) No law could be made by legislature or parliament which contravenes any of provisions of the Fundamental Rights, such as Right to Equality (Article 14), right to Practise any profession or to carry on any occupation, trade or business [Article 19(1)] payment of any tax for promotion of any particular religion (Article 27) etc.

(ii) No state legislature or any authority within the State can tax the property of union (Article 285).

(iii) The union cannot tax property and income of a state (Article 289).

(iv) The State cannot impose or authorise the imposition of a tax or the sale or purchase of goods where such sale or purchase taken place outside the State (Article 286).

(v) The State cannot impose or authorise imposition of a tax on the sale or purchase of goods where such sale or purchase taken place in the course of import of goods into or export of the goods outside the territory of India(Article 286).

(vi) No State can impose a tax on consumption or sale of electricity meant for consumption by Government of India, etc (Article 287).

(vii) Trade, commerce and intercourse within the territories of India shall be free subject to provisions of Part XIII of the Constitution (Article 301).

(viii) Taxes on professions, trade, callings and employment shall not exceed Rs 2500/- per annum (Article 276).
When any law is not in conformity with the provisions of Constitution, it can be declared *ultra virus* and hence void. The High Court or, as the case may be Supreme Court can strike down such law as unconstitutional. For these reasons, tax disputes are too many for tax administration to tackle or even for Court to accommodate for expenditure.

**Statutes governing the levy of Service Tax:-**

Following are the statutes which are governing the levy of Service Tax:-

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

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


(xii) Service Tax Dispute Resolution Scheme, 2008.

(xiii) Service Tax Provisional Attachment of Property Rules, 2008.

(xiv) The Central Excise Act, 1944.


(xvi) Point of Taxation Rules 2011.

### 3.7 Sections relating to Service Tax of The Finance Act, 1994

<table>
<thead>
<tr>
<th>Section 64</th>
<th>Extent, commencement and application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 65</td>
<td>Definitions</td>
</tr>
<tr>
<td>Section 66</td>
<td>Charge of service tax</td>
</tr>
<tr>
<td>Section 66A</td>
<td>Charge of service tax on services received from outside India</td>
</tr>
<tr>
<td>Section 66C</td>
<td>Determination of place of provision of service</td>
</tr>
<tr>
<td>Section 66D</td>
<td>Negative list of services</td>
</tr>
<tr>
<td>Section 66E</td>
<td>Declared Services</td>
</tr>
<tr>
<td>Section 66F</td>
<td>Principals of interpretation of specified descriptions of services or bundled service</td>
</tr>
<tr>
<td>Section 67</td>
<td>Valuation of taxable services for charging Service tax</td>
</tr>
<tr>
<td>Section 68</td>
<td>Payment of service tax</td>
</tr>
<tr>
<td>Section 69</td>
<td>Registration</td>
</tr>
<tr>
<td>Section 70</td>
<td>Furnishing of Return</td>
</tr>
<tr>
<td>Section 71</td>
<td>Scheme for Submission of Returns through Service Tax Preparers</td>
</tr>
<tr>
<td>Section 72</td>
<td>Best Judgment Assessment</td>
</tr>
<tr>
<td>Section 72A</td>
<td>Special Audit</td>
</tr>
<tr>
<td>Section 73</td>
<td>Recovery of Service tax not levied or paid or short levied or short paid or erroneously refunded</td>
</tr>
<tr>
<td>Section 73A</td>
<td>Service Tax collected from any person to be deposited with Central Government</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>73B</td>
<td>Interest on amount collected in excess</td>
</tr>
<tr>
<td>73C</td>
<td>Provisional attachment to protect revenue in certain cases</td>
</tr>
<tr>
<td>73D</td>
<td>Publication of information in respect of persons in certain cases</td>
</tr>
<tr>
<td>74</td>
<td>Rectification of mistake</td>
</tr>
<tr>
<td>75</td>
<td>Interest on delayed payment of Service Tax</td>
</tr>
<tr>
<td>76</td>
<td>Penalty for failure to pay service tax</td>
</tr>
<tr>
<td>77</td>
<td>Penalty for contravention of rules and provisions of Act for which no penalty is specified.</td>
</tr>
<tr>
<td>78A</td>
<td>Penalty for suppressing value of taxable service</td>
</tr>
<tr>
<td>78</td>
<td>Where a company has committed any of the specified contraventions</td>
</tr>
<tr>
<td>80</td>
<td>Penalty not to be imposed in certain cases</td>
</tr>
<tr>
<td>82</td>
<td>Power to search premises</td>
</tr>
<tr>
<td>83</td>
<td>Application of certain provisions of Central Excise Act of 1944</td>
</tr>
<tr>
<td>83A</td>
<td>Power of adjudication</td>
</tr>
<tr>
<td>84</td>
<td>Appeals to Commissioner of Central Excise</td>
</tr>
<tr>
<td>85</td>
<td>Appeals to the [Commissioner] of Central Excise (Appeals)</td>
</tr>
<tr>
<td>86</td>
<td>Appeals to Appellate Tribunal</td>
</tr>
<tr>
<td>87</td>
<td>Recovery of any amount due to Central Government</td>
</tr>
<tr>
<td>88</td>
<td>Liability under Act to be first charge</td>
</tr>
</tbody>
</table>
Section 89  Offences and Penalties
Section 90  Cognizance of offences
Section 91  Power to arrest
Section 93  Power to grant exemption from service tax
Section 93A Power to grant Rebate
Section 93B Rules made under section 94 to be applicable to services other than taxable services
Section 94  Power to make rules
Section 95  Power to remove difficulties in implementing new services
Section 96  Consequential amendment

3.8 Administrative Set up for Service Tax

The Department of Revenue under Ministry of Finance has the Central Board of Excise and Customs to administer the levy and collection and to advise on policy matters relating to direct and indirect taxes and matters incidental thereto for whole of India. The CBEC looks after indirect taxes including matters relating to Service Tax and Central Sales tax etc. The CBEC has a chairman assisted by Members. The CBEC notifies the jurisdiction of central excise officers in exercise of the power conferred under Rule 3 of the Central Excise Rules, 2002.
The hierarchy is as follows:-

```plaintext
GOVERNMENT OF INDIA
  ↓
MINISTRY OF FINANCE
  ↓
DEPARTMENT OF REVENUE
  ↓
CENTERAL BOARD OF EXCISE AND CUSTOMS
  ↓
PRINCIPAL CHEIF COMMISSIONER
   (TERRITORIAL JURISDICATION)
  ↓
PRINCIPAL COMMISSIONER OF CENTRAL EXCISE/PRINCIPAL COMMISSIONER OF SERVICE TAX WITH TEREITORIAL JURISDICATION
  ↓
ASSISTANT/DEPUTY COMMISSIONER OF DIVISION WITH TERRITORIAL JURISDICATION
  ↓
SUPERINTENDENT OF CENTRAL EXCISE IN CHARGE OF RANGE WITH TERRITORIAL JURISDICATION
```

Whereas the CBEC has all India jurisdictions, each chief Commissioner has jurisdiction over a few Commissioners. The Commissioner has jurisdiction over few AC/DC who are also called Divisional Officers. Each division has five to six Ranges. Each range is headed by a superintendent of Central Excise assisted by handful of inspectors.
3.9 Status of Service Tax Revenue over the period in India

There are some amazing facts about service tax which are produced here below for getting a understanding of importance of service tax in our economy or contribution of service tax in total revenue collection:

- The Service Tax collections have shown a steady rise since its inception in 1994. The tax collections have grown substantially since 1994-95 i.e. from Rs. 410 crore in 1994-95 to Rs.132518 Crore in 2012-13.
- The target for the year 2012-13 was Rs.132697 Crore and the actual realisation was Rs. 132518 Crore.
- The total number of taxable services also increased from 3 in 1994 to 119 in 2012. However, from 1.7.2012, the concept of taxation based on the negative list regime has been introduced in service tax.
- There is a substantial growth in the assessee base from 3943 numbers in 1994-95 to 1712617 in 2012-13.

The revenue and assessee statistics from the year 1994-95 onwards is given in the Table below:

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Revenue Rs. Crores</th>
<th>% Growth over previous year</th>
<th>No. of Services under tax net</th>
<th>No. of Assessee</th>
<th>% Growth over previous year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994-95</td>
<td>407</td>
<td>Base Year</td>
<td>3</td>
<td>3943</td>
<td>Base Year</td>
</tr>
<tr>
<td>1995-96</td>
<td>862</td>
<td>112</td>
<td>6</td>
<td>4866</td>
<td>23.41</td>
</tr>
<tr>
<td>1996-97</td>
<td>1059</td>
<td>23</td>
<td>6</td>
<td>13982</td>
<td>187.34</td>
</tr>
<tr>
<td>1997-98</td>
<td>1586</td>
<td>50</td>
<td>18</td>
<td>45991</td>
<td>228.93</td>
</tr>
<tr>
<td>1998-99</td>
<td>1957</td>
<td>23</td>
<td>36</td>
<td>107479</td>
<td>133.70</td>
</tr>
<tr>
<td>1999-00</td>
<td>2128</td>
<td>9</td>
<td>26</td>
<td>115495</td>
<td>7.45</td>
</tr>
<tr>
<td>2000-01</td>
<td>2613</td>
<td>23</td>
<td>26</td>
<td>122326</td>
<td>5.91</td>
</tr>
<tr>
<td>2001-02</td>
<td>3302</td>
<td>26</td>
<td>41</td>
<td>187577</td>
<td>53.34</td>
</tr>
<tr>
<td>2002-03</td>
<td>4122</td>
<td>25</td>
<td>52</td>
<td>232048</td>
<td>23.71</td>
</tr>
<tr>
<td>Year</td>
<td>Number</td>
<td>E</td>
<td>Rate</td>
<td>Amount</td>
<td>Percentage</td>
</tr>
<tr>
<td>--------</td>
<td>--------</td>
<td>---</td>
<td>-------</td>
<td>--------------</td>
<td>------------</td>
</tr>
<tr>
<td>2003-04</td>
<td>7891</td>
<td>91</td>
<td>62</td>
<td>403856</td>
<td>74.04</td>
</tr>
<tr>
<td>2004-05</td>
<td>14200</td>
<td>80</td>
<td>75</td>
<td>774988</td>
<td>91.89</td>
</tr>
<tr>
<td>2005-06</td>
<td>23055</td>
<td>62</td>
<td>84</td>
<td>846155</td>
<td>9.18</td>
</tr>
<tr>
<td>2006-07</td>
<td>37598</td>
<td>63</td>
<td>99</td>
<td>90641</td>
<td>11.17</td>
</tr>
<tr>
<td>2007-08</td>
<td>51301</td>
<td>36</td>
<td>100</td>
<td>1073075</td>
<td>14.08</td>
</tr>
<tr>
<td>2008-09</td>
<td>60941</td>
<td>19</td>
<td>106</td>
<td>1204570</td>
<td>8.78</td>
</tr>
<tr>
<td>2009-10</td>
<td>58422</td>
<td>-4.13</td>
<td>109</td>
<td>1307286</td>
<td>8.53</td>
</tr>
<tr>
<td>2011-12</td>
<td>97509</td>
<td>37</td>
<td>119</td>
<td>1535570</td>
<td>11.90</td>
</tr>
<tr>
<td>2012-13</td>
<td>132518</td>
<td>36</td>
<td>Negative List regime</td>
<td>1712617</td>
<td>11.53</td>
</tr>
<tr>
<td>2013-14</td>
<td>180141</td>
<td>36</td>
<td>Negative List Regime</td>
<td>2207463</td>
<td>28.89</td>
</tr>
</tbody>
</table>
% Share of Service Tax in total revenue from Indirect Taxes:-

Increase in share of service tax in total revenue from Indirect taxes can be understood by following table:-

<table>
<thead>
<tr>
<th>Year</th>
<th>Total revenue from indirect taxes (Rs in Crore)</th>
<th>Revenue from Service Tax (Rs in Crore)</th>
<th>Share (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003-04</td>
<td>105904</td>
<td>7891</td>
<td>7.45%</td>
</tr>
<tr>
<td>2004-05</td>
<td>118042</td>
<td>14200</td>
<td>12.03%</td>
</tr>
<tr>
<td>2005-06</td>
<td>138799</td>
<td>23055</td>
<td>16.61%</td>
</tr>
<tr>
<td>2006-07</td>
<td>169863</td>
<td>37598</td>
<td>22.13%</td>
</tr>
<tr>
<td>2007-08</td>
<td>192409</td>
<td>51301</td>
<td>26.66%</td>
</tr>
<tr>
<td>2008-09</td>
<td>202664</td>
<td>60941</td>
<td>30.06%</td>
</tr>
<tr>
<td>2009-10</td>
<td>165934</td>
<td>58422</td>
<td>35.20%</td>
</tr>
<tr>
<td>2010-11</td>
<td>226707</td>
<td>71016</td>
<td>31.32%</td>
</tr>
<tr>
<td>2011-12</td>
<td>284641</td>
<td>97509</td>
<td>34.26%</td>
</tr>
<tr>
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<td>333143</td>
<td>132518</td>
<td>39.77%</td>
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<tr>
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<td>496231</td>
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</tr>
<tr>
<td>2014-15(target)</td>
<td>623244</td>
<td>215973</td>
<td>34.66%</td>
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The first year collections now appear very modest at Rs 407 crore. After appearing largely as just-another-tax for the first 8 years, with collections touching Rs 3,302 crore in 2001-02, service tax took some giant leaps in the next 7 years, both on the back of wider coverage as well as increase in tax rate, reaching Rs 60,941 crore in 2008-09. Next two years saw the growth somewhat moderating with collections reaching Rs 70,896 crore in 2010-11. The buoyancy began once again on the back of some policy initiatives and Service Tax contributed Rs 97,444 crore during 2011-12, an increase of nearly 37% over the previous year. In 2012-13 it reaches to Rs 132518 crore.
Service Tax collections have also increased from Rs 81,758 crore in April-Oct 2013-14 to Rs 90,673 crore during April-Oct 2014-15 registering an increase of about 11%.

Indirect taxes mop up inched by 4.5 percent in the April-June quarter of the current fiscal due to decline in Custom duty and Excise duty reflecting slump in manufacturing activity. Indirect tax collections comprising Excise, Customs and Service Tax stood at about Rs 113570 crore in the first quarter of 2014-15 of fiscal, as against Rs 1086309 crore in the corresponding period a year ago (as said by the Finance Ministry in a release).

3.10 Negative List Regime

There are two approaches for levy of service tax one is comprehensive and the other one is selective. Each country depending upon the socio economic compulsions may adopt either a comprehensive approach or a selective approach.

In Comprehensive Approach, all services are made taxable and a negative listed is provided to exempt some of the services.

In Selective Approach, selective services are subject to service tax.

India began its journey of taxation of services on July 1, 1994 with a selective approach for taxation of services. The first year have a very modest collection of Rs 407 Crore.

After appearing largely as just another tax for the first 8 years, with collection touching Rs 3302 crore in 2001-02, service tax took some giants leaps in the next 7 years, both on the back of wider coverage as well as increase in tax rate, reaching Rs 60941 crore in 2008-09. Next two years saw the growth somewhat moderating with collection reaching Rs 70896 crore in 2010-11.
While the revenue expectations were often exceeded in all these years. The administrative challenge began to assume unmanageable proportions. The newer additions to the list of services often raised issues of overlaps with the previously existing services, confounding both sides as to whether some activities were taxed for the first time or were covered under an earlier, even if a little specific head.

There was also a near unanimity across a wide section of thinkers that potential of service tax huge and largely untapped. Part of the problem, identified was the lack of comprehensive taxation of services, not so much in the lack of coverage but more on account of lack of clarity and significant gaps in existing definitions, exposing the tax collection process to avoid leakage and litigation.

Budget 2012, ushered a new system of taxation of services; popularly known as Negative List effective from 01.07.2012. There was a paradigm shift from the earlier system where only services of specified descriptions were subjected to tax. In the new system of all services, except those specified in the negative list, are subject to taxation.

Key features of new taxation introduced in 2012 are as under:-

- At the outset ‘Service’ has been defined in clause (44) of section65B of the Act.
- Section 66B specifies the charge of service tax which is essentially that service tax shall be levied on all services provided or agreed to be provided in a taxable territory, other than services specified in the negative list.
- The negative list of services is contained in section 66D of the Act.
- Since provision of service in the taxable territory is an important ingredient of taxability, section 66C empowers the Central Government to make rules for determination of place of provision of service. Under these provisions the Place of Provision of Services Rules, 2012 have been made.
• To remove some ambiguities certain activities have been specifically defined by description as services and are referred as Declared Services (listed in section 66E).

• In addition to the services specified in the negative list, certain exemptions have been given. Most of the exemptions have been consolidated in a single mega exemption for ease of reference.

• Principles have been laid down in section 66F of the Act for interpretation wherever services have to be treated differentially for any reason and also for determining the taxability of bundled services.

• The system of valuation of services for levy of service tax and of availment and utilization of Cenvat credits essentially remains the same with only incidental changes required for the new system of taxation.

The detailed analysis of the above regime is given hereunder through examining the following important terms as introduced by Finance Act, 2012:-

* Charging Section 65B(44)
* Declared Services
* Negative Listed Services
* Place of Provision Rules
* Bundled Services
Charging Section 65B(44):-

For understanding the Service Tax it is necessary to know what the service is. The definition of service has been defined in clause 44 of the new section 65B and means “Any activity for consideration carried out by a person for another includes a declared service”. The said definition further provides that Service does not include-

- any activity that constitutes only a transfer in title of
  (i) goods or
  (ii) immovable property by way of sale, gift or in any other manner
  (iii) a transfer, delivery or supply of goods which is deemed to be a sale of goods within the meaning of clause (29A) of article 366 of the Constitution
  (iv) a transaction only in (a) money or (b) actionable claim

- A service provided by an employee to an employer in the course of the employment.

- Fees payable to a court or a tribunal set up under a law for the time being in force.

Explanation 1 to the said clause describes that nothing contained in this clause shall apply to-

(a) The functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and members of other local authorities who receive any consideration in performing the functions of that office as such member, or

(b) The duties performed by any person who holds any post in pursuance of the Constitution in that capacity; or

(c) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Government or local authority and who is not deemed as an employee before the Commencement of this section.
Explanation 2:- to the said clause describes that transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Explanation 3:- Two exceptions have been carved out to the general rule that only services provided by a person to another are taxable. These exceptions, contained in Explanation 2 of clause (44) of section 65B, are:

(a) An establishment of a person located in taxable territory and another establishment of such person located in non-taxable territory are treated as establishments of distinct persons.

(b) An unincorporated association or body of persons and members thereof are also treated as distinct persons.

Implications of these deeming provisions are that inter-se provision of services between such persons, deemed to be separate persons, would be taxable. For example, services provided by a club to its members and services provided by the branch office of a multi-national company to the headquarters of the multi-national company located outside India would be taxable provided other conditions relating to taxability of service are satisfied.
How the service is defined by the Act can be elaborated through the following chart more clearly:

Charging Section (Section 66B)

- All Services
  - Other than Negative Listed Services
    - Provided or to be provided in taxable territory
      - By one person to another

Any activity

For consideration

By one person to another

- Do something
  - It should be Exist/Certain AT THE TIME OF PROVISION of service
- NOT to do something
  - May be in the Monetary or in Non-monetary terms
- Contract Execution

**Exclusions:**

* Sale/Deemed sale/Gift etc. of movable/immovable property.
* Transactions in Money & Actionable Claim
* Employee Employer relationship.
* Court Fees.

**Inclusions:**

* 9 specified services as specified in Section 66E.
Declared Services (Section 66E):- The term declared service has been defined under section 66E as “An activity carried out by a person for another for consideration and specified in Section 66E of the Act”. The following nine activities have been specified in section 66E:

1. Renting of immovable property.

2. 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 certificate of completion by a competent authority.

3. Temporary transfer or permitting the use or enjoyment of any intellectual property right.

4. Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software.

5. Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.

6. Transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods.

7. Activities in relation to delivery of goods on hire purchase or any system of payment by instalments.

8. Service portion in execution of a works contract.

9. 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 part of the activity.
The above activities when carried out by a person for another for consideration would amount to provision of service. Most of these services are presently also being taxed except in so far as Sl. No.5 is concerned. It is clarified that they are amply covered by the definition of service but have been declared with a view to remove any ambiguity for the purpose of uniform application of law all over the country.

Negative Listed Services: Section 66D:- In terms of the Section 66B of the Act, Service tax will be liveable on all services provided in the taxable territory by a person to another for a consideration other than the services specified in the negative list. The services specified in the negative list therefore go out of the ambit of chargeability of service tax. In all, there are 17 heads of services that have been specified in the Negative List.

The negative list comprise of the following services, namely:-

(a) Services by Government or a local authority excluding the following services to the extent they are not covered elsewhere:-

(i) Services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government.
(ii) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport.
(iii) Transport of goods or passengers
(iv) Support services, other than services covered under clauses (i) to (iii) above, provided to business entities.

(b) Services by the Reserve bank of India.

(c) Services by a foreign diplomatic mission located in India.
(d) Services relating to agriculture or agricultural produce by way of –

(i) Agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing.

(ii) Supply of farm labour.

(iii) Processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter essential characteristics of agricultural produce but make it only marketable for the primary market,

(iv) Renting or leasing of agro machinery or vacant land with or without a structure incidental to its use.

(v) Loading, unloading, packing, storage or warehousing of agricultural produce.

(vi) Agricultural extension services.

(vii) Services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.

(e) Trading of goods.

(f) Any process amounting to manufacture or production of goods.

(g) Selling of space or time slots for advertisements other than advertisements broadcast by radio or television.

(h) Service by way of access to a road or a bridge on payment of toll charges.
(i) Betting, gambling or lottery.

(j) Admission to entertainment events or access to amusement facilities.

(k) Transmission or distribution of electricity by an electricity transmission or
distribution utility.

(l) Services by way of –

   (i) Pre-school education and education up to higher secondary school or
equivalent.

   (ii) Education as a part of a curriculum for obtaining a qualification rec-
ognized by law.

   (iii) Education as a part of an approved vocational education course.

(m) Services by way of renting of residential dwelling for use as residence;

(n) Services by way of –

   (i) Extending deposits, loans or advances in so far as the consideration
is represented by way of interest or discount

   (ii) Inter-se sale or purchase of foreign currency amongst banks or author-
ized dealers of foreign exchange or amongst banks and such dealers;

(o) Service of transportation of passengers, with or without accompanied be-
longings, by –

   (i) A stage carriage

   (ii) Railways in a class other than –

       First class; or

       An air conditioned coach;

   (iii) Metro, monorail or tramway

   (iv) Inland waterways

   (v) Public transport, other than predominantly for tourism purpose, in a
vessel between places located in India; and

   (vi) Metered cabs, radio taxis or auto rickshaws;
(p) Services by way of transportation of goods –

(i) By road except the services of –
   A goods transportation agency; or
   A courier agency;

(ii) By an aircraft or a vessel from a place outside India up to the customs station of clearance in India;

(iii) By inland waterways;

(q) Funeral, burial, crematorium or mortuary services including transportation of the deceased.

**Place of Provisions of Service Rules 2012**

Since provision of service in the taxable territory is an important ingredient of taxability, section 66C empowers the Central Government to make rules for determination of place of provision of service. Under these provisions the *Place of Provision of Services Rules, 2012* have been made, which determine the place of provision of service depending on the nature and description of service.

The ‘Place of Provision of Services Rules, 2012’ specifies the manner to determine the taxing jurisdiction for a service. Hitherto, the task of identifying the taxing jurisdiction was largely limited in the context of import or export of services. For this purpose rules were formulated which handled the subject of place of provision of services somewhat indirectly, confining to define the circumstances in which a provision of service would constitute import or export.

The place of provisions of service rules 2012 rules, on the other hand, determine the place where a service is deemed to be provided, in terms of section 66C of the Finance Act, 2012, read with section 94 (hhh) of Chapter V of the Finance Act, 1994. Under Section 66B, a service is taxable only when, inter alia, it is “provided (or agreed to be provided) in the taxable territory”. Thus, the taxability of a ser-
vice is determined based on the “place of its provision”. The ‘Place of Provision of Services Rules, 2012’ replaced the ‘Export of Services, Rules, 2005’ and ‘Taxation of Services (Provided from outside India and received in India) Rules, 2006.

For whom are these rules meant?

These rules are primarily meant for persons who deal in cross-border services. They will also be equally applicable for those who have operations with suppliers or customers in the state of Jammu and Kashmir.

Additionally service providers operating within India from multiple locations, without having centralized registration will find them useful in determining the precise taxable jurisdiction applicable to their operations. The rules will be equally relevant for determining services that are wholly consumed within a SEZ, to avail the outright exemption.

Basic philosophy of these rules:- The essence of indirect taxation is that a service should be taxed in the jurisdiction of its consumption. This principle is more or less universally applied. In terms of this principle, exports are not charged to tax, as the consumption is elsewhere, and services are taxed on their importation into the taxable territory.

However, this determination is not easy. Services could be provided by a person located at one location, actually performed at another while being delivered to a person located at a third location, and occasionally actually consumed at a third location or over a larger geographical territory, falling in more than one taxable jurisdiction. For example a person located in Mumbai may buy a ticket on internet from a service provider located outside India for a journey from Delhi to London. On other occasions the exact location of service recipient itself may not be available e.g. services supplied electronically.
As a result it is necessary to lay down rules determining the exact place of provision, while ensuring a certain level of harmonization with international practices in order to avoid both the double taxation as well as non-taxation of services.

It is also a common practice to largely tax services provided by business to other business entities, based on the location of the customers and other services from business to consumers based on the location of the service provider. Since the determination in terms of above principle is not easy, or sometimes not practicable, nearest proxies are adopted to provide specificity in the interpretation as well as application of the law.

How will a person determine the taxability of a service in terms of these rules?

As stated earlier, in terms of section 66B, a service is taxable only when, inter alia, it is “provided (or agreed to be provided) in the taxable territory”. Thus, the taxability of a service will be determined based on the place of its provision. For determining the taxability of a service, therefore, one needs to ask the following questions sequentially:-

1. Which rule applies to the service provided specifically? In case more than one rules apply equally, which of these come later in the order given in the rules?
2. What is the place of provision of the service in terms of the above rule?
3. Is the place of provision in taxable territory? If yes, tax will be payable. If not, tax will not be payable.
4. Is the provider ‘located’ in the taxable territory? If yes, he will pay the tax.
5. If not, is the service receiver located in taxable territory? If yes, he may be liable to pay tax on reverse charge basis.
6. Is the service receiver an individual or government receiving services for a non-business purpose, or a charity receiving services for a charitable activity? If yes, the same is exempted.
7. If not, he is liable to pay tax.
There are total 14 Rules are provided in Point of Taxation of Service Rules, 2012, which are given hereunder:

**Rule 3 (Place of provision generally)** The place of provision of a service shall be the location of the recipient of service, provided that in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

The principal effect of the Main Rule is that:

a) Where the location of receiver of a service is in the taxable territory, such service will be deemed to be provided in the taxable territory and service tax will be payable.

b) However if the receiver is located outside the taxable territory, no service tax will be payable on the said service.

**Rule 4(Place of provision of performance based services):** The place of provision of following services shall be the location where the services are actually performed, namely:

a) Services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service,

b) To a person acting on behalf of the provider of service, in order to provide the service.

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service.
Provided further that this sub-rule shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or reengineering for re-export, subject to conditions as may be specified in this regard.

c) Services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, who require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.

The essential characteristic of a service to be covered under this rule is that the goods temporarily come into the physical possession or control of the service provider, and without this happening, the service cannot be rendered. Thus, the service involves movable objects or things that can be touched, felt or possessed.

Examples of such services are repair, reconditioning, or any other work on goods (not amounting to manufacture), storage and warehousing, courier service, cargo handling service (loading, unloading, packing or unpacking of cargo), technical testing/inspection/certification/analysis of goods, dry cleaning etc. It will not cover services where the supply of goods by the receiver is not material to the rendering of the service e.g. where a consultancy report commissioned by a person is given on a pen drive belonging to the customer.

Similarly, provision of a market research service to a manufacturing firm for a consumer product (say, a new detergent) will not fall in this category, even if the market research firm is given say, 1000 nos. of 1 kilogram packets of the product by the manufacturer, to carry for door-to-door surveys.
Rule 5 (Place of provision of services relating to immovable property):- The place of provision of services provided directly in relation to an immovable property, including services provided in this regard by experts and estate agents, provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever, name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

What are the criteria to determine if a service is ‘directly in relation to’ immovable property located in taxable territory?

Generally, the following criteria will be used to determine if a service is in respect of immovable property located in the taxable territory:

(i) The service consists of lease, or a right of use, occupation, enjoyment or exploitation of an immovable property;

(ii) The service is physically performed or agreed to be performed on an immovable property (e.g. maintenance) or property to come into existence (e.g. construction);

(iii) The direct object of the service is the immovable property in the sense that the service enhances the value of the property, affects the nature of the property, relates to preparing the property for development or re-development or the environment within the limits of the property (e.g. engineering, architectural services, surveying and sub-dividing, management services, security services etc);
(iv) The purpose of the service is:

i. The transfer or conveyance of the property or the proposed transfer or conveyance of the property (e.g., real estate services in relation to the actual or proposed acquisition, lease or rental of property, legal services rendered to the owner or beneficiary or potential owner or beneficiary of property as a result of a will or testament);

ii. The determination of the title to the property.

There must be more than a mere indirect or incidental connection between a service provided in relation to an immovable property, and the underlying immovable property. For example, a legal firm’s general opinion with respect to the capital gains tax liability arising from the sale of a commercial property in India is basically advice on taxation legislation in general even though it relates to the subject of an immovable property. This will not be treated as a service in respect of the immovable property.

Examples of land-related services:-

1. Services supplied in the course of construction, reconstruction, alteration, demolition, repair or maintenance (including painting and decorating) of any building or civil engineering work;

2. Renting of immovable property;

3. Services of real estate agents, auctioneers, architects, engineers and similar experts or professional people, relating to land, buildings or civil engineering works. This includes the management, survey or valuation of property by a solicitor, surveyor or loss adjuster.
4. Services connected with oil/gas/mineral exploration or exploitation relating to specific sites of land or the seabed.

5. The surveying (such as seismic, geological or geomagnetic) of land or seabed.

6. Legal services such as dealing with applications for planning permission.

7. Packages of property management services which may include rent collection, arranging repairs and the maintenance of financial accounts.

8. The supply of hotel accommodation or warehouse space.

What if a service is not directly related to immovable property?

The place of provision of services rule applies only to services which relate directly to specific sites of land or property. In other words, the immovable property must be clearly identifiable to be the one from where, or in respect of which, a service is being provided. Thus, there needs to be a very close link or association between the service and the immovable property.

Needless to say, this rule does not apply if a provision of service has only an indirect connection with the immovable property, or if the service is only an incidental component of a more comprehensive supply of services.

For example, the services of an architect contracted to design the landscaping of a particular resort hotel in Goa would be land-related. However, if an interior decorator is engaged by retail chain to design a common décor for all its stores in India, this service would not be land-related. The default rule i.e. Rule 3 will apply in this case.
Examples of services which are not land-related:-

(i) Repair and maintenance of machinery which is not permanently installed. This is a service related to goods.

(ii) Advice or information relating to land prices or property markets because they do not relate to specific sites.

(iii) Land or Real Estate Feasibility studies, say in respect of the investment potential of a developing suburb, since this service does not relate to a specific property or site.

(iv) Services of a Tax Return Preparer in simply calculating a tax return from figures provided by a business in respect of rental income from commercial property.

(v) Services of an agent who arranges finance for the purchase of a property.

**Rule 6** *(Place of provision of services relating to events):*- The place of provision of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held.

What are the services that are covered in this category?

Services in relation to admission as well as organization of events such as conventions, conferences, exhibitions, fairs, seminars, workshops, weddings, sports and cultural events are covered under this Rule.
What is a service ancillary organization or admission to an event?

Provision of sound engineering for an artistic event is a prerequisite for staging of that event and should be regarded as a service ancillary to its organization. A service of hiring a specific equipment to enjoy the event at the venue (against a charge that is not included in the price of entry ticket) is an example of a service that is ancillary to admission.

**Rule7 (Place of provision of services provided at more than one location):**
This Rule covers situations where the actual performance of a service is at more than one location, and occasionally one (or more) such locations may be outside the taxable territory. This Rule states as follows:-

Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided.

The following example illustrates the application of this Rule:-

**Illustration 1:** An Indian firm provides a ‘technical inspection and certification service’ for a newly developed product of an overseas firm (say, for a newly launched motorbike which has to meet emission standards in different states or countries). Say, the testing is carried out in Maharashtra (20%), Kerala (25%), and an international location (say, Colombo 55%).

Notwithstanding the fact that the greatest proportion of service is outside the taxable territory, the place of provision will be the place in the taxable territory where the greatest proportion of service is provided, in this case Kerala.
This rule is, however, not intended to capture insignificant portion of a service rendered in any part of the taxable territory like mere issue of invoice, processing of purchase order or recovery, which are not by way of service actually performed on goods.

It is clarified that this rule is applicable in performance-based services or location-specific services (immovable property related or event-linked). Normally, such services when provided in a non-taxable territory would require the presence of separate establishments in such territories. By virtue of an explanation of sub-clause (44) of section 65B, they would constitute distinct persons and thus it would be legitimate to invoice the services rendered individually in the two territories.

**Rule 8(Place of provision of services where provider and recipient are located in taxable territory):**- Place of provision of a service, where the location of the provider of service as well as that of the recipient of service is in the taxable territory, shall be the location of the recipient of service.

**Implication of this Rule:**-The implication of this Rule is that in all such cases, the place of provision will be deemed to be in the taxable territory, notwithstanding the earlier rules. The presence of both the service provider and the service receiver in the taxable territory indicates that the place of consumption of the service is in the taxable territory. Services rendered, where both the provider and receiver of the service are located outside the taxable territory, are now covered by the mega exemption.
Rule 9(Place of provision of specified services):- The place of provision of following services shall be the location of the service provider:-

(a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;
(b) Online information and database access or retrieval services;
(c) Intermediary services;
(d) Service consisting of hiring of means of transport, upto a period of one month.

What is the meaning of “account holder”? Which accounts are not covered by this rule?

“Account” has been defined in the rules to mean an account which bears an interest to the depositor. Services provided to holders of demand deposits, term deposits, NRE (non-resident external) accounts and NRO (non-resident ordinary) accounts will be covered under this rule. Banking services provided to persons other than account holders will be covered under the main rule (Rule 3- location of receiver).

What are the services that are provided by a banking company to an account holder (holder of an account bearing interest to the depositor)?

Following are examples of services that are provided by a banking company or financial institution to an “account holder”, in the ordinary course of business:-

(i) Services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc;

(ii) Transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.
What are “Online information and database access or retrieval services”?

“Online information and database access or retrieval services” are services in relation to on-line information and database access or retrieval or both, in electronic form through computer network, in any manner.

Thus, these services are essentially delivered over the internet or an electronic network which relies on the internet or similar network for their provision. The other important feature of these services is that they are completely automated, and require minimal human intervention.

Examples of such services are:-

(i) Online information generated automatically by software from specific data input by the customer, such as web-based services providing trade statistics, legal and financial data, matrimonial services, social networking sites;

(ii) Digitized content of books and other electronic publications, subscription of online newspapers and journals, online news, flight information and weather reports;

(iii) Web-based services providing access or download of digital content.

What are “Intermediary Services”?

Generally, an “intermediary” is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus, an intermediary is involved with two supplies at any one time:

(i) The supply between the principal and the third party; and
The supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.

For the purpose of this rule, an intermediary in respect of goods (such as a commission agent i.e. a buying or selling agent, or a stockbroker) is excluded by definition.

In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-

**Nature and value:** An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.

**Separation of value:** The value of an intermediary’s service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as “commission”.

**Identity and title:** The service provided by the intermediary on behalf of the principal is clearly identifiable. In accordance with the above guiding principles, services provided by the following persons will qualify as ‘intermediary services’:-

(i) Travel Agent (any mode of travel)
(ii) Tour Operator
(iii) Commission agent for a service [an agent for buying or selling of goods is excluded]
(iv) Recovery Agent
Even in other cases, wherever a provider of any service acts as an intermediary for another person, as identified by the guiding principles outlined above, this rule will apply. Normally, it is expected that the intermediary or agent would have documentary evidence authorizing him to act on behalf of the provider of the ‘main service’.

Illustration:-

A freight forwarder arranges for export and import shipments. There could be two possible situations here- one when he acts on his own account, and the other, when he acts as an intermediary.

What is the service of “hiring of means of transport”?

The services of providing a hire or lease, without the transfer of right to use, are covered by this rule. Normally the following will constitute means of transport:-

(i) Land vehicles such as motorcars, buses, trucks;

(ii) Vessels;

(iii) Aircraft;

(iv) Vehicles designed specifically for the transport of sick or injured persons;

(v) Mechanically or electronically propelled invalid carriages;

(vi) Trailers, semi-trailers and railway wagons.
What if I provide a service of hiring of a fleet of cars to a company on an annual contract? What will be place of provision of my service if my business establishment is located in New Delhi, and the company is located in Faridabad (Haryana)?

This Rule covers situations where the hiring is for a period of up to one month. Since hiring period is more than one month, this sub-rule cannot be applied to the situation. The place of provision of your service will be determined in terms of Rule 3 i.e. receiver location, which in this case is Faridabad (Haryana).

**Rule10(Place of provision of goods transportation services):** The place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods.

Provided that the place of provision of services of goods transportation agency shall be the location of the person liable to pay tax.

What is the place of provision of a service of transportation of goods?

Place of provision of a service of transportation of goods is the place of destination of goods, except in the case of services provided by a Goods Transportation Agency in respect of transportation of goods by road, in which case the place of provision is the location of the person liable to pay tax (as determined in terms of rule 2(1) (d) of Service Tax Rules, 1994 (since amended).

**Illustration:** A consignment of cut flowers is consigned from Chennai to Amsterdam. The place of provision of goods transportation service will be Amsterdam (outside India, hence not liable to service tax). Conversely, if a consignment of crystal ware is consigned from Paris to New Delhi, the place of provision will be New Delhi.
What does the proviso to this Rule imply?

The proviso to this Rule states as under:-“Provided that the place of provision of services of transportation of goods by goods transportation agency shall be the location of the person liable to pay tax.”

Sub-rule 2(1)(d) of Service Tax Rules, 1994 provides that where a service of transportation of goods is provided by a ‘goods transportation agency’, and the consignor or consignee is covered under any of the specified categories prescribed therein, the person liable to tax is the person who pays, or is liable to pay freight (either himself or through his agent) for the transportation of goods by road in a goods carriage. If such person is located in non-taxable territory, then the person liable to pay tax shall be the service provider.

Illustration 1

A goods transportation agency ABC located in Delhi transports a consignment of new motorcycles from the factory of XYZ in Gurgaon (Haryana), to the premises of a dealer in Bhopal, Madhya Pradesh. Say, XYZ is a registered assessee and is also the person liable to pay freight and hence person liable to pay tax, in this case. Here, the place of provision of the service of transportation of goods will be the location of XYZ i.e. Haryana.

Illustration 2

A goods transportation agency ABC located in Delhi transports a consignment of new motorcycles from the factory of XYZ in Gurgaon (Haryana), to the premises of a dealer in Jammu (non-taxable territory). Say, as per mutually agreed terms between ABC and XYZ, the dealer in Jammu is the person liable to pay freight. Here, in terms of amended provisions of rule 2(1)(d), since the person liable to pay freight is located in non-taxable territory, the person liable to pay tax will be ABC. Accordingly, the place of provision of the service of transportation of goods will be the location of ABC i.e. Delhi.
**Rule11 (Place of provision of passenger transportation service):** The place of provision in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

“A continuous journey” means:- A “continuous journey” means a journey for which:

(i) A single ticket has been issued for the entire journey; or

(ii) More than one ticket or invoice has been issued for the journey, by one service provider, or by an agent on behalf of more than one service providers, at the same time, and there is no scheduled stopover in the journey.

What is the meaning of a stopover? Do all stopovers break a continuous journey?

“Stopover” means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time. All stopovers do not cause a break in continuous journey. Only such stopovers will be relevant for which one or more separate tickets are issued. Thus a travel on Delhi-London- New York-London-Delhi on a single ticket with a halt at London on either side, or even both, will be covered by the definition of continuous journey. However if a separate ticket is issued, say New York-Boston-New York, the same will be outside the scope of a continuous journey.

It may also be pertinent to mention that for flights originating from, or terminating in, the north- east region, though the place of provision will be determined in terms of this rule, there is an exemption for air transportation of passengers, embarking from, or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal.
The examples in the table below illustrate some situations:

**Single ticket (No stopover)**

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Journey</th>
<th>Place of Provision</th>
<th>Taxability</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Dibrugarh-Kolkata-Mumbai</td>
<td>Dibrugarh is the place Journey</td>
<td>Journey is taxable, but no service tax of provision is payable owing to the exemption.</td>
</tr>
<tr>
<td>2.</td>
<td>Dibrugarh-Kolkata-Mumbai-Kolkata-Dibrugarh</td>
<td>Dibrugarh is the place of provision</td>
<td>Journey is taxable, but no service tax is payable owing to the exemption. Here it is relevant to note that the journey is against a single, return ticket.</td>
</tr>
<tr>
<td>3.</td>
<td>Guwahati-Kolkata-Bangkok-Kolkata-Guwahati</td>
<td>Guwahati is the place of provision for the continuous journey</td>
<td>Place of provision being in the taxable territory, the service is taxable, but no service tax is payable owing to the exemption and journey is deemed continuous.</td>
</tr>
<tr>
<td>4.</td>
<td>Kolkata-Guwahati-Kolkata</td>
<td>Kolkata is the place of provision for the continuous journey</td>
<td>Place of provision being in the taxable territory, the service is taxable, but no service tax is payable owing to the exemption (the onward and return legs of journey terminate and originate in exempted territory respectively).</td>
</tr>
</tbody>
</table>
**Rule 12 (Place of provision of services provided on board a conveyance):**

Place of provision of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

**What are services provided on board conveyances?**

Any service provided on board a conveyance (aircraft, vessel, rail, or roadways bus) will be covered here. Some examples are on-board service of movies/music/video/ software games on demand, beauty treatment etc, albeit only when provided against a specific charge, and not supplied as part of the fare.

**What is the place of provision of services provided on board conveyances?**

The place of provision of services provided on board a conveyance during the course of a passenger transport operation is the first scheduled point of departure of that conveyance for the journey.

**Illustration:** A video game or a movie-on-demand is provided as on-board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi flight. The place of provision of this service will be Bangkok (outside taxable territory, hence not liable to tax).

If the above service is provided on a Delhi-Kolkata-Bangkok-Jakarta flight during the Bangkok-Jakarta leg, then the place of provision will be Delhi (in the taxable territory, hence liable to tax).
Rule 13 Powers to notify description of services or circumstances for certain purposes: In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.

Implication of this Rule: The rule is an enabling power to correct any injustice being met due to the applicability of rules in a foreign territory in a manner which is inconsistent with these rules leading to double taxation.

Due to the cross border nature of many services it is also possible in certain situations to set up businesses in a non-taxable territory while the effective enjoyment, or in other words consumption, may be in taxable territory. This rule is also meant as an anti-avoidance measure where the intent of the law is sought to be defeated through ingenious practices unknown to the ordinary ways of conducting business.

Rule 14 Order of application of rules: Notwithstanding anything stated in any rule, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.

This Rule covers situations where the nature of a service, or the business activities of the service provider, may be such that two or more rules may appear equally applicable. Following illustration will make the implications of this Rule clear:-
Illustration:- An architect based in Mumbai provides his service to an Indian Hotel Chain (which has business establishment in New Delhi) for its newly acquired property in Dubai. If Rule 5 (Property rule) were to be applied, the place of provision would be the location of the property i.e. Dubai (outside the taxable territory). With this result, the service would not be taxable in India.

Whereas by application of Rule 8 both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi. Place of provision being in the taxable territory, the service would be taxable in India.

By application of Rule 14, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.