CHAPTER -I
INTRODUCTION AND METHODOLOGY

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CHAPTER -I
INTRODUCTION AND METHODOLOGY

Introduction:

Every nation has its own economic policy to achieve economic development in the desired manner and directions. But it is well-recognized fact that the economic development basically depends upon the public finance system of the country, while the foundation of an effective and stable public finance system of a country lies in its taxation policy.\(^1\) Therefore, every nation in the world applies its own taxation policy as a power of incentive or/and deceptive instrument to stimulate economic development. India, too particularly after independence has applied taxation policy with direct and indirect taxes to accelerate economic growth consistent to its overall objectives i.e. equality and justice. Thus, taxes i.e. direct and indirect taxes under the present tax structure are the important sources of revenue to the country. The direct tax structure consists of personal taxes, corporate taxes and wealth taxes etc. The direct taxes contribute about 40 per cent of the total tax revenue. Rest of the tax revenue is contributed by indirect taxes such as excise duty, custom duty and central sales taxes.

The indirect tax structure in our economy is in a process of revolution. Therefore, several reforms have been undertaken by the Central and State Governments for the simplification and rationalization of such taxes. The VAT (at state level CENVAT at Central level) and service tax are the new breed of taxes which has been introduced in the Indian taxation system through the reformation.
Currently, goods and services are taxed differently. The law governing central excise duty has been in place since more than 60 years and therefore matured. While the law governing value added tax is nascent, the principles are continued from early sale tax (i.e. BST) provisions which also in the place for more than 50 years. Accordingly, one may find that the provisions of VAT are also more or less mature. ²

However, the service tax through the Finance Act, 1994 is comparably new and there are few precedents from the judiciary. Therefore, it is like fresh stream of water which has still to find its course. As it charts, its journey by learning lessons from its colleagues –both Excise Duty and VAT, it is now considered as blossom in the Indian taxation system and can become a fruit barring tree to reap such fruits by the Government systematically in order to raise its revenue. It is not surprising that like sales tax on goods, service tax which proved a veritable “kamadhenu” to the Government. It carries the merits of elasticity, indirectness and over expanding scope and has also proved to be a levy with tremendous potential. ³

With the wide impact of the service tax into various classes of services and the distinct possibility of its penetration into almost all fields of human endeavourer, areas for legislative and administrative overhaul come to light.

Meaning of Service:

Fundamentally, service tax is a tax on services rendered by a person to another person. ⁴ However, the word ‘service’ has not been defined under the Finance Act, (i.e. Chapter Vᵗʰ) 1994. As
such the term 'service' would be important to analyze whether a particular activity become a service or not for charging service tax.

‘Service to mankind is Service to God’. No doubt this was the gospel truth in the days yore, at present the concept is no longer confined to ‘obedience’ and ‘charitable work’ but also extend to work undertaken according to the instructions of an individual or organization for a consideration. Therefore, services constitutes a very heterogeneous spectrum of economic activities and cover a wide range of activities. Over a period of time, the definition of service has also undergone change. In olden days it was very difficult to separate service from the service provider and service recipient and people were crucial to the definition of service.

According to Adam Smith, “Services were seen to perish in the very instant of their performance and they seldom leave any trace or value behind them.” This may lead to conclusion that a wide range of activities can be called as services and they could neither be stored nor be transacted again and classical economist felt that they amounted to be unproductive activities.

From the above explanation the meaning of the term service can not be cleared. Hence, it is worthwhile to consider to certain definitions from other laws and different judicial pronouncements under the Finance Act.1994:

1. **Consumer Protection Act, 1986:**

Under the Consumer Protection Act, 1986 the term ‘service’ has been defined as follows: “Service means service of any description which is made available to potential users and includes, but not limited to the provisions of facilities in connection with banking, financing, insurance, transport, processing, supply of
electrical or other energy, boarding or lodging or both, housing contrution, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.” 7 Section 2 (1) (o) of CPA, 1986

2. Foreign Exchange Management Act, 1999:

As per section 2(z b) of FEMA 1999 define ‘service’ as under-

“Service means service of any description which is made available to potential users and includes the provisions of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund real estate, transport processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.” 8

In the light of the above statutory definitions of ‘service’, one can safely define service as ‘an act of helpful activity, an act of doing something useful, rendering assistant or help without involving goods.’ 9 In this direction T.P. Hill defined service as “It is transformation use or users’ goods as a result of voluntary intervention by the producer of services.” It implies a modification of the characteristics of the service recipient and it allows for a variety of different interpretation incorporating both person based services and goods based services. 10 The person based services are education, health, consultancy etc, while goods based services are courier, transport, research and development etc. In this connection broadly service means an activity by which one person or entity provides satisfaction, happiness or promotes interest of another

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person or entity without involving transfer of goods or in which the transfer of goods is only incidental.\textsuperscript{11}

In the judicial interpretation and cognate expression, one can reach the following conclusions that whether a particular activity becomes a service to charge service tax or not.

1. **Service must be a process of two parties:**

   A service must be a process of two parties consisting of ‘service provider’ and the ‘service recipient’. However, there is not a direct flow of consideration from the service recipient to the service provider as there may be intermediaries in the chain.\textsuperscript{12}

2. **Service must not be capable of transfer or storage:**

   A Service must not be capable of transfer or storage. In fact, this should from the distinguishing character of a service from goods. By applying this logic, the nature of service tax must be single point levy of taxation.

3. **Service must Pre or Post stored:**

   Service must not be capable of storage; there can be pre storage or post storage of a service. Pre-storage could refer to a document evidencing the commitment to provide a service (e.g. could be refill cards or travel coupons). Post-storage could refer to the end result of the service being abstracted and stored (e.g. could be software or the music disk).such storage of service may amount to goods.\textsuperscript{13}

   In short, service connotes transformation of use or users goods as a result of voluntary intervention of service provider. There must be service provider rendering services to some other person who shall be recipient of service.\textsuperscript{14} Service presupposes
some value addition at the end of the service provider.\textsuperscript{15} Thus the term ‘service’ is very wide and may be contractual, professional, public, domestic, legal, statutory etc.

**Concept of Service Tax:**

Service Tax is a form of indirect tax and can be defined as “A Tax on ‘Services’, i.e. ‘Taxable services’ provided by ‘service provider.’\textsuperscript{16} Plainly speaking, services provided by different professionals such as doctors, engineers, lawyers etc. are liable for service tax to be paid on them.\textsuperscript{17} But it does not mean that it is tax to be on profession, trade or employment, it is the tax on services provided in the course of profession or trade. It is leviable only if there is provision of service. In this sense, service means useful result or product of labour which is intangible. Thus, service is a value addition that can be felt only but can not be seen.

‘Service’ and ‘Sale’ are two different terms having significant expressions. If some goods have been used in the course of providing service, it does not make that transaction as a ‘sale’. Basically, the nature of transaction depends on the intention of the parties. If the intention of parties is to purchase and sale of goods, the transaction will be ‘sale’ irrespective of some services has been provided with and such services will be taxed separately. However, in case where goods have been used in providing services or where the sale of goods is incidental to the provision of services, the transaction will be ‘service’.

In short, if the predominant factor in a transaction is ‘sale’ the transaction will be ‘sale’. However, if the predominant factor in a transaction is a provision of service the transaction would be service and such service will attract service tax, if taxable. Thus,
service tax is a transaction driven tax levied on services as distinct from a tax on goods.\textsuperscript{18} It is a consumption based destination tax. It means that service tax is leviable only, if the services are rendered by service provider i.e. consumed by service receiver at a destination, where Finance Act, 1994 is applicable.\textsuperscript{19}

**Need for Service Tax:**

Since time immemorial, taxes have been instrumental in the economic development of a nation as they are the source of public expenditure. In any welfare state, it is the prime responsibility of the Government to meet the needs of the country and its people by way of public expenditure. Hence, every country in the world uses taxation as an important mean for economic development. In this regard, both direct and indirect taxation make their invaluable contribution in order to achieve the national objectives of a country. India, being a welfare state, is striving to fulfill the obligations within its limited resources by using the direct and indirect taxes as its primary sources of revenue. Under the direct taxes, central excise duty on goods manufactured/ produced in India and customs duties on goods imported in and exported from India constitute the two major sources of indirect taxes in India.

From the last few decades, it has been observed that Indian taxation system especially indirect taxation has become more complex in the world.\textsuperscript{20} Moreover, our indirect taxation laws have been unwieldy procedure ridden and an impediment in its effective administration, developing into a regressive element in trade and industry.\textsuperscript{21} As again, the brief overview of our indirect taxes reveals several structural deficiencies and tax induced
distortions. The cumulative impact of all these things have finally pulled down the industrial growth rate. 22

The era of liberalization formally keep away the Nehruvian socialistic pattern of economy with the policy of liberalization, Globalization and Privatization becoming a new politico-economic mantra of development. 23 In this period, the systems of de-regulation, de-licensing and de-control has been changed the face of the culture of corporate governance as well as finance capitalism. Consequently, revenue receipts from customs and excise are not keeping pace with the growth in Indian economy to the WTO commitments and rationalization of duties. Due to declining share of indirect taxes, India’s’ entry into the WTO and certain socio-economic constraints, it become essential for the government to look for various viable alternatives of mobilizing resources. In this direction, Government of India has made certain reformations and enactments in the Indirect tax regime, i.e. Central Value Added Tax (CENVAT) in 2002, as a single rate of excise is a major step and fundamental rationalization in the central tax structure and levy and Value Added Tax (VAT) in 2005 in the form of sale tax in the state tax structure. By making such reformation and laws the Government of India has not been bridged the gap of decline revenue from commodity taxation.

Hence, by taking its clue from European countries, where goods and services consumed are taxed, the Government of India introduced service tax through the Finance Act, 1994 in its endeavor to fulfill the increasing demand of developmental needs. It has been introduced on the recommendations made in early 1990’s by Tax Reform Committee headed by Dr. Raja Chelliah.
By this enactment the Government of India has made a step to move towards full-fledged VAT system covering services and commodities.

Bringing services under taxation is not simple because services are intangible and provided by large groups of organized as well as unorganized service providers including retailers who are scattered across the country. Further there are several services which are of intermediate nature. Low level of education of service providers also poses difficulties to both administration and assessees.

**Rationale of Levying Tax on Services:**

Services are now occupying the centre stage of the economy so much. This is because service covers wide range of activities like trade, transport, tourism, education, health care, research and development, banking, insurance and other financial services, legal and other advisory services, accounting and consultancy services, customer care and other personal services, business process outsourcing, broadcasting services and still many more to mention. It is generally found that services constitute a larger proportion of the consumption of the rich than of the poor because the demand for services is more income elastic. Therefore, in the contemporary world, development of service sector has become synonymous with the development of economy.\(^{24}\) The share of service sector in the real GDP in India has surpassed that of agriculture and industry at a relatively faster pace as compared to industrialized nation. Besides, the growth rate of economic activities in the service sector is faster than in any other sector.
Although, the contribution of service sector to GDP has increased over the years, the Indian tax system remains confined mainly to commodity production. In this direction the Tax Reform Committee 1991 recommended tax on services. The robust logic for taxing the services is that most of the economists do not distinguish between the goods and services and considered both as productive activities that enhance the income of the nation. They strongly commented that if, the tax is payable on the manufactured goods in the form excise duty, and then the services should also not be excused. This has become basis for the levy of tax on services. Besides, other justifications for levying service tax are as follows:

1. As the share of industry in GDP decreases, that of services expands, tax base shrinks, aggregate of buoyancy of excise tax revenue declines and the excise tax –GDP ratio falls.

2. Failure to tax services distorts consumer choices encouraging the tilt towards spending on services at the expense of goods.

3. Non taxation of services will lead lavish spending on services by the high income groups. This will reduce savings and ultimately the investment in the economy.

4. Non taxation of services will mean that traders will not able to claim VAT on their service inputs. This will result in to cascading effect, distorts choice and encourages business to develop in house services, creating further distortions.
5. As most of the services that are under tax net are consumed by high income bracket so that such tax quite equitable and progressive in nature.\textsuperscript{25}

All these facts have been realized by the state of India in the last century and started utilizing of service sector gradually as a vibrant avenue to augment its revenue by imposing tax on services. For this purpose, Government of India adopted ‘Selective Approach to Taxation of Services’.\textsuperscript{26}

\textbf{Legislative Framework:}

The imposition of service tax is made by the legislation. Being a central enactment, the legislation has to be passed by the parliament. It means that it has to be consented by the \textit{Lok Sabha} as well as \textit{Rajya Sabha} and then signed by the President of India. After such sanction, the imposition of tax can be valid. It may be important to note that the Provinsional Collection of Taxes Act, 1931 does not apply to service tax as a separate enactment. The Chapter V and V-A of Finance Act, 1994 as amended from time, time to provide for the levy of service tax and constitute the law governing service tax. After the 16 years of existing of service tax, there is no independent Service Tax Act. Interestingly, in case, where the adjudicating authority confirmed the demand based on the reference to Service Tax Act, it was treated as a work reference and therefore, the matter was remanded back.\textsuperscript{27}

\textbf{Constitutional Authority and Validity of Service Tax}

The Constitution of India, as the supreme authority, contains separate provisions to regulate the power of taxation and to ensure distribution of such power between Central Government and States. Article 265 of the Constitution lays down that no tax shall
be levied or collected except by the authority of law, the three lists to Schedule VII to the Constitution are:-

a) List-I (Union List): Only Central Government can make laws on the matters covered by it.

b) List-II (State List): Only State Government can make laws on the matters covered by it.

c) List-II (Concurrent List): Both Central and State Government can make laws on the matters covered by it.

Although there is no specific entry in the constitution to authorize levy of service tax, Central Government has imposed such tax in terms of residuary Entry No.97 in the Union List. 28

In absence of any specific entry and tax on services is the subject of State, the parliament by virtue of the residuary Entry No.97 derives power to impose any fiscal levy. On these grounds Supreme Court upheld the legality of service tax in many times.

In accordance with the suggestion made by the Kelkar Committee in October, 2002, through its report, 29 the Government brought an amendment in the Constitution vide the Constitution (95th Amendment) Act, 2003 and inserted a new Article 268A. Accordingly, Union Govt. empowered to imposition of service tax and appropriation and distribution thereof between Government of India and the Government of States.

The constitutional validity of service tax has been challenged unsuccessfully in the various Court of India, on the grounds of it being discriminatory in nature and in violation of Article 14 of the Indian Constitution. In all the cases the various High Courts dismissed the petitions challenging the Constitutional validity of
service tax. The courts opined that Service Tax is a tax on service provided or to be provided by a service provider. It is neither a tax on service provider nor on his profession. Service tax is chargeable only when ‘service’ is rendered, while professional tax is leviable on ‘privilege’ to carry on a profession, even if no service is provided. Further, it is not a tax on sale or purchase of goods.

Some of the judicial pronouncements given in the certain leading cases regarding the Constitutional validity of service tax can be represented as follows:

➢ The Gujarat High Court in the case of Addition Advertising vs. Union of India\textsuperscript{30} (1998) held that levy of service tax on advertising service is Constitutionally valid and it is not a tax on Profession, Trade calling or employment but in respect of service rendered.

➢ The Gujarat High Court in the case of Chartered Accountants Associations vs. Union of India\textsuperscript{31} (2001) held that levy of service tax is constitutionally valid and also held that professional tax and service taxes are two different taxes.

➢ In case of Kerala Color Lab Associations vs. Union of India (2003) it was held that “service tax on photography studio or agency and it is not a tax on profession, trade calling or employment within the legislative competence of parliament related to Article 248 read with entry 97 of List I of 7\textsuperscript{th} Schedule to the Constitution, hence, it is constitutionally valid. The court also held that the parliament by imposing service tax has neither taxed the material, nor the sale thereof. What has been taxed is the service rendered by the photography studios and agencies, which has hitherto untouched. We are therefore,
unable, to accept that parliament has no competence to enact the legislation for the levy of service tax.\textsuperscript{32}

- In the case of \textit{Nava Bharat Ferro Alloys Ltd. vs. Union of India}\textsuperscript{33} (2005) held that the tax is levied on providing service of transport. Therefore providing for facilities in order to facilitate transport of goods would be a factor constituting the service for which tax is levied.

- In the case of \textit{Gujarat Ambuja Cements Ltd. vs. Union of India}\textsuperscript{34} (2005) held that the service tax is not levied on the goods or passengers.

A number of trade bodies and individual service providers had challenged the levy of service tax by the Union Government under the residuary entry no. 97, List I in VII schedule of the constitution. They contended that the service tax is nothing but a tax on professions, which is specially listed, in the State List. Therefore Union Government is not empowered to levy of such tax on the same. Further, the constitutional validity of levy of service tax a composite contract prior to June 1, 2007 under various taxable services viz commercial construction service residential complex services and erection, commissioning or installation services has also been challenged on ground that it was not within the legislative competency of the parliament. Similarly, levy of service tax on renting of immovable properties have also been challenged in court. However, such cases are pending in High Courts have upheld the Constitutional validity of service tax law provisions in the Chapter V of Finance Act, 1994 as amended and the rules framed there under.\textsuperscript{35}
There is no an independent Act of service tax yet. At present the statutes governing the levy of service tax are as follows:

1. **Finance Act, 1994- Chapter V:**
   
   It introduced the law relating to service tax in India. It gives an exhaustive list of all the services which are taxable under service tax and sections relating to levy, collection and other procedures.

2. **Service Tax Rules, 1994:**
   
   It contains the rules relating to registration, maintenance of records, self-assessment and provisional assessment, payment of tax, filing of returns etc.

3. **Finance Act, 2004- Chapter VI for levy of Education Cess 2% on the Service Tax:**
   
   By this Finance Act, the taxpayers have to pay on extra amount as Education Cess of 2% of the total amount of service tax.

4. **Finance Act, 2007 for levy of Secondary and Higher Secondary Education Cess- 1% of the Service Tax:**
   
   As per this Act, the taxpayers has to pay extra 1% of the amount of service tax, which is to be included in the total levy of service tax.

5. **CENVAT Credit Rules, 2004:**

   If the service provider is liable to pay service tax has availed certain input for the final production and has already paid tax on availing these input services under various legislations, than the provider take advantage of CENVAT credit i.e. reduction in total
tax liability by the amount of tax paid by him on input service. He can also take such credit on the duty paid on input lying in stock or in process Rule 3(2).

6. Taxation of Service (Provided from outside India and Received in India) Rules, 2006

Any taxable service provided from outside India by a non–Indian become a taxable service in the hands of a service receiver in India as a destination based consumption tax the place of residence or business of a service receiver within India is enough to make service liable to tax. 40


These Rules deals with the determination of value of taxable service when the consideration is wholly or partly not in money and the amount of tax which is to be paid by the service provider and what is actual amount of service as well as payment on which service tax has to be paid. 41


If there is any kind of confusion regarding applicability of the provision of service tax on a particular service or in case to determine value, service provider can approach Advance Rule to determine and get solution of all such queries. 42


These rules deals with definition of export service, exemption or rebate of service tax and excise duty in case of taxable export services and CENVAT credit thereof. 43
10. Service Tax (Registration of Special Category of Persons) Rules 2006.

Every person who providing some specific services, which are taxable under service tax, than he has to get registered himself with Central Excise department within the specified time and prescribed manner. Similarity, he has to file annual return in prescribed manner with the department. 44

11. Service Tax (Removal of Difficulty) Order 2002:

The service Tax laws are very complicated and not easily available, so a general businessman was facing a lot of problems in the classification of the services provided as well as in the determination of the value of tax. In order to over-come all such problems and to help the taxpayer, the Government has come with this circular.

12. Provisions of Central Excise Act, 1994 as applicable to service tax: 45

Service is administered by the Central Excise Department, so some of provisions of the Central Excise Act, 1944 are also applicable to service tax.

13. Custom Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982:

This has some relevance with the procedural part relating to registration and the mode of payment. 46

14. Works contract (Composition Scheme for payment of Service Tax) Rules, 2007:

The scheme provides that the service provider shall have an option to pay an amount equivalent to 4 per cent of gross amount
charged for the work contract instead of paying service tax at the rate specified in Section 66 gross amount charged for the works contract shall not includes VAT or Sales tax paid on transfer of property in goods. The service provider opting for such scheme is not entitled to take CENVAT credit duty paid puts used in or in relation to said works contract.  

15. Service Tax Dispute Resolution Scheme, 2008:

If a small tax payer has made any fault in the payment of service tax and there is some justifiable reason for the non payment, than the small tax payer can approach here for speedy resolution of his dispute, which will save time and money for the small tax payers.

16 Notifications on Service Tax:

Sections 93 and 94 of Chapter V, and Section 96 I of Chapter VA of the Finance Act, 1994 empower the Central Government to issue notifications to exempt any service or part of service from service tax, and to make rules to implement service tax provisions. Accordingly, notifications on service tax have been issued by the Department of Revenue, Ministry of Finance, from time to time. These notifications usually declare date of enforceability of service tax provisions, provide rules relating to service tax, make amendments therein, declare exemptions from service tax or recession of the exemptions already granted, or deal with any other matter which the Central Government may think would facilitate the governance of service tax matters.
17. Circulars or Office Letters (Instructions) on Service Tax:

The Central Board Excise Customs issues departmental circulars or instruction letters from time to time to elaborate upon the scheme of service tax administration, to explain the scope of taxable services, to remove doubts about the taxability of various services, etc. These circulars/instructions are to be read with the statutory provisions and notifications on service tax. The Board issues circulars either as serially numbered circulars or as instruction letters where name of the file containing the letter is quoted as reference number of the letters. The Director General of Service Tax, Mumbai, also issues instruction letters to clarify provisions of service tax.

18. Orders on Service Tax:

Orders on service tax may be issued either by the CBEC or by the Central Government. Rule 3 of the Service Tax Rules, 1994, empowers the CBEC to appoint such Central Excise Officers as it thinks fit for exercising the powers under Chapter V of the Finance Act, 1994. Accordingly, orders have been issued by the CBEC, from time to time, to define jurisdiction of Central Excise Officers for the purposes of service tax. Section 37B of the Central Excise Act, 1944, empowers the CBEC to issue orders, instructions and directions to the Central Excise Officers for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods. Since Section 37B has been made applicable to the service tax provisions through Section 83 of the Finance Act, 1994, the powers of CBEC extend to giving orders, etc. for classification and taxability of services. Under these
provisions, the CBEC has issued orders from time to time to bring uniformity in the classification of taxable services.

Section 95 of the Chapter V of the Finance Act, 1994, empowers the Central Government to issue “Removal of Difficulty” Order to remove difficulties in implementation of amendments made in the service tax provisions. Till now, the Central Government has used this power twice.  

19. Trade Notices on Service Tax:

Trade Notices are issued by the Central Excise/Service Tax Commissionerates. Through these trade notices, the Commissionerates may disseminate the contents of the notifications issued by Ministry of Finance, (Department of Revenue), circulars/letters/orders issued by the CBEC or the Central Government, and circulars or letters issued by the DGST; define their jurisdiction; identify the banks in which service tax can be deposited; provide information regarding the measures adopted to facilitate the assessee in the context of their service tax responsibilities, give clarifications regarding service tax matters, etc.

Applicability of Service Tax:

Service Tax was introduced in the year 1994 by making provisions in the chapter V of the Finance Act, 1994, which came into force from 1st July, 1994. Section 64(1) provides that service tax is applicable to whole of India expect the State of Jammu and Kashmir. Further Central Government has extended the applicability of the provisions of service tax to the designated area in the “Continental Shelf and Exclusive Economic Zone of India.” The various aspects relating to the applicability of service tax provisions are as follows:
a) ‘India’ includes territorial water of India,\textsuperscript{52} if the service provided in the territorial waters of India (i.e. up to 12 nautical miles from the land mass of India) are also liable to tax.

b) Service tax provisions are also applicable to the services rendered in designated areas in Continental Shelf and Exclusive Economic Zone extends up to 200 nautical miles inside the sea from base line.\textsuperscript{53}

c) Service tax provisions do not applicable to the State of Jammu and Kashmir. It means that services provided in the territorial Jurisdiction of these states are not applicable to service tax irrespective of the location of the service provider or the service receiver.

In short, service tax will not be payable only if service is provided in Jammu and Kashmir. If a person provides service outside the Jurisdiction of Jammu and Kashmir in any part of India, that service will be taxable because the place of service provider is not relevant in this regard.

**Nature and Levy of Service Tax:**

As per Section 65(95) of Finance Act, 1994, ‘Service Tax’ means tax leviable under the provisions of this chapter (chapter V of Finance Act, 1994). Section 66 of Finance Act, 1994\textsuperscript{54} is the ‘charging section’ of Service Tax. Section 66 provides that there shall be levied a tax (i.e. Service Tax) @ 10\% (by the Finance Act, 2009) of the value of taxable service referred to in various clauses of section 65(105). It will be collected in a manner as may be prescribed.\textsuperscript{55}
In respect of each type of service, two things are very important for the purpose of levy of service tax, such as taxable service and value of taxable service. The value of each type of taxable service is defined under the various clauses of section 65(105) of Finance Act, 1994. Thus, service tax is a destination based consumption tax,\textsuperscript{56} it needs at least two parties, because a person cannot provide service himself.\textsuperscript{57}

In short, the nature of levy of service tax can be explained as follows:

1) Service tax is an indirect tax.

2) It is a destination based consumption tax.

3) It can be collected from service receiver by service provider.

4) It is attracted when there are two parties in the transaction of service.

5) It is leviable only when there is provision of service, which is taxable.

6) It is different from excise duty, though excise and service tax are administered by the same department.

**Administration of Service Tax**

The Central Board of Excise and Customs (CBEC), Department of Revenue, Ministry of Finance Government of India, is the apex body deals with the task of formulation of policy regarding levy and collection of Service Tax. The CBSC is assisted by the Directorate General of Service Tax Located at Mumbai. The Service Tax is administered by the Central Excise Commissionerates working under the CBEC which are extended across the
country. There are at present 23 Central Excise and Service Tax Zones in the country, each headed by a Chief Commissioner. These Zones include 93 Central Excise Commissionerates, 7 Service Tax Commissionerates and 4 Large Taxpayer Units (LTUs). Besides the seven exclusive Service Tax Commissionerates, 65 Central Excise Commissionerates in the country also deal with Service Tax. In addition, a majority of the Central Excise Commissionerates also attend to the Customs work relating to bonded warehouses, ICDs/CFSs etc.

On an average, each Central Excise commissionerate comprises 5 or more Divisions, each headed by an Assistant/Deputy Commissioner. Each division has about 5 Ranges; each headed by a Superintendent and assisted by Inspectors. The main functions of the Commissionerate are monitoring of revenue, administration, Supervision of subordinate formations, audit, anti-evasion, adjudication, legal and review and appeals. The Commissioners (Appeals) decide the appeals against the orders passed by officers below the rank of Commissioner of specific Commissionerates. (See Annexure-I under Appendices)

**Administrative Set Up:**

A brief insight into administrative setup of a Commissionerate can be outlined as follows

**Chief Commissioner, Central Excise (Zone):**

He exercises supervision and control on all the technical and administrative work overall the Commissionerates in the Zone. He monitors the revenue collection by each Commissionerate in the Zone.
He monitors the proper implementation of Board’s instructions/guidelines issued from time to time on technical and administrative matters. He keeps a close watch over the functioning of Commissionerate, its Divisions and Ranges also.

**Commissioner Central Excise:**

Commissionerate is headed by a Commissioner, who is responsible for collection of service tax in his jurisdiction and also the appointing and disciplinary authority for officers up to the rank of Group 'B'. At the headquarters, he is assisted by three Additional Commissioners/Joint Commissioners, who are assigned specific areas of responsibilities. The Additional Commissioners are assisted by Deputy Commissioners/Assistant Commissioners.

**Deputy Commissioner/Assistant Commissioner:**

He is Incharge of a branch, which is assigned more specific responsibilities. The Deputy Commissioners/Assistant Commissioners are assisted by Superintendents, Inspectors, Tax Assistants, etc.

The jurisdiction of the Commissionerate has been divided into divisions. Each Division is headed by a Deputy Commissioner or Assistant Commissioner and assisted by four to six Superintendents and about eight to ten inspectors in the Divisional office besides the ministerial staff and an administrative officer. The work of all the divisions is supervised by the Commissioner with the help of Additional Commissioners, Joint Commissioners, Deputy Commissioners/Assistant Commissioners and other subordinate officers.
The jurisdictional area of a division is again divided into Ranges. The jurisdiction of a range is also governed by various factors, which govern the area of jurisdiction a division. The 'Range Office' is the first office of contact between trade and industry and the Department. Each range is headed by a Superintendent designated as 'Range Officer'. Each Range officer has two to four inspectors in his charge.

**Additional/Joint Commissioner (PandV)**

He is incharge of personal and vigilance matters. Additional/Joint Commissioner (Review) is responsible for review of adjudication orders passed by various original and appellate authorities and for filing of further appeals against the orders which are not legal and proper.

**Additional/Joint Commissioner (Tech):**

He is responsible for interpretation of law and its implementation. He also acts as databank for the Commissionerate and facilitator for the trade and industry. The first check over the proper payment of service tax by assesseees is done by Range Superintendent and his staff. The audit branch under the supervision of Additional/Joint Commissioner exercises second check for proper and timely collection of revenue.

**Significance of the study:**

Indian economy is passing through a transition phase and has entered into a new scenario where the service sector is posing exceptional growth by leaving traditional sectors like agriculture and industry far behind. This sector is proved as a more vibrant and now at the forefront of the rapid growth of the Indian economy.
and contributing nearly 63% of the GDP in 2007-08. The sector has come to play an increasingly dominant role in the economy accounting for 59.6 per cent of the overall average growth in the GDP in the last eight years between 2000-01 and 2007-08. Due to its faster growth rate, the overall growth rate of the GDP has been increased and the targeted growth in the GDP of the country is also expected to be achieved. Therefore, it can be said that the service sector has provided the impetus and acting as the trigger for the advancement of the country from developing nation to a developed nation in the direction of vision 2020.

In the view of revenue need with rising contribution of service sector to GDP, the Government of India has introduced service tax in the year 1994 at 5% on three services such as telephone, non life insurance and stock broker. With the modest beginning, its scope is increasing every year by bringing total 103 categories of services fall within its ambit as on 2009. In a span of 14 years it has grown from a ‘Baby’ to a ‘Monster.’ But there is no independent statute on service tax yet and no action has been taken so far. However, it has been progressing faster in all the fronts of the economy, but it has failed to meet the tremendous growth in revenue generation through the service sector. As again, it is contributing its share so negligible to the gross tax revenue of the country even if the service sector accounts for more than half of the GDP of Indian today.

In fact, service tax has now become chief source of revenue for the Central Government with ever increasing list of services being brought under the service tax net. But it has failed to reduce the tax burden on international trade (i.e. Custom Duty) and domestic manufacturing sector (i.e. Excise Duty) and at the same time it would
not be reduced the cost of collection. Therefore, service tax administration in our country is facing multi-dimensional problems. These can be categorized in relation to the nature and growth of service sector in the economy and procedural aspects of service tax collection. Besides, the Government has also given various exemptions and abatements to certain services by issuing various notifications. Due to these reasons, Finance Act, 1994 relating to service tax has become so complex and very difficult for layman to understand. For determining taxability of any new service, its effective date and chargeability, one has to refer not only Finance Act, 1994 but also subsequent Finance Acts and notifications issued by government from time to time. Unfortunately, as on today there is no single and compact Act, covering all the provisions relating to service tax is existing India.

Despite the foregoing issues, it may be said that the service tax being of overwhelming importance for economic development, the research studies on it are extremely limited. Hence, the present study assumes importance on the face of serious dearth of research work related to service tax and to furnish cohesive statutory matters on the subject for the convenience of layman, assessees and the concerned. It is particularly significant in the context of Pune and Pune Zone, because Pune is now a fast growing industrial hub of the country leading wide range of services and giving substantial contribution to economic development of the State of Maharashtra. While Pune Zone is economically more progressive and it is one of the top contributors towards service tax revenue of the country in the State of Maharashtra. Moreover, there is hardly any specific research work conducted yet on it in this direction. Hence, the present study has been undertaken
examine all the aspects of progress of service tax in India and in the State of Maharashtra in general and Pune Zone in particular.

**Scope of the Study:**

The scope of the present study from geographical, operational and periodical standpoints has been mentioned below:

The Central Excise and Customs, Pune Zone consists of three Central Excise Commissionerates, and Central Excise and Customs Commissionerate and Customs Commissionerate each having jurisdiction over the seven districts of the State of Maharashtra viz. Pune, Satara, Sangali, Kolhapur, Solapur, Ratnagiri and Sindhudurga and the entire State of Goa.

The present study is geographically restricted to three Central Excise Commissionerates with 16 divisional and 81 range offices extended across the seven districts of the State of Maharashtra under the jurisdiction of Pune Zone. As the study is restricted to the Maharashtra in general, the Central Excise and Customs Commissionerate, Goa State has been excluded from the study.

The present study operationally takes overviews of statutory provisions of the law relating to service tax in India. It mainly tries to examine the growth, emerging trends and prospects of the service tax in India and Maharashtra in general and Pune Zone in particular.

It has been observe that there is significant growth of service tax in India in terms of revenue collection and assessee base in the financial years 1990-2000 to 2008-09. Hence, the researcher thinks that the period of 10 years from 1990-2000 to 2008-09 is quite enough in order to analyze and evaluate the trends and prospects of
service tax so as to make certain suggestions for the further line of action to the policymakers and concerned authorities.

**Objectives of the study:**

The objectives of the present study are as follows:

1) To review the historical perspectives of taxation including tax on services in India.

2) To study the Indian taxation structure with proposed GST as a unified tax system.

3) To gain a brief insight into the statutory provisions of the service tax prevailing in India.

4) To analyze the role and progress of service tax in India.

5) To assess the position and progress of service tax in terms of revenue growth and Assessee base in the State of Maharashtra.

6) To identify the contribution of the State of Maharashtra in total Service tax collection and Assessee base of the country.

7) To evaluate the performance of Service tax in Pune Zone in the total revenue collection and assessee base of the State of Maharashtra and India.

8) To analyze the major administrative activities of service tax in Pune Zone.

9) To examine and study the future prospects of service tax in ‘Goods and Services Tax’ regime.

10) To suggest means and measures for boosting the contribution of Pune Zone in the total service tax collection in the State and the country.
**Hypotheses of the Study:**

The hypotheses of the present study are as follows.

1. The law relating to service tax in India is not user friendly due to its complex nature.

2. There is significant growth in service tax revenue in India due to increase in number of taxable services, rate of service tax and number of assessees, but its share in the entire tax basket of central government is minimal.

3. Service tax contribution of the State of Maharashtra in the country in terms of per assessee and per service and in general is significant.

4. Considering growing range of services and wide geographical areas of Pune Zone, its contribution towards the total service tax collection and assessee base in the State of Maharashtra is higher.

5. Service tax collection in Pune Zone in terms of per assessee and per service is comparatively less than the service tax collection of per assessee and per service in the State of Maharashtra and India.

6. Performance of Pune Zone in the revenue administration of Service tax is satisfactory.

7. There is substantial scope and prospects for service tax in proposed GST regime to generate large tax revenue to the government.
Research Methodology

The study is based on more than one method of data collection. These are surveys, personal discussion, review of records and observations. These methods will be divided into two groups i.e. primary and secondary data.

Nature and Sources of Data:

This study has made use of primary data and secondary data. The nature and sources of the data are:-

Primary Data:

Primary data have been collected by providing two sets of well-structured and designed questionnaires to the target respondents. A separate set of questionnaire has been provided personally and/or through e-mail to each of the following groups of target respondents:

First to the Commissioners with different grades, (Chief, Deputy, Joint, Assistant and Additional) Superintendents and Inspectors working in head quarter and its constituent divisional and range offices; and

Second to the service tax professionals including tax consultants conducting their professions in the jurisdiction of Pune Zone.

In addition, personal discussions have been made with the concerned tax authorities and service tax professionals including tax consultants as mentioned above. Their views have been recorded for the purpose of analysis of data and the provisions of service tax prevailing in India.
Areas covered in Questionnaires:

Areas covered in each set of questionnaire are stated below

1) First set of questionnaire contains the questions relating to the survey of statistical data of major component activities of revenue administration of service tax and the questions relating to prospects of service tax in GST regime.

2) Second set of questionnaire contains the questions relating only to the prospects of service tax in GST regime.

In both the sets of questionnaires questions relating to prospects of service tax in GST regime have been kept common in order to obtain exhaustive opinions on the same from the respondents.

Secondary Data:

Secondary data are collected from the records maintained by the Commissionerates in Pune Zone and concerned authorities like Ministry of Finance, Central Board of Excise and Customs, Director General of Service Tax, Chief Comptroller of Accounts, Central Statistical Organization, etc. In addition, secondary data are also collected from Government publications, like Annual Budgets, Annual Statistical Reports, and Economic Surveys etc. Various books, journals, periodicals, newspapers, different websites and even some relevant but unpublished articles have also been used.

Population and Sample Design:

Three Central Excise Commissionerates which are selected for the study from the Central Excise and Customs, Pune Zone consists of with 16 divisional and 81 range offices. There are 30
Commissioners with different grades (Chief, Deputy, Joint, Assistant and Additional), 262 Superintendents and 381 Inspectors working in all the offices of service tax in Pune Zone.

All these Service Tax Authorities working at administrative as well as operational levels are 673 in total. Due to time and geographical constraints it is highly impossible to deal with all the authorities. By deliberate and convenient method nearly 17 percent of the total authorities 114 authorities were selected. In addition, 36 Service Tax professionals including tax consultants were also selected as the representatives of the assessees. Thus, the total 150 respondents were designed as sample for the study. Table No 1.1 shows the details about the population and sample design.

**Sample size of the respondents:**

It is assumed that the target 150 respondents as sample so designed would be statistically appropriate for the study. However, during the survey period, so many difficulties encountered when attempting to talk to and get questionnaire filled from the respondents. Few respondents especially of service tax officers and professionals had not given their co-operation and some of them in fact refused to respond to the researcher’s request. Hence, the response rate to the surveys had come down at around seven percent, so the sample size for the study is 140 respondents including service tax professionals. Table No. 1.2 indicates the brief description of the sample obtained and its size with weights assigned under different cells.
Table No. 1.1
Population and Sample Design

<table>
<thead>
<tr>
<th>Category</th>
<th>Total Members</th>
<th>Sample Members</th>
<th>% to total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioners</td>
<td>30</td>
<td>30</td>
<td>100%</td>
</tr>
<tr>
<td>Superintendents</td>
<td>262</td>
<td>39</td>
<td>15%</td>
</tr>
<tr>
<td>Inspectors</td>
<td>379</td>
<td>45</td>
<td>12%</td>
</tr>
<tr>
<td>Tax Professionals</td>
<td>243</td>
<td>36</td>
<td>15%</td>
</tr>
<tr>
<td>Total</td>
<td>914</td>
<td>150</td>
<td>16%</td>
</tr>
</tbody>
</table>

Table No. 1.2
Sample Size of Respondents for the Study

<table>
<thead>
<tr>
<th>Category</th>
<th>Sample Designed</th>
<th>Actual Respondents Size</th>
<th>% of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioners</td>
<td>30</td>
<td>26</td>
<td>87%</td>
</tr>
<tr>
<td>Superintendents</td>
<td>39</td>
<td>37</td>
<td>95%</td>
</tr>
<tr>
<td>Inspectors</td>
<td>45</td>
<td>43</td>
<td>96%</td>
</tr>
<tr>
<td>Professionals</td>
<td>36</td>
<td>34</td>
<td>94%</td>
</tr>
<tr>
<td>Total</td>
<td>150</td>
<td>140</td>
<td>93%</td>
</tr>
</tbody>
</table>

Tools and Techniques used for Analysis of data:

In this study simple analytical approach is adopted. Hence, in analyzing the statistical data, techniques like percentage, ratio, average, growth rate, co-efficient of variance and standard deviation etc. has been used. In addition, graphs and diagrams have also been used for the brief presentation of vast data.
Limitations of the study

All efforts have been made to carry out this study according to the objectives as set out in the beginning. However, during the course of study, certain difficulties are encountered and accordingly, the following limitations for the study have been set out.

1. The study is restricted to the analysis of data obtained from the Commissionerates in the State of Maharashtra in general and three Commissionerates in Pune Zone as special, hence, any comparative analysis has not been made with the Zones in other States of India.

2. For the sake of brevity, the study has not been dealt with the aspects such as definitions of various individual taxable services, impact of service tax on other taxes of central government, allocation and disposal of service tax revenue by the government and analysis of matter relating to disputes and complaints under service tax.

3. Although the survey relating to major activities of service tax administration is expected to be conducted for the period under study, the researcher actually conducted the survey for 2004-05 to 2008-09 as earlier data could not be availed from the concerned commissionerates.

4. Some respondents are not fully participated in discussion and not paid their due attention towards filling up the questionnaire due to time constraint.
Chapter Scheme:

The present study has been divided into Nine chapters. The contents of each chapter have been mentioned as follows:

**Chapter I- Introduction and Methodology**

It deals with introduction to service tax and statement regarding, scope, objectives, hypotheses, reference period data sources and methodology of study and its chapter scheme.

**Chapter II – Review of Literature**

It represents the review of literature on the subject to highlight the significance and dimensions of different issues relating to service tax under two parts i.e. review of Finance Acts and Reports of different Tax Reforms Committees and review of articles on service tax.

**Chapter III – Taxation system and Service Tax in India**

It deals with the introduction to taxation, historical perspectives of taxation system including service tax and taxation structure in India with brief scheme of 'Goods and Services Tax.'

**Chapter IV- Review of Statutory Provisions of Service Tax**

Under this chapter, the review of statutory provisions relating to service tax has been undertaken in order to understand the legal framework of service tax law.

**Chapter V – Role and Progress of Service Tax**

It deals with the analysis and interpretation of secondary data relating to role and progress of service tax in India under certain indicators.
Chapter VI– Position and Progress of Service Tax in Maharashtra

Under this chapter, position and progress of Service Tax in the State of Maharashtra and its contribution in terms of total service tax revenue collection and assessee base of the country has been analyzed.

Chapter VII – Performance of Service Tax in Pune Zone

It deals with the analysis and interpretation of the performance of service tax in Pune Zone and its contribution in the total service tax collection and assessee base in Maharashtra and India.

Chapter VIII – Administration and Prospects of Service Tax

It deals with empirical analysis and the interpretation of primary data relating to major administrative activities and prospects of service tax in Goods and Service Tax regime in simple statistical form.

Chapter IX – Findings, Suggestions and Policy Implications

It discusses the major findings, suggestions and policy implications. Besides, all appendices and bibliography has been added at the end.
References:


4. All India Federation of Tax Practitioners’ Vs. Union of India 2007 (7) STR 625(SC.) and Tamilnadu Kalyana Mandapam Association Vs. Union of India 2006 (3) STR 260(SC.)


10. Miss Lina Heygunde, (2006-07) “Service Tax in India- A Study,” Vanijya Vichar Published by BMCC, Pune, P-113

11. A reasonable looks from the safe preposition in view of Notification 12/2003 granting blanket abatement for the value of goods sold during the process of providing the service
12. See Section 72 (b) of Section 65 (105) of Finance Act, 1994 regarding the definition of ‘Taxable service under the category of telephone services

13. This concept is judicially referred as, “Aspect Theory” and may lead to the simultaneous levy of Sales tax and Service tax (Escotel Mobile Communications vs. Union of India 126 STC 475 and State of Uttar Pradesh vs. Union of India 130 STC 1.

14. Magus Construction Pvt. Ltd. vs. Union of India 2008 (11) STR 225(Gau)

15. Home Solution Retail India Ltd. vs. Union of India 2009 (14) STR 43 (Del)


17. www.economywatch.com-economy, investment and finance Reports


19. I bid Dr. Sanjiv Kumar, (2006), P-793.


22. Selective Approach to Taxation of Services means only selective services is taxed at a prescribed rate.


27. Commissioner of Central Excise vs. Times, Tours and Travels-9, STT 203, (Kolkata (ESTAT))

28. Any other matter not enumerated in List-II or List III including any tax not mention in either of those lists.


30. Additional Advertising vs. Union of India (1998), ELT, 14 2006 (2) STR 228 (Guj.)

31. Chartered Accountants Associations vs. Union of India (2001), 115 Taxmman 543 and (2005), 179 ELT, 129, 2006 (2) STR 300 (Guj.)

32. Kerala Color Lab Associations vs. Union of India (2003), 156 ELT, 17(Ker.)

33. Nava Bharat Ferro Alloys Ltd. vs. Union of India (2005) 185 ELT, 236 (AP.)

34. Gujarat Ambuja Cements Ltd. vs. Union of India (2005) 182 ELT, 33 (SC.)
35. “http://www.cacentre.ua – An overview of service tax in India”
36. See Section 65 to 96(1) of the Finance Act, 1994.
37. It is levied for the welfare functions of Government.
38. See Rule 3 and 4 of Service Tax Rules, 1994, are the main governing law.
40. See Rule 2(d) (IV) of Taxation of Services (Provided from outside India and received in India) Rules 2006.
41. See Rule 3 and 4 of Service Tax (Determination of value) Rules, 2006. It gives the idea of determination the value of services.
43. See Rule 3 and 4 of Export of Services Rules, 2005. It gives from and manner in which exemption should be obtained by exporter.
44. See Rule 4 service tax (Registration of Special Category of Persons) Rules, 2005
45. See Sec. 9 (c), Sec.11 to 15, Sec.33 to 38 and Sec.40 of Central Excise Act, 1944.
47. Rule 3 of Works contract (Composition Scheme for Payment of Service Tax) Rules, 2007 Vide Notification No. 32/2007 service tax dated- 22/05/2007
48. See Rules 2 of Service Tax Dispute Resolution Scheme 2008
49. Orders by CBEC under Rule 3 of Service Tax Rules, 1994
50. Orders by Central Government under section 95 of the Finance Act, 1994
52. Section 5(4) of Territorial Waters, Continental Shelf and Exclusive Economic Zone and Maritime Zone Act, 1976
53. Section 5(4) of the above Act
54. See Section 65(95) of the Finance Act, 1994
55. See Section 65(105) of the Finance Act, 1994
57. Roll Royce India Power vs. CCE 2004 STT 573- It was held that service tax is attracted when there are two parties. One cannot give service to himself.
58. I bid, ‘Harpreet Dusanjh and Deepak Davgan.’ P-43
59. www.ibef.org