CHAPTER – IV
REVIEW OF STATUTARY PROVISIONS OF SERVICE TAX

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REVIEW OF STATUTARY PROVISIONS OF SERVICE TAX

Introduction:

There is no independent Service Tax Act, in India yet. The service tax is being imposed and collected through the Finance Act, 1994. The scope of service tax is enhanced from time to time by making various amendments in the provisions of chapter V of Finance Act, 1994 and the Service Tax Rules, 1994. Section 64 to 96-I of Finance Act, Finance Act 1994 contain provisions relating to service tax. Besides, certain sections and rules of further Finance Acts, Service Tax Rules 1994, Central Excise Act, 1944 and other statutes along with notifications, circulars, orders, trade notices etc. issued by CBEC and administrative authorities are governed the levy of service tax. The service tax is administered by the Central Excise Commissionerates, working under the CBEC.

The material containing legal provisions and rules relating to service tax are not exclusively available in form nor are they compiled together in a single statute for general taxpayers. In this chapter as far as possible, efforts have been made to review the statutory and procedural provisions relating to service tax together in order to provide a bird’s eye to service tax law. This chapter does not include a discussion on definitions of various individual taxable services considering the fact that there are more than 110 categories of services as well as the fact that this area would be an independent area for a separate study to be conducted in different perspectives.
**Scope of Service Tax Provisions**

The provisions contained in Chapter V and V A (Section 64 to 96-I) of the Finance Act, 1994 govern the levy of service tax. As per section 64 service tax is extended to whole India except the State of Jammu and Kashmir. It means that the services provided from outside India for persons in India would also be a subject matter of service tax. Because the service tax is a destination based tax and hence services provided from outside India but consumed in India, called as import of services appears to be taxed in India. The service recipient of the same is liable to pay tax section 66A.¹ The services provided from outside India by residents for their clients located outside India would not be subject matter of service tax because it is an export service. In short taxable services are provided by a non resident/ foreigner/foreign company present in India, the levy would be attracted while the taxable services provided by the residents to their clients located outside India the levy would not be attracted.

It should be noted that in the State of Jammu and Kashmir, service tax also be levied at the rate of 8.5 percent on 14 services under the General Sales Law of that state.² However, it is not levied under Finance Act, 1994.

**Chargeability of Service Tax**

Section 65(95) of Finance Act, 1994 states that ‘Service Tax’ means tax leviable under the provisions of Chapter V of Finance Act, 1994. Section 66 of Finance Act, 1994 is the charging section of service tax. As per Section 66 of the act, the liability of service tax arises when a taxable service is provided i.e. ‘Taxing Event’. However, the collection is delayed up to the point of time.
the service provider receives some consideration for the taxable
service provided i.e. ‘Collection Event’. Practically, the levy of
service tax would not permissible if any one of the two events
failed. In other words, where there is no service the levy of service
tax would not be attracted. Service to self or division of the same
entity would not be leviable. Further there is no payment of service
tax where there is no receipt of monies for the taxable service
provided. Similarly, if services are not charged at all, then also
there is no payment of service.

All the analysis of the provisions of Section 66 of the Act, one
can easily expressed the following essential ingredients for levy of
service tax.

1) Service Tax can be levied only on services provided or to be
   provided in India or received in India.

2) Services should be taxable services.

3) Services should be provided after the notified date.

4) The value of taxable service should be realized.

   In the light of selective approach of services, it is very
important that the service must be taxable service and it showed be
covered under any categories of taxable services.

**Taxable Services Section 65 (105)**

The term ‘Taxable Services’ has been defined under section 65(105) of the Finance Act, 1994. Definition of taxable services is
different for each class of services.

An analysis of the Section 65(105), one can draw the pattern
of taxable service for the levy of service tax.
Taxable service means any service provided to a person (scope of service receiver is defined here) by a service provider (scope of service provider is defined here) in relation to (scope of service is defined here).

It is evident that, for the purpose of levy of service tax on any particular service will require detail analysis of the following aspects:

1) Scope of service receiver
2) Scope of service provider
3) Scope of service provided or to be provided.

The liability of service tax is on service provider and in most of the cases it is a person who provides taxable service. While in few cases exceptions have been made and other person may also liable to pay service tax. The term service provider would include an individual, partnership firm, HUF society, body corporate charitable institutions, and co-operative society, Central or State Government. As per Section 3(42) of General causes Act, person shall include any company or association or body of individual whether incorporated or not.

The service is taxable in many cases, when it is provided to a client or to a customer. These words are not defined under the Act and hence these words can be understood as per common parlance in order to define the service receiver.

As per Section 65(105) service is taxable when it specified under the categories of taxable service as on date. Any those services which are set out in the said section are liable to the tax from there effective rate. Therefore, service provider should have
to examine the services for which he is liable and those which are exempted or cases where no services is at all. It is evident from the section 65(105) of the finance Act, 1994, the service tax liability often depend upon the inter relationship between service provider, service receiver and service provided or to be provided.

But the definitions of various services are defined in a manner to provide a very wide scope for each of the services. Various phrases like ‘in relation to’, ‘in connection with’, ‘directly or indirectly’, ‘in any manner etc. used in the definitions should create an impact of subject matter for litigations.

**Person Liable to Pay Service Tax**

Generally, service provider is liable to pay service tax at the prescribed rate. As per section 65(105) of Finance Act, 1994 Service provider is the person who provides taxable service. Accordingly, the person providing taxable service is liable to pay service tax.

However, in respect of following services, the recipient of service is responsible for paying service tax-

**a) Service provided or to be provided by Non – Resident :**

In relation to taxable service provided or to be provided by any person from outside India and received by any person having his place of business, fixed establishment, permanent address or as the case may be, usual place of residence in India, the recipient of service is liable to pay service tax, Rule 2(1) (d) (iv).

**b) Insurance Auxiliary service by an Insurance Agent :**

If insurance auxiliary service is provided by an insurance agent to any person carrying on general insurance or life insurance
as case may be, recipients of such service is liable to pay service tax. However, such agent is not entitled to avail exemption available to a small service provider.

c) Services Good Transport Agencies:

In case of services of Goods Transport Agency where consignor or consignee may be any person, who pays or liable to pay freight either himself or through the agent is liable to pay service tax (Rule 2(1) (d) (v)). However the consignor or consignee is not entitled to avail exemption available to a small service provider.

d) Business Auxiliary services relating to distribution of mutual fund:

Any business auxiliary service relating to distribution of mutual funds by a distributor or agent is provided to mutual funds, the liability of service tax will be on service recipient. (Rule 2(1) (VI)) However, the mutual funds agent is not a small service provider.

e) Sponsorship Service:

Where the sponsorship service is provided to a body corporate or firm located in India, the body corporate or firm receiving such sponsorship will liable to pay Service Tax (Rule 2(1) (d) (VII)). However, the recipient of sponsorship service is located outside India; service tax is required to be paid by the service provider.

The provision of the law is that service receiver is liable to pay service tax is termed as ‘Reverse charges’. When a statuary
liability is fixed on service receiver, it cannot be shifted to another by agreement and it cannot be demanded from service provider.

Classification of Taxation Services:

Finance Act, 2003 has inserted a new section 65A providing for classification of taxable services. There are various types of services on which service tax is payable. These are specified in various sub-clauses of section 65(105). It is possible that a service may be appearing to be classifiable under more than one heading.

Principles of Classification (Sec. 65A):

When a taxation service is prima-facie classifiable under one category of service, it shall be so classified. However, when a taxation service is prima-facie classifiable under various sub-clauses of section 65(105), it is possible that a service may be appearing to be classifiable under more than one heading.

Meaning of Classification:

Classification means specifying the heading under which the service being provided is falling. In fact, as per Rule 4A (1) the invoice should indicate description and classification of a service, neither the department nor the assessee likely to bother about this provision.

Need for Classification:

For the purpose of charge of service tax, the taxable services are to be classified under the different categories of 'taxable services.' Generally, exemptions from service tax are provided in respect of specific category of taxable service. In that case, the classification may lead to wrong availment of exemption, thereby giving rise to demand, interest and penalty.

Principles of Classification (Sec. 65A):

When a taxation service is prima-facie classifiable under a particular heading, it shall be so classified. However, when a taxation service is prima-facie classifiable under various sub-clauses of section 65(105), it is possible that a service may be appearing to be classifiable under more than one heading.

Meaning of Classification:

Classification means specifying the heading under which the service being provided is falling. In fact, as per Rule 4A (1) the invoice should indicate description and classification of a service, neither the department nor the assessee likely to bother about this provision.
taxable service is prima-facie classifiable under two or more categories of service, then classification shall be done as follows-\textsuperscript{12}

a) It shall be classified under the category which provides the most specific description; (Clause (a))

b) In case of service is a composite service consisting of a combination of different services which can not classified in the manner specified in (a) above, than such service shall be classified under that category which gives them their essential character; (Clause (b))

c) When a service cannot be classified under in the manner specified in (a) or (b) above, then it shall be classified under the category, which occurs first in clause (105) of section 65. (Clause (c))

From the above statements, classification can be divided in the following manner.

I. Specific description to be preferred-

Most specific description should be preferred over general description;

II. For composite service; essential character should be considered;

III. In case of more than one description, service should be classified in accordance with section 65(105) of the Act.

**Valuation of Taxation Services:**

The issue of valuation is important and critical factor for every taxation law. Since the tax or duty is payable on the value adopted with the efforts of the tax payer to reduce tax to a ad
minimum and the tax collecting authority seeking to maximize the same. The value therefore, becomes a backbone of contention and leads to increased litigation. Valuation of taxable services for charging service tax is governed by section 67 of Finance Act, 1994 and service tax (Determination of value) Rules, 2006 and amendments made by the Central Government from time to time through its notifications.

Section 67 of the Finance Act, 1994 has been substituted a new section by the Finance Act, 2006. The earlier system of valuation of taxable services was based on gross amount charged subject to some inclusions and exclusions. But the new valuation norms provide for a three tier valuation mechanism and the provisions for valuation of non-monetary consideration has been provided for the first time in service tax legislation.

The valuation of taxable services is made on three fold basis as follows:

a) Where the consideration for providing services is entirely in money:

The gross amount charged by service provider for such service, provided or to be provided by him will be relevant for valuation.\(^\text{13}\)

b) Where the consideration for providing services is not wholly or partly in terms of money:

The taxable value shall be such an amount in money, with addition of service tax charged, equivalent to the consideration.\(^\text{14}\)

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c) Where the consideration for providing services is not ascertainable:

The valuation will be made on the basis of valuation rules.$^{15}$

**Where the gross amount charged is inclusive of service tax:**

Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable. In such a case the value shall be such amount as, with addition of tax payable is equal to gross amount charged.$^{16}$

**Scope of gross amount charged:**

The gross amount charged for the taxable services shall include any amount received, for the service provided or to be provided towards the taxable service before, during or after the provision of such service.$^{17}$

For the purpose of Section 67 of Finance Act, 1994 (as amended in 2006), further explanations shall be provide for.

1. ‘Consideration’ include any amount that is payable for the taxable services provided. It means any amount i.e. payable in past, present and further liabilities, all are included;

2. ‘Money’ includes any currency, cheque, promissory note, letter of credit, draft, pay orders, travelers cheque, money order postal remittance and other similar instruments but does not include currency that is held for its numismatic value;

3. ‘Gross amount charged’ includes payment by cheque, credit card, deduction from account and any from of payment by issue of credit notes and book adjustment. (Expect the book adjustments not between associated enterprises and the adjustments not related to any taxable service.)
Valuation of Taxable service where the consideration is not wholly or partly in money:

If the consideration for the provision of taxable service is not wholly or partly consisting of money, i.e. part of it in cash and part of it is other than cash. In such cases, the value of taxable service shall be equivalent to the gross amount charged by service provider for similar services in ordinary causes of trade and the gross amount charged shall be the sole consideration.\textsuperscript{18}

Valuation of Taxable service where the consideration is not ascertainable:

If the consideration for the provision of taxable service is in money term but consideration or value is not ascertainable. In such cases, the valuation shall determine the equivalent money value of such consideration, which shall not be less than the cost of provision of such taxable services.\textsuperscript{19}

Rejected ‘value’ of taxable service:

Central Excise officer shall have powers and right to satisfy himself about the accuracy of information furnished or documents presented for valuation.\textsuperscript{20}

Central Excise office can ‘reject’ determined by service provider, if he satisfied that the value so determined by the service provider is not in accordance with the provision of the Act or the rules made there under and he shall issue a notice to him to show cause by standing there in the value of such taxable service.\textsuperscript{21} After providing a reasonable opportunity of being heard, the Central Excise officer shall determine the value of such taxable service in. Accordance with the provisions of the Act and Rules made thereunder.\textsuperscript{22}
Valuation in respect of services involved in execution of a works contract:

Valuation of services involved in the execution of works contract shall be done as follows:

a) General valuation (Under section 2A):

The value in respect of the newly introduced works contract service shall be the gross amount charged for such contract less the value of transfer of property in goods involved in the execution of the said works contract.

The value of the transfer of property in goods shall be taken as the value on which the VAT/Sales are paid under the local laws for determining the value of works contract service.\(^{23}\)

b) Composition Scheme Rule 3:

As per this composition scheme, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability at rate equivalent to 4 per cent of the gross amount charged for the works contract, instead of paying at the normal rate of service tax on the gross value.\(^{24}\)

For the purpose of opting, the composition scheme, the assessee is restricted for:-

i. No CENVAT credit is available

ii. Such option shall be exercised in respect of a works contract prior to the payment of service tax in respect of the said contract and the option so exercised shall be applicable for the entire works contract and can not be withdrawn until the completion of the said contract.
iii. The option shall be permissible only where the declared value of the works contract is not less than the gross amount charged for such works.

Inclusion and Exclusion from gross value in respect of works contract service:

The value of works contract service includes labour charges, amount paid to sub-contractor for labour or service, planning and designing and architects fee, hire charges paid on machinery and tools, consumables (such as water, electricity, fuel etc) cost, other expenses and profit involved in supply of labour and service. While the gross amount charged for works contract shall not include VAT, or Sales Tax as case may be paid, if any, on the transfer of property in goods in the execution of the said contractor.25

Reimbursable Expenses (out of pocket expenses)26

In normal course all reimbursements of cost or expenditure would be included in the value of Taxable services. However, the reimbursements would be allowed as deductions from the value of taxable services subject to the following conditions; Fulfillment of

I. Service provided as a pure agent;

II. Services provided to the client and not to the agent;

III. There should be disclosure that the agent is acting on behalf of the client;

IV. The amount charged by the third party must be equal to the amount charged by the agent to the client;

V. The agent should not use any of the goods or services so procured.
After considering the conditions said above it is cleared that many of the agreements especially in relation to facilitation, customer, support, cleaning and forwarding agent, professionals and many more would have charge service tax on the gross amount including the out of pocket expenses incurred. However, the group companies and a few specialized service providers would be in a position to claims the reimbursement as deductions.

In this regard, Pure Agent means a person who:-

a) Enters into a contractual agreement with the service receiver to Act as his pure agent to incur expenditure or costs in the course of providing taxable service;

b) Neither intends to hold nor holds any title to the goods or services so procured or provided as a pure agent of the service receiver;

c) Does not use such goods or service so procured, and

d) Receives only actual amount incurred to procure such goods or services.

Inclusion in and Exclusion from the value of some special Taxable Services:

Rule 6 deals with the cases in which certain in exclusion from or inclusion in the value of taxable services shall be available subject to the provisions of Section 67 of Finance Act, 1994

In case of some specific taxable services, the gross amount so charged shall include the followings:-

- Commission /brokerage charged by a Stock Exchange broker, Air travel agent, Rail travel agent, Actuary/
insurance intermediary or agent, Clearing and forwarding agent;

• Insurance premium charged by the insurer from the policy holder;
• Adjustments made by telegraph authority for deposits;
• Reimbursement received by the authority service station from manufacturing of motor car / motor vehicle.

Besides, the following exclusion shall be made from the value of some taxable services

• Initial deposit collected by telegraph authority;
• Air, rail fare collected by air, rail travel agent respectively;
• Interest on loans by banks and other financial agencies.

**Valuation in case of taxable service provided from outside India under section 66A:**

Where the taxable service provided from outside India and received in India to be taxed under section 66A of the Finance Act, 1994. In such cases, value of taxable service received u/s 66A, such amount is equal to the actual consideration charged for the services provided or to be provided. However, where a taxable service is only partly performed in India, then the value of taxable service shall be the total consideration paid by the recipient for such services including the value of service partly performed outside India.29

After foregoing, details regarding the valuation of taxable services, researcher would like to note that the entire valuation rules as it stands appears to be ultra-virus to the section 67 of the Act as section envisages a charge for the service per section. However, same is amended there will disputes.
**General Exemptions from Service Tax:**

Sections 93 of the Finance Act, 1994 empower the Central Government to grant exemption from service tax. The section provides that if the Central Government is satisfied, which necessary in the public interest so to do, can grant partial or total exemption by issuing notification in official Gazette. Such exemption may be general or conditional to the taxable service of any description from the whole or any part of the service tax leviable thereon. It further provides that if the Central Government is satisfied, it is necessary in the public interest so to do, can grant exemption in each case by special order to the taxable service of any specified description from the payment of whole or any part of the service tax leviable thereon. Such exemption may be granted under the circumstances of exceptional nature to be stated in such exemptions either special or general with retrospective effect.

General exemption may be of three types-

1) Exemptions available to all service providers in respect of all services.

2) Exemptions available to specified service providers in respect of all services.

3) Threshold exemptions.

1) Exemptions available to all service providers in respect of all services.

The following are the exemptions available to all service providers in respect of all services:

a) Services provided to United Nations or an International Organizations: Services provided to United Nations or an
‘International Organizations’³⁴ by any service provider are exempted from service tax.

b) Services provided to Foreign Diplomatic Mission, Family members of Diplomatic Agent / Career Consular officers:

All taxable services provided by any person for the official uses of a foreign diplomatic mission or consular post in India are exempted.³⁵ Similarly, all taxable services provided by any person for the personal use or Career Consular officers posted in a Foreign Diplomatic Mission or consult post in India are exempted from service tax.³⁶

c) Services provided to a developer of SEZ or a unit therein:

Services provided to a developer of SEZ or a unit (including a unit under construction) of SEZ for consumption within SEZ are exempted subject on the following conditions.³⁷

i) The developer has been approved by Board of Approvals to develop, operate and maintain the SEZ.

ii) The unit of the SEZ has been approved by the Development Commissioner or Board of Approvals as case may be, to establish the unit in the SEZ.

iii) The tax developer of unit of SEZ shall maintain proper account of receipts and utilization of the said taxable services.

d) Goods and materials supplied while providing service:

Service tax is not payable on the value of goods and materials supplied by the service provider to the recipient of while service providing service is exempted.³⁸ There should be documentary proof specially indicating the value of said goods and
materials. Such exemption is permissible only when CENVAT credit on the same is not taken by the provider under CENVAT Credit Rules, 2004.

e) Service exported from India:

Any taxable service may be exported from India as per ‘Export of Service Rules, 2005 is exempted from service tax. 39

2) Exemptions available to specified service providers:

The following service providers are exempted from service tax in respect of all taxable services.

1) Services provided by Reserve Bank of India:

Services provided by Reserve Bank of India and services received by it from goods transport agency and sponsorship service under Rule 2 of service tax Rules, 1994 are exempted from service tax. 40 Similarly, services imports by RBI u/s 65A of the Act are also exempted from tax. 41

Services provided by Incubators;

All services provided by the Department of Science and Technology and Science and Technology Entrepreneurship Perk known as Incubators are exempted from service tax subject to specified conditions. 42

2) Services Provided by Technology, Business, Incubates:

All taxable services provided by Technology, Business, Incubates, who are Entrepreneurs working with the Incubators to develop there ideas into commercial viable are exempted from levy of service tax subject specified conditions. 43
3) **Services Provided by Passengers Transport Vehicles:**

All taxable services provided by a vehicle bearing ‘Contract Carriage Permit’ in respect of interstate or intrastate transportation of passengers are exempted from service tax with specified conditions.\(^{44}\)

4) **Club or Association Service:**

Club or Association Service is being provide to the Federation of Indian Export Organizations, and specified export promotion councils is exempted from service tax leviable thereon.\(^{45}\)

5) **Banking, Financial Services or Foreign Exchange Broking Service:**

Banking and other Financial Services or Foreign Exchange Broking Services in respect of inter bank purchase and sale of foreign currency between scheduled banks are exempted from service tax.\(^{46}\)

3) **Threshold Exemptions:**\(^{47}\)

The small service providers whose aggregate turnover of taxable services from one or more premises did not exceed Rs. 10 Lakh during a financial year are exempted from service tax leviable thereon. However, the persons using the brand name or trade name of another person and service receivers who are liable to pay service tax are excluded from such exemption. This exemption is permissible only if the service provider is not avail CENVAT credit in respect of tax paid on input service and capital goods.
CENVAT credit for service Tax:

The CENVAT (Central Value Added Tax)/Scheme is principally based on system of granting credit of duty paid on input, input service and capital goods. A output service provider has to charge service tax in his invoice as per normal procedure. However, he gets credit of:

a) Duty paid on input and capital goods and  
b) Service tax paid on input services

This is termed as “CENVAT Credit”

Thus, the concept of CENVAT credit was introduced with an intention to avoid cascading effect of taxes. The CENVAT allows the credit of the duty paid on the inputs and capital goods and service tax paid on input services, which is to be utilized for the payment of Excise Duty on final products or service tax on output services.

To understand the scheme of CENVAT credit, it is required to understand meaning of the terms output service, input goods, capital goods and input service which can be explained below:

1. Concept of input

Inputs generally mean all goods used for providing any output service. Input would not include light diesel oil, high speed diesel oil and motor spirit and motor vehicles.

2. Output service

As per Rule 2(p) of CENVAT Credit Rules 2004 output service as means any taxable service provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person as the case may be.
Taxable service shall not include service where the receiver pays the tax like GTA\textsuperscript{48}, sponsorship or import of services. Therefore where the receiver is required to pay the service tax, the same has to be paid fully in cash. The logic is that an input service credit cannot be used to pay the service tax on another input service.

3. **Capital goods**

As per Rule 2(a) of CENVAT Credit Rules 2004, means the following goods.

1. All goods falling under chapters 82, 84, 85, 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to Central Excise Tariff Act
2. Pollution control equipment
3. Components, spares and accessories of the goods specified at clauses (1) and (2) above
4. Moulds and dies, jigs and fixtures
5. Refractories and refractory materials
6. Tubes and pipes and fittings thereof; and
7. Storage tank

The aforesaid items should be used for providing output service. Motor vehicles would also be regarded as capital goods where they are registered in the name of the service provider who provides output services falling under the categories stated below.

- A customer by a courier agency in relation to door-to-door transportation of time sensitive documents, goods or articles
• Any person by a tour operator in relation to a tour
• Any person by a rent-a-cab scheme operator in relation to the renting of a cab
• Any person by a cargo handling agency in relation to cargo handling services
• A customer by a goods transport agency in relation to transport of goods by road in a goods carriage
• A client by an outdoor caterer
• A client by a Pandol or Shamiana contractor in relation to a Pandol or Shamiana in any manner.

The definition of capital goods under Companies Act 1956 or under Income Tax Act, 1961 would not be valid here.49

4. **Input service** :

‘Input service’ means any service used by a provider of taxable service for providing an output service; It includes services used in relation to setting up modernization or renovation or repairs of the premises of provider of output service or an office relating to such premises; advertisement or sales promotion market research storage up to the place of removal procurement of inputs activities relating to business (such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security) inward transportation of inputs or capital goods outward transportation up to the place of removal

It may note that the concept of input service is usually subject matter of maximum litigation under Service Tax. This is mainly on account of a narrow interpretation of the definition from the departmental officials with the intention to deny credits to the
assessee. This has resulted in unnecessary litigation in many cases which are usually resolved by the Tribunal with most of the verdicts being in favour of the assessee. The input services which are usually questioned are telephone services, canteen services, rent a cab services, repairs and maintenance of assets, services of outward transportation etc. 50

Duties/taxes which can be considered for set off or availing credits:

The duties and taxes which can be considered as per Rule 3(1) of CENVAT Credit Rules 2004 for set off or availment are as follows

• Basic Excise Duty (First Schedule to CETA)
• Special Excise Duty (Second Schedule to CETA)
• Education cess on excisable goods and on taxable services
• Secondary Higher Education Cess of excisable goods on taxable services
• Service tax u/s 66 of Chapter V of Finance Act
• Counter Veiling Duty u/s 3 (3) of Customs Tariff Act on imported goods

The aforesaid duties should have been incurred on input or capital goods received in the premises of the provider of output service on or after 10.09.2004 and the taxes should be paid on any input service received by the provider of output services on or after 10.09.2004. The service provider cannot claim credit of additional duty (SAD 4%) leviable under section 3(5) of the Customs Tariff Act, by virtue of provision to Rule 3(1) of CENVAT Credit Rules.
Utilization of the credits

The service provider who avails CENVAT Credit on inputs, capital goods or on input services can utilize the credits as per Rule 3(4) of CCR 2004, either for:

- Payment of excise duty on any final product or
- Reversal of CENVAT credit availed on inputs when the inputs are removed as such or after partial processing (other than for providing taxable services) or
- Reversal of CENVAT credits or
- Payment of service tax on output service or
- Reversal of CENVAT credit on capital goods where the capital goods are removed as such other than for providing taxable services

Education cess and secondary higher education cess credit can be utilized for payment of the Cess on service tax or cess on excisable goods. But the credits of education cess and SHE cess cannot be used for payment of any other tax or duty. Education cess credit is to be used for payment of education cess and SHE cess credit is to be used for payment of SHE cess.51

CENVAT credit when inputs/capital goods are removed outside the premises:

As per Rule 3(5), when inputs or capital goods on which CENVAT credit has been taken, are removed as such from the premises of the service provider, the CENVAT credit availed would have to be reversed unless the removal was for providing taxable service. Where the removal of capital goods or inputs is for providing an output service, there would be no time limit for
receipt of the same back into the premises of the service provider. However, the service provider is advised to track the movement of inputs and capital goods using challans and registers to avoid flouting of Rules and end up with disputes/demands. In case of capital goods removed after use, where the credits are to be reversed, the reversal would be reduced to the extent of 2.5% per quarter of use of the capital goods.

As per Rule 3(5B), where the value of any input or capital goods (before being put to use) is written off fully or provision for writing off fully is made in the books of accounts, the CENVAT credit taken (if any) on such inputs or capital goods would have to be reversed. The credit can be claimed again where such inputs or capital goods are used in providing taxable service.

**Restriction in case of capital goods**

As per Rule 4(2)(a) of CENVAT Credit Rules, 2004, the CENVAT credit in respect of capital goods received in the premises of the service provider, who provides taxable services, shall be taken for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year and the balance in the subsequent financial year, if the capital goods are in possession of such service provider. The criterion as to possession would not apply to components, spares, accessories, refractories and refractory materials, moulds, dies and goods falling under heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of First Schedule of Central Excise Tariff Act. Moreover, in case the capital goods are cleared as such in the same financial year (initial year), the balance can be claimed in that year itself. Where CENVAT credit is claimed on capital goods, the duty
amount cannot form part of the cost of the capital goods for the purpose of claiming depreciation under section 32 of Income Tax Act 1961 by virtue of Rule 4(4) of CENVAT Credit Rules, 2004. If depreciation is claimed on the duty amount on which CENVAT credit had been claimed earlier, the credit would have to be reversed.\textsuperscript{52} Capital goods may even be acquired on lease, hire purchase or loan agreement from a financing company under rule 4(3) and credits would still be available as long as documentations in order.

**CENVAT credit on inputs or capital goods which is sent out to a sub contractor for processing :**

The input or capital goods on which credit has been claimed, can be sent out under Rule 4(5)(a) of CENVAT Credit Rules 2004 to a job worker for processing, testing, reconditioning etc. The goods after processing, testing etc are to be received back within the premises of the service provider within 180 days from the date of sending the same. Where it is not so received, the CENVAT credits availed earlier in respect of the inputs so sent would have to be reversed which can again be claimed back once the goods are received any time after the expiry of the said in period of 180 days. There is no restriction as to receipt within 180 days in case of capital goods as the same has been amended with regard to a service provider, as long as the removal is for providing output service.

The goods are normally sent under a pre-numbered challan which would consist of details like, name and address of the job worker, the description of the goods, value with duty amount, nature of processing required and the date on which the items are
expected. The challan can have a provision for authenticating the receipt and dispatch details at his end along with details of dispatch like, goods sent back, scrap generated if any, processing undertaken, date of sending and details of invoices raised if any. The service provider can also maintain a register to keep track of material movements showing the issue and receipt details.

**CENVAT Credits Refund for exporter of service**

As per Rule 5 of CENVAT Credit Rules, 2004, where any input or input service is used in providing an output service which is exported (in accordance with the Export of Service Rules 2005), the CENVAT credit in respect of that input or input service can be utilized by the provider of output service towards payment of service tax on taxable services provided within India. Where such utilization is not possible, the provider of output service can opt for a refund of such amount subject to conditions notified by the Central Government. This refund shall not be allowed where the provider of output service avails of either:

- Drawback under the Customs and Central Excise Duties drawback rules 1995 or
- Claims rebate of duty under Central Excise Rules 2002 or
- Claims rebate of service tax under Export of Services Rules 2005 in respect of such duty/tax.

**Where Service provider providing both taxable as well as exempted services:**

The provisions are governed by Rule 6 of CENVAT Credit Rules 2004. Where a service provider exclusively provides exempted services, he cannot avail and utilize the CENVAT
credits. The same philosophy would also apply to a manufacturer manufacturing exempted final products exclusively. In a scenario where the service provider provides both taxable as well as exempted services and avails CENVAT credits on inputs and input services used in providing services, he would in the normal course be required to maintain separate accounts for receipt, consumption and inventory of inputs and input services meant for use in providing output service and those inputs and input services meant for use in providing exempted services. This would be to ensure that he does not claim credits on inputs and input services used for providing the exempted services. Even where they are availed, the same can be reversed in the books. But where the service provider is not in a position to maintain separate accounts or has not maintained separate accounts, he cannot utilize the full amount of CENVAT credits at his disposal. In such a scenario, the position would be as explained below -

For the period prior to 1st April 2008:

The utilization shall be only to the extent of an amount not exceeding twenty per cent of the amount of service tax payable on taxable output service. This utilization is subject to having sufficient balance of CENVAT credits on hand on the basis of the invoices given by the input service provider/suppliers. The balance credit left out after such utilization can be carried forward to the subsequent period.

On or after 1st April 2008:

The rule now gives the service provider two options:

- Pay an amount equal to 6% (prior to 07.07.09, the rate was 8%) of the value of the exempted services or
• Pay an amount equivalent to the CENVAT credit attributable to inputs and input services used for providing exempted services as per the formula/method indicated. As per this formula/method, the CENVAT would be determined in two steps.

• First of all, during each month, the CENVAT credits attributable to exempted activity would have to be ascertained provisionally by taking the value of exempted services, goods manufactured and taxable services provided during the preceding financial year as the basis.

• Secondly, the actual credits that the service provider is entitled to, would be calculated at the end of the year on the basis of actual figures for the relevant financial year with regard to the value of exempted services and taxable services provided or goods manufactured (if any).

Where the credits ascertained finally in relation to exempted activity are less than the credits ascertained provisionally, the service provider can take credit for the differential amount. Where the credits ascertained finally in relation to exempted activity are more than the credits ascertained provisionally, the service provider would have to pay the differential amount on or before the 30th June of succeeding financial year. Where the payment is made after 30th of June, interest at 24% p.a. would be payable for the period of delay.

**Where the input services fall under the specified categories:**

Where the input services obtained by the service provider happen to fall under the categories specified under rule 6 of CENVAT Credit Rules, 2004, full CENVAT credit can be utilized
in respect of the service tax paid on such services unless such services are used exclusively for providing exempted services or exempted final products by the assessee. In other words neither the restriction as to 20% of the tax payable on output services (for the period prior to 1st April 2008), nor the restriction under the new sub rule 3 and 3A of rule 6 for the period following 1st April 2008, would apply to these services received by the service provider.

The concerned input services are as follows:

1. Consulting engineer’s services (Sec. 65(105)(g))
2. Services received from an architect (Sec. 65(105)(p))
3. Interior decorators services (Sec. 65(105)(q))
4. Management consultant’s services (sec. 65(105)(r))
5. Real estate agent’s services (Sec. 65(105)(v))
6. Security agency’s services (Sec. 65(105)(w))
7. Services provided by a scientist or a technocrat in relation to scientific or technical consultancy (Sec. 65(105)(za))
8. Banking and financial services (Sec. 65(105)(zm))
9. Insurance auxiliary services concerning life insurance business (Sec. 65 (105)(zy))
10. Erection, commissioning and installation services (Sec. 65(105) (zzd))
11. Management or maintenance or repair service (Sec. 65(105) (zzg))
12. Technical testing and analysis agency’s services(Sec. 65(105) (zzh))
13. Technical inspection and certification services (Sec. 65(105) (zzi))
14. Banking or other financial services by a foreign exchange broker (Sec.65(105) (zzk))
15. Commercial or industrial construction services (Sec. 65(105) (zzq))
16. Intellectual property services (Sec. 65(105) (zzr))

Service providers may note that the category of works contract services as well as some of the other construction related services is conspicuous by their absence. This is so while commercial or industrial construction services do find a mention. It is common that as additional services have been included under tax net, their additions in the facilitating segments has been ignored. Whether this is an unintended omission or it is not something which would have to be clarified in due course of time but indicates the lack of professional approach to law making in our country.

**Where the assessee is both a manufacturer as well as a service provider:**

Rule 6 of CENVAT Credit Rules, 2004 did not specifically cover a scenario for utilization of credits where the assessee engaged in manufacturing as well as providing services and had both dutiable and exempted goods as well as taxable and exempted services prior to 1st April 2008. However, with effect from this date, Rule 6 of the CENVAT Credit Rules 2004 has been amended by indicating the formula to be used for finding out the CENVAT credits attributable to exempted services and exempted goods, which seems to take care of this issue.
Documents Required for CENVAT

The service provider should ensure that he claims the CENVAT credits on a valid document satisfying the requirements of Rule 9 of CENVAT Credit Rules 2004. The documents may be -

• An invoice issued by a manufacturer
• An invoice issued by an importer
• An invoice issued by a registered first stage or second stage dealer
• Supplementary invoice issued by a manufacturer/importer
• Bill of entry
• Certificate issued by an Appraiser of Customs in respect of goods imported through a Foreign Post Office
• A challan evidencing payment of service tax where the service receiver is liable to pay u/s 68(2)
• An invoice, bill or challan issued by a provider of input service on or after 10.09.2004
• An invoice, bill or challan issued by an Input Service Distributor

The service provider would also be better off maintaining a CENVAT credit register disclosing the details as to the CENVAT credits being claimed. The register can disclose details as to the name of the supplier/input service provider, bill number, date, basic value of duty/tax, education cess, SHE cess, assessable value, GRN reference for material receipts, payment reference for input services, column for debits, credits balance. This record would facilitate the task of preparation of returns which would become easier.
Where the assessee opts for ascertaining the credits as per the method prescribed:

Under Rule 6 of CENVAT Credit Rules, 2004 on a provisional basis the following particulars would have to be intimated to the Superintendent of Central Excise while exercising this option:

- Name, address and registration number of the provider of output service/manufacturer of goods
- Date from which the option is to be exercised
- Description of dutiable goods or taxable services
- Description of exempted goods or exempted services
- CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition

Once the credits have been determined finally and the excess credits availed paid back or credits short availed have been availed, the following details would have to be sent to the Superintendent of Central Excise within 15 days from date of payment or adjustment.

- CENVAT credits attributable to exempted goods and exempted services for the whole financial year, determined provisionally on monthly basis
- Credits attributable to exempted goods and exempted services for the whole financial year determined finally
- Amount short paid with the date of payment of the said amount
- Interest payable and paid on the shortfall
- Credits taken on excess payments made earlier
Transfer of CENVAT Credit

As per Rule 10(2) of CENVAT Credit Rules 2004, where a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of business to a joint venture, with the specific provision for transfer of liabilities of such business, then such provider of output service shall be allowed to transfer the CENVAT credit lying unutilized in his accounts, to such transferred, sold, merged, leased or amalgamated business. The stock of inputs as such or in process or the capital goods are also to be transferred to the new site/owner and the accounting of such inputs/capital goods should be to the satisfaction of the Assistant Commissioner of Central Excise/Deputy Commissioner of Central Excise.

The CENVAT Credit unutilized balance

The service provider can bring forward the unutilized credits lying in his books as on 10.09.04 in respect of the credits availed under Service Tax Credit Rules, 2002 and utilize the same in accordance with these rules.

Credits can be taken on inputs and capital goods received under invoice; bill or challan issued by another office of service provider Rule 7A of CENVAT Credit Rules, 2004 allows distribution of credits on inputs by the office or another premise of output service provider. Here, the credits can be taken on inputs as well as capital goods received on basis of an invoice or a bill or challan issued by an office or premises of the said provider of output service which receives invoices towards purchase of inputs and capital goods. The assessee would have to note that provisions
applicable to first stage and second stage dealers under Central Excise have been made applicable in regard to the office issuing such invoice/bill and distributing credit.

**Confiscation and penalty in case of wrong availment of CENVAT Credits**

As per Rule 15 of CENVAT Credit Rules, 2004, where CENVAT credit in respect of inputs or capital goods is taken wrongly or in contravention of these Rules, then such inputs or capital goods shall be liable to confiscation and the penalty would be Rs.2000/- or duty on such goods whichever is greater.

Where credit on input services has been taken wrongly or sought to be utilized by way of fraud, collusion, willful mis-statement or suppression of facts or through contravention of any of the provisions of the Finance Act or rules made thereunder, with the intention to evade payment of service tax, the service provider shall be liable to pay penalty in accordance with section 78 of the Finance Act.

Where CENVAT credits in respect of input services is wrongly availed or availed in contravention of any of the provisions of these rules, then such person shall be liable to a penalty of an amount not exceeding Rs. 2000/-

**Provision for recovery of credits wrongly availed**

Where the CENVAT credit has been taken or utilized wrongly by the service provider or has been erroneously refunded to him, the same can be recovered from him under Rule 14 of CENVAT Credit Rules 2004. Recovery shall be governed by sections 73 and 75 of Chapter V of Finance Act.
CENVAT Credit for Input Service Distributor

The term input service distributor has defined by Rule 2(m) of CENVAT Credit Rules 2004 to mean an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be.

This facility could be used where the manufacturer or service provider has a system of receiving the bills for input services at the Head Office or at branch offices but the credits are to be distributed to the registered service units providing taxable services or the factories engaged in manufacturing. Where the assessee has independent registration for the various service units/factories, this scheme would be particularly useful. The scheme requires the head office/branch office seeking to distribute the CENVAT credits to the individual units, to register under service tax as an ISD (Input Service Distributor). Once registered, the head office/branch office would issue an invoice, bill or a challan to each of the recipient to whom the credit is sought to be distributed. The invoice, bill or challan is to be serially numbered and shall contain.

1. Details like name, address and registration number of the provider of input services

2. Details of the document/bill given by such input service provider

3. Name and address of the input service distributor
4. Name and address of the recipient of the distributed credit

5. The amount of the credit that is sought to be distributed

**Distribution of Credit on Input in case of Input Service Distributor:**

The credit amount distributed cannot exceed the amount of service tax paid by the branch office/head office. Moreover, the credits pertaining to input services used by the unit engaged exclusively in providing exempted services or manufacturing exempted goods cannot be distributed.

Readers should note that the concept of input service distributor would enable in distributing the credit of service tax on input service whereas what is envisaged under rule 7A is availing of credit of excise duty on inputs and capital goods. The availing under rule 7A would require the office or branch passing on the credit to register as a dealer under central excise and maintain registers recording the movement of materials i.e. receipt from supplier and issue to premises where credits is to be availed as well as the details as to duty per unit paid and duty per unit passed on to the premises where credit is to be availed. A dealer’s invoice/bill or challan would have to be raised which would indicate the amount of credit passed on along with the description of goods, value, details of consignor/consignee etc. A quarterly return within 15 days from the end of the quarter would have to be filed by the consigning office/branch/unit.

**Registration under Service Tax**

For the effective implementation of any tax law, a registration of the ‘assessee’ is generally provided in that law. This
helps the assessee in identifying and establishing his conduct of business with the law to keep the assessee at the track of such compliance.

At this juncture, one would have to examine whether the subject matter of registration in the taxation law is ‘person’ or the premises of the person. Section 65(7) of the act defines the term assessee as “a person liable to pay service tax and includes agent.” Accordingly, the subject matter of registration in the Financial Act, 1994, is a person and not premises. However, section 69 of the Act empowers the Central Government to notify rules and procedures for registration of person who is liable to pay service tax. From the various rules and procedures notified by the Central Government, Rules 4(3A) of the service Tax Rules 1994 require separate registration of each premise from the services are rendered. Otherwise centralized registration is obtained under Rule 4(2) of the rules.

Person liable for registration

As per 69(1) of Finance Act, 1994 read with Rule 4 of Service Tax Rules 1994, every person liable to pay service tax shall get registered with the concerned superintendent of Central Excise. Further the Government by exercising the power under section 69(2) has specified the following persons who shall get registered under the aforesaid provisions:

a) Input service distributors as defined under rule 2(m) of CENVAT credit Rules, 2004.

b) Any service provider whose aggregate value of taxable services for all taxable services and from all premises in a financial year exceeds 9 Lakh rupees.
Form and Time Limit for Registration

Every person liable for registration must make an application for registration in Form ST-1 to the designated superintendent of Central Excise. The application has to be made with in following prescribed time limits.

<table>
<thead>
<tr>
<th>No.</th>
<th>Situation</th>
<th>Time limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>In case of service providers are already engaged in providing service and that service is new taxable.</td>
<td>An application shall be made within 30 days from the date of levy of service tax.</td>
</tr>
<tr>
<td>II</td>
<td>In case a service provider commences the business of providing the service which is already taxable.</td>
<td>An application shall be made within 30 days from the date of commencement of business.</td>
</tr>
</tbody>
</table>

However, according to 69, only those persons who are liable to pay service tax shall require to make an application for registration. It means a persons not providing taxable service or providing only exempted services, or a sub contractor dealing only with main contractor, or a service provider who has commenced the business of taxable service but not realized taxable services and hence not liable for service tax etc are debatable issues, whether they have to make an application for registration or not, the rule 4 is a procedural provision and can not over-ride the provision of section 69 of the Act.
Documents to be attached

An application for registration has to be accompanied with application: 

1. Application in Form ST-1 in triplicate duly signed.
2. Attested copy of PAN card.
3. Address proof of the premises which is required to be registered.
4. Copy of document governing the constitution of the organization e.g. Partnership Deed or Memorandum of Association or Trust Deed as applicable.
5. Authority letter in favor of the person who is to collect the registration certificate on the letterhead of the organization applying for registration.
6. Power of Attorney in case the documents are signed by an authorized representative.

The registration process under service tax is so simple and minimum information is required for the same. However, certain Commissionerate have effected amendments in the application form ST-1 to ask for certain additional information. Such as registration details with other Government department from the person who are applying for registration. 

The legal position of such an action is not free from doubt.

Issue of Registration Certificate

The superintendent of Central Excise is bound to grant a certificate of registration in form ST-2 within seven days from the date of receipt of the application after due verification of
application for registration. While granting registration, declaration given by service provider in his application should be accepted by the superintendent of Central Excise. The Rules do not permit him to question about the correctness of the declaration made by the service provider. He should bind to grant registration immediately in any case within seven days. If the registration certificate is not granted within said period, it is deemed to have been granted. 59

Service Tax Code (STC) Service Tax payer number

In order to identify assessee and his business the Government had decided to issue common identification number based on the Permanent Account Number (PAN) allotted by the Income Tax Department, which is known as Service Tax Code (STC), which has been named as Service Tax payer number in the circular e-filing returns. The STC is a 15 digits alphanumeric code. First 10 digits will be 10 characters PAN. Next two characters will be ‘ST’. Last three will be numeric code i.e. 001, 002, 003 etc. indicating the number of registrations taken by the service provider against a common PAN. With effect from 20-10-2005 the provision for issue of PAN based registration number has been made in ST-2 which is also known as STC number. These two numbers are combined together by Central Government but earlier service tax registration number is also in existence. Thus till now assessee are having a registration number as well as PAN based service tax code also.

Registration in case where services are provided from more than one premise:

If a person liable for paying service tax on taxable service which is providing from more than one premises or offices or
receiving taxable service in more than one premises or offices or having more than one premises or offices which are manner. In such cases, such person can obtain centralized registration at his option as follows:

a) In a case where the billing system or accounting system of the assessee are centralized in an administrative office which may be a branch or head office irrespective of services being provided from more than one location, he may registered in respect of such service.

b) In a case where the billing system or accounting system of the assessee is located in one or more offices or premises, he may registered such premises or office from where such centralized billing or centralized accounting systems are located. Authority to grant centralized registration. Centralized registration will be granted by commissioner in whose jurisdiction the premises or offices of centralized billing or accounting is done are located Rules 4(3).

For this purpose an application in form ST-1 shall be submitted to Jurisdiction Assistant Commissioner or Deputy Commissioner, by giving details of various branches or offices. This will be forwarded to commissioner, who will grant registration in form ST-2.

No centralized billing or accounting system:

Where an assessee is providing a taxable service from more than one premises or offices and does not have any centralized billing or accounting system as case may be, he shall be separately registered with Jurisdiction superintendent of Central Excise (Rule 4(3A)).
**Registration for Multiple Services Rendered:**

If, the same assessee providing more than one category of taxable service, he need not be apply for separate registration for each taxable service. Single application is enough by mentioning there in all the taxable services. Even in case the assessee is already registered for one service and thereafter becomes liable for another category service, and then he has to get his certificate endorsed for that category of service.

**Amendments in registration certificate:**

If there is any change in information or details submitted in form ST-1 at the time of registration, the same should be informed to Jurisdictional Assistant Commissioner or Deputy Commissioner with in 30 days of such changes. The form ST-1 is both for new registration as well as amendment to existing registration certificate.

**Cancellation or Surrender of registration:**

If the assessee ceases to carry on the activity for which he is registered, he should surrender the registration certificate immediately to the superintendent of Central Excise. For this purpose, the assessee should fill up to date of returns and apply for cancellation of registration. On receipt of application with certificate the superintendent of Central Excise ensures that the assessee has paid all the dues to Central Government under the provision of the Act, and then he will cancelled the registration. If any demand are pending with the assessee registration may not cancelled.
**Fresh Registration:**

When registered assessee transfers his business of rendering taxable service to another person, then that person should have to obtain a fresh registration. The transferee must make an application for fresh registration within 30 days from the date of transfer.\(^{66}\)

**Duplication registration certificate:**

If a registration certificate issued by the department is lost, the assessee is required to make written request for duplicate registration certificate. The same will be used by the department after suitable entry in the registers or records of the office.\(^{67}\)

The registration procedure under service tax is simplified by the Government by making various amendments from time to time but certain difficulties and hardships are not totally ruled out.

**4.9 Maintenance of Records:**

The Finance Act, 1994 and Service Tax Rules, 1994 has not prescribed any form of records for the service tax assessee. The records maintained by the assessee either in manual or computerized form in accordance with various other laws in force from time to time is acceptable to the department.\(^{68}\) Every assessee should furnish a list of all accounts maintained by him to the superintendent of Central Excise at the time of filing returns for the first time.\(^{69}\) As per the recent amendment to the Service Tax Rules, each service tax assessee should also be required to maintain such records at the registered premises of the assessee with an authority to the officers of the department to access the registered premises.
List of Accounts to be furnished to the Department:

As per a new sub rule (2) of Rule 5 of Service Tax Rules, service tax assessee has to furnish a list in duplicate to Superintendent of Central Excise at the time of filing return all the records for accounting transaction relating to:

a) Providing any service whether taxable or exempted.

b) Receipt or procurement of input services and payment of such input services.

c) Receipt, purchase, manufacture, storage, sales or delivery as case may be in regards of inputs and capital goods.

d) Other activities, such as manufacture and sale of goods, if any.

e) All other financial records maintained in the normal course of business.

According to the above said rule and clarification by the Government vide their instruction F. No.137/26/2007-Cx 4 dated 1-1-2008, it is worthwhile to maintain certain records by the assessee for the purpose of service tax. Moreover, as a result of discussion with service tax experts and consultants, it is advisable for the assessee to maintain the following records in order to avoid any problem in the future at the time of verification of records by the department for audit or any other purposes.

A) Registers

1) Service tax Billed Register
2) Service Tax Receipt Register
3) CENVAT Credit availment Register.
4) CENVAT Credit Utilization Register
5) Sales, Purchase and Production Registers.
6) Stock Register.
7) Debit / Credit note Register
9) Journal and Ledger Register.

B) Financial records
1) Financial Statements
2) Financial audit, Tax Audit and Other Audit Reports.

C) Documents
1) Sales and Purchase Invoices.
2) Invoices of Services rendered.
3) Expense Vouchers with Supporting.
4) CENVAT Vouchers.
5) Challans of Service tax paid.
6) Service Tax Returns filed.
7) Service Tax Registration Certificate

There is liberal policy of the Government in relation to the maintenance of records by the assessee. Hence, records / documents required to be maintained under various laws such as Income Tax Law, Company Law, CENVAT Credit Rules 2004, VAT and other State legislations would be acceptable and amendment made in the rule does not cast any responsibility in tax payers in terms of maintenance of records. However, the list of records maintained by the assessee should be submitted once only. If once filed, further intimation would be required to be given only in case there is any addition, deletion, modification in the list that had been furnished by the assessee. In addition, it is obligatory for an assessee to preserve records as maintained for a period of five years immediately after the financial year to which such records pertain.
Payment of Service Tax

As per section 68(1) of Finance Act, 1994, every person providing a taxable service is liable to pay service tax. Accordingly every person liable to pay service tax is required to pay service tax at the prescribed rates in prescribed manner and within the prescribed period to the credit of the Central Government. However, as per section 68(2) Central Government notifies the persons other than the person providing the taxable service to be liable for payment of service tax.

Procedure for Payment of Service Tax

Procedure for payment of service tax as prescribed under Rule 6 of Service Tax Rules, 1994, can be represented as follows:

Due date for payment of Service Tax:

<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Category of Assessee</th>
<th>Periodicity</th>
<th>Due date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Individuals, Proprietary firm or Partnership firm</td>
<td>Every quarter</td>
<td>5th of the month (6th of the month) immediately following to the quarter</td>
</tr>
<tr>
<td>2</td>
<td>Other assessee (e.g. Society, HUF, Company)</td>
<td>Every Calendar Month</td>
<td>5th of the month (6th of the month in case of e-payment) immediately following the said calendar month</td>
</tr>
</tbody>
</table>

Exception in March:

Service tax of March or quarter of March is required to be paid by 31st March itself.
Meaning of Quarter:

Quarter means period of 1st Jan to 31st March or 1st April to 30th June or 1st July to 30th September or 1st October to 31st December of a financial year.

If any assessee find it difficult to estimate the amount he is going to receive from his customers in last two days, he may, pay excess amount up to Rs.100000, which can be adjusted in next month or quarter.

Payment of Service Tax on Receipt basis:

The service tax required to be paid only on the value of taxable services actually received in a particular month or quarter as case may be and not on the amounts charged in the bill/ invoice to a client.

Payment of Service Tax in case of Associated Enterprises:

In normal cases, the service tax is to be paid on the value of taxable services actually realized (cash basis). But in case of transactions take place in respect of taxable services with ‘associated enterprises’ the service tax is required to be paid on accrual basis. Accordingly, any amount credited or debited in respects of taxable service in any account whether called ‘suspense account’ or by any other name shall be treated as payment received, service tax will be payable even if actually no payment is received or made. Thus, the liability of service tax will be arise when the book entry is made by the service provider/ service receiver in case or reverse charge respect of the value of taxable service actual received /paid. But in case of associated enterprises,
any entry in the book of account either debit or credit is enough for the occurrence of service tax liability.

**Form of Service Tax Payment:**

The assessee require to make payment of service tax in form TR6 or GAR7 or in any manner prescribed by CBEC either by cash or cheque. For the payment of service tax the assessee is required to submit Form GAR-7 which has been received for the payments from April, 2007.

**Filling up GAR-7:**

The assessee should fill-up form GAR-7 carefully and should indicate/mention correct Accounting Code Number for taxable services and amount should also shown distinctly according to the sub-head code number such as ‘tax collections and other receipts’ in order to avoid misclassification. Further an assessee should also mention the correct code number of his Commissionerate, Division and Range. Although, payment in wrong accounting code does not mean to pay service tax again, it is desirable to the assessee to confirm the said codes from the assessing officer of his jurisdiction.

**Place to Deposit Service tax:**

The assessee is required to deposit the service tax with the bank designated by the CBEC for this purpose. Therefore, the assessee should confirm from the service tax department of his Jurisdiction about the designated branch of the bank. The department has clarified that payment of service tax into non-designated banks would not amount to payment of service tax. Besides, if the assessee deposited the amount of tax in a bank
which is not designated due to bonafied error, it cannot result in the conclusion that tax has not been paid at all and it is not required to paid again.\textsuperscript{81} However it would be advisable to the assessee to stick to the normal list of designated bank accounts supplied by their assessing officers.

**Rounding off of Amount of Tax:**

The provisions of section 370 of Central Excise Act, 1944 have been made applicable to service tax law for rounding off of the payment of service tax due.\textsuperscript{82} Accordingly the payment of service tax should be rounded off in multiple of Rupees.\textsuperscript{83} If amount payable includes 50paisa or more, it should be rounded off to one rupee and when it is less than 50 paisa it should be applied for payment of service tax provisions should be applied for payment of service tax only and not for collection of service tax.

**Payment of Service tax by Cheque:**

Rule 6(2) provides that the cheque of proper amount should be deposited with designated bank on or before due date. If the cheque is deposited on due date, it shall be deemed to be the date of payment of service tax even though the cheque is realized later. In certain cases, where the cheque is deposited before due date and is dishonored later, service tax will not deemed to be paid and has a ground to claim interest later.\textsuperscript{84}

**Payment of Service Tax in Advance:**

A system similar to PLA in Central Excise has been introduced in service tax also. A person liable to pay service tax can pay any amount in advance towards future tax liability. After such payment he should inform superintendent of Central Excise
within 15 days. However, he should also indicate details in the subsequent return filed about the adjustments of the advance.\textsuperscript{85}

**E-Payment of Service Tax:**

E-payment is a mode of payment of service tax in addition to the conventional methods of payment offered by the banks under specific security norms of RBI. This scheme facilitates anytime, anywhere payment and an instant cyber receipt is generated once the transaction is complete. There are 28 banks are authorized for e-payment.

This facility is available to all registered Central Excise/Service tax assessees who have the 15 digit PAN based Assessee Code. The customer of any authorized bank which provides e-payment solution can make e-payment. The customer should have internet banking ID of the Bank and should have given option for this purpose.

However, as per the Rule 6(2) of Service Tax Rules, 1994, assesse who paid the revenue of Rs. 50 Lakh in the last year/current year he has to make payment of service tax compulsory by electronically popularly known as e-payment w.e.f. October 1, 2006.

**Adjustment of the Advance Tax paid:**

An assesse is now permitted to pay any amount as advance service tax on his own choice and the tax so paid is eligible for self-adjustment against service tax liability for the subsequent period.\textsuperscript{86} However, the details of such advance payments made and its adjustments have to be shown in service tax return and also have to be intimated to the to the concerned superintendent within 15 days of payments.
Self adjustment of excess payment of service tax, if service is not provided partly or fully:

If the excess service tax paid by an assessee in respect of service which is not provided either wholly or partly for any reason, the excess service tax so paid can be adjusted against his service liability for the subsequent period on pro-rata basis subject to the value of services and tax thereon is refunded to the person from it was received. Thus, if the person refunds on account of giving some discount to client, this provision does not apply.

- Self-adjustment of Excess Payment of Service Tax for any other reasons:

Facility of self-adjustment of excess service tax paid has been extended to all assessees subject to the following conditions:  

- Self-adjustment of excess credit is allowed on account of reasons other than interpretation of law, taxability, classification, valuation or applicability of any exemption notification.

- Excess amount paid and proposed to be adjusted should not exceed Rs. 1 lakh.

- Adjustment can be made only in the subsequent month or quarter.

- The details of self-adjustment should be intimated to the superintendent of Central Excise within a period of 15 days from the date of adjustment.

However, assessees who have centralized registration can adjust the excess service tax paid on their own without any
monetary limit, provided the excess amount paid is on account of delayed receipt of details of payments from branch offices.

**Refund of Service Tax:**

Refund of excess service tax paid will not be an automatic process even though the assessment order has been passed by the assessing authority. A application in form ‘R’ in triplicate for refund of service tax necessarily filed within year from the date of payment to the Assistant or Deputy Commissioner of Central Excise. On receipt of application the Assistant/ Deputy Commissioner of Central Excise after being satisfied, may himself make an order for refund of whole or part of tax. However, such amount shall be refund to the applicant only if the incidence of tax has not been passed by the applicant to any other persons; otherwise the amount shall be transferred to the Consumer Welfare Fund and not to the assessee.

**Filing of Service Tax Returns**

Section 70 of the Finance Act 1994, along with Rule 7 of the Service Tax Rules, 1994 provide for the filing of service tax returns every person liable to pay service tax shall himself assess the tax due and shall furnish to the Superintendent of Central Excise a return in the prescribed form and manner at such frequency as may be prescribed there under. Similarly, input Service Distributer is also required to file return in the prescribed form and manner at prescribed frequency to the said authority. The procedure relating to filing service tax return is given under the Rule 7 of the Service Tax Rules 1994, can be reviewed as follows:
**Form for Filing Return:**

The service tax return is required to be filed in Form ST-3 or ST-3A as case may be in triplicate. As per the revised form, an assessee is required to give details in each column of ST-3 separately for each of the taxable services. However, service tax payment details and CENVAT credit details are common and combined. Further, there are some details cannot be indicated in prescribed format, these should be intimated by a separate and or given in the ST-3 form as a ‘remark’ or ‘note’.

**Periodicity of Filing Return:**

Every assessee shall submit returns on half yearly basis. Accordingly, for every assessee whether corporate or non corporate, the periodicity of filling return is half yearly. For the purpose ‘half year’ means the period between 1\textsuperscript{st} of April to 30\textsuperscript{th} September or 1\textsuperscript{st} of October to 31\textsuperscript{st} of March of a financial year.

**Due Dates of Filing Returns:**

The half yearly returns should be filed in triplicate in the following manner:

<table>
<thead>
<tr>
<th>Period</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. For half year ending 30\textsuperscript{th} September</td>
<td>25\textsuperscript{th} October of the financial year</td>
</tr>
<tr>
<td>2. For half year ending 31\textsuperscript{st} March</td>
<td>25\textsuperscript{th} April of the next financial year</td>
</tr>
</tbody>
</table>

**Last date for filing return is a public holiday**

If last day of payment and filing return is a public holiday, tax can be paid and return can be submitted on the next working day.
Enclosures to the Returns:

- Copies of TR6/GAR-7 challans for the months covered in returns.
- Memorandum in Form ST-3A in case of provisional assessment.
- List of accounts maintained in relation to service tax by the assessee should be attached with the first return.
- Documentary proof for adjustment of excess service tax paid in terms of Rule 6(3).
- Worksheet of calculation of interest in case of delayed payment of service tax.

Place of Filing Return and Details of Accounts:

The return in ST-3 and details of accounts maintained to be filed before the Jurisdictional superintendent of Central Excise.

Return in case of Multiple Services or Multiple Locations:

An assessee providing more than one services which are liable to be taxed under different categories of sub-clauses of clause 105 of the section 65 of the act, he is allowed to file a single service tax return in ST-3. However, he has to provide details in each column in ST-3 separately for each of the taxable services rendered by him.

Return in case of assessee took single registration for multiple locations:

Where a single registration has been taken for multiple locations, the assessee is required to file single ST-3 return. However, the monthly statements of centralized office with branch
reports and payments details should be submitted before the superintendent of Central Excise along with ST-3 return. In this regard there is no specific provision in the Act/Rules. But the above case, guidelines issued by the Commissioner of Customs and Central Excise, Hyderabad-IV will be so imperative.

**Revised Return:**

After long representations, the Finance Act 2007, permits the assessees to revise returns to correct mistakes. As per new Rule 7B, a revised return is to be filed in triplicate in Form ST-3 within 90 days from the date of filing of the original return. There is no provision for submission of revised return after 90 days. In such cases, if the assessee finds that he has made some mistakes he should pay the amount by GAR-7 challan and inform department suitably. If he has paid excess amount by mistake, he is required to file refund claim. He cannot adjust excess payment on his own, except in the cases where it has been specifically allowed. However, in case of CANVAT credit on input services or capital goods, it can be availed in subsequent period, since there is no time limit for availing CANVAT credit.

**Nil Return:**

If a person gets registered with the service tax department, he has to follow all the procedures and submit all the relevant documents which are necessary, even if he is not providing any services during the concerned half year. Accordingly, an assessee is not providing any service or not liable to pay any service tax during the corresponding half year, he is required to file return in ST-3 or ST-3A as case may be as a nil return. However, in various cases the tribunals has taken liberal stand for non filing or late
filing of nil return and rejected the penalty proceedings for the same.\textsuperscript{100}

\textbf{E-Filing of Service Tax Return:}

The assessee can file his return electronically as per the guidelines issued in question–answer form on CBEC website. The facility of e–filing of ST–3 return has been extended to all taxable services,\textsuperscript{101} but it is optional. The following steps to be followed to file ST–3 electronically:

- Assessee should apply one month in advance in Annexure–I to AC or DC of Central Excise
- Obtain 15 digit STP code
- Use STP code on all the GAR-7 Challans

Assessee will download form for entering details of ST–3 and GAR–7 from central server. He should enters necessary details. After return is filed, computer will generate a key number and will also generate acknowledgement.

\textbf{Scheme of submission of returns through service tax return preparers:}

The Government has announced the Service tax Return preparer scheme 2009, through its notification.\textsuperscript{102} Therefore, small service provider can take help of service tax return prepares to file their service tax returns. As per the scheme, now any assessee has the option of furnishing his return after getting it prepared through a service tax return preparer. However, until and unless the original return is filed through the service tax return preparer, a revised return cannot be filed through them. The duties and obligations of both the assessee and return preparer have also been given in the
scheme. Fees can be paid the assessee and return preparer. However, the Board has recommended a fee of Rs. 1000 per return.

**Scrutiny of Returns:**

The scrutiny of service tax returns is conducted by the Central Excise officers in accordance with the guidelines used by the Board through its instructions. While issuing the guidelines, the board has noted that preliminary scrutiny may reveal substantial short payment of service tax, which is apparent from the return such as arithmetical errors, application of wrong date, tax payment through credit more than the available credit balance etc. Such scrutiny can increase individual tax liability.

In many cases the service tax officers/ formations are contacting taxpayers, soon after filing the return without detecting any short nonpayment of tax or error covering the massage that though the return has been received, it would be accepted subject to details scrutiny. In this connection, CBEC has directed that the officer should not resort to such practices. Only in the event of detection of short levy or non levy or arithmetical errors or error in filing return. The taxpayer should be contacted by the appropriate officer and record of such communication may be maintained by the officer. Such record should be periodically reviewed by the senior officers. Any deviation from this practice would be viewed seriously.

**Assessment and Adjudication:**

Initially under the service tax section 70 of the Act provided for regular assessment of service tax assessees. Further, the Act incorporated the provisions for best judgment assessment and re-assessment also in section 72 and 73 respectively. The system
regular assessment as prescribed by section 70 was replaced with the system of self–assessment with effect from 1-07-2001. The provision for re–assessment provided by section 73 was omitted. Similarly, section 72 providing for best judgment assessment has been omitted. The same has been now re–introduced by Finance Act 2008, w.e.f. 10-05-2008.

Accordingly, definition of ‘assessment’ includes “self–assessment of service tax by the assessee, provisional assessment and best judgment assessment.”

Literally, assessment means the correct determination of tax liability, which in turn implies correctness of tax rate(s) and the value for the taxable service provided or to be provided. Once this is done by the service provider for a particular period he pays the tax and indicates the same in the prescribed return filed by him. Assessment does not necessarily mean that a tax is to be paid and even the determination of ‘nil’ tax liability would be treated as assessment.

I. Self Assessment:

With effect from 2001, every assessee is required to himself assess the tax due on the services provided or to be provided by him and to furnish a return to the superintendent of Central Excise in prescribed manner. Self–assessment is completed when the assessee filed his service tax return ST–3 by the due date.

Thus, under the self–assessment, scheme the service provider normally assesses his tax liability himself and pays the same. However, if an assessee is not in a position to determine his tax liability due to any reason that valuation or classification of tax taxable service or issue of admissibility of an exemption
notification cannot determined or any such other reason at the time of filing return, he may option for the provisional assessment after obtaining an order from the jurisdictional Deputy/ Assistant Commissioner. The assessment under this situation shall be made in accordance with the said order and would continue to be provisional till the issue is finalized. After finalization, there may be addition tax liability or refund and the assessee would have to pay the differential amount of tax with interest or claim refund as case may be.

**Provisional Assessment:**

For any reason if an assessee is unable to correctly estimate the actual amount of service tax payable on the due date of deposit, he may deposit the tax provisionally and later on the final assessment may be done by the Central Excise authority. After the final assessment, an adjustment can be made for any difference in the tax paid and the tax due.  

**II. Procedure for provisional assessment:**

Provisions assessment of service tax under rule 6 Service Tax Rules, 1994, and the provisions of Central Excise as applicable are summarized as below:

**1. Permission for Provisional Assessment:**

For restoring to provisional assessment, the assessee may request in writing to Assistant/ Deputy Commissioner of Central Excise by giving reasons for payment of service tax on provisional basis. On receipt of such request AC/DC may allow payment of service tax on provisional basis on such value of taxable service as may be specified by the assessee.
2. Filing of Form ST-3A (Memorandum) along with service tax returns:

The assessee, who has obtained permission for provisional assessment and accordingly, he has made provisional payment of service tax. He is required to file a memorandum in Form ST-3A along with half yearly return. The memorandum is a statement which gives details regarding the difference between the service tax paid and service tax payable on each month. The memorandum should be prepared in triplicate. Here it should be noted that any discrepancy in filing return does not alter the nature of provisional assessment. As again a provisional assessment is also subject to the appellate provisions. Further, non filing of Form ST-3 along with return can not mean that the assessment made is not provisional. The requirement of filing this form is basically for the purpose of enabling the assessing officer to make the correct final assessment.

3. Completion of Final Assessment under Provisional Assessment:

On the receipt of Form ST-A along with return, the Deputy/Assistant Commissioner of Central Excise may completion of final assessment; he can call such further documents or records which he considers necessary and proper. Although Rule 6 (6) of the Service Tax Rules does not prescribe time limit for completion of final assessment of the provisional assessment, but according to Rule 7(3) of the Central Excise Rules, 2002, the assessing office is bound to pass the final assessment order maximum within six months from the date of communication of the provisional assessment. However, such period may be extended by the
Commissioner by another six months for the reason to be recorded in writing and the Chief Commissioner may also extend the period as he may deem fit. There is no limit for the Chief Commissioner to grant extension for the final assessment. Demand on finalization of the prevision assessment becomes payable and no Show Cause notice is required to be issue for the same.\textsuperscript{111}

\textbf{4. Service Tax Payable or Refund due on Final Assessment:}

After the completion of final assessment the assessee may be required to pay service tax in addition to the tax already paid under provisional assessment or may be entitled to refund in case he had paid excess service tax earlier. As per Rule 7(4) of Central Excise Rules, 2003, the assessee shall be liable to pay the interest at the rate of 13 percent p.a. on the amount of tax payable on final assessment.\textsuperscript{112} Similarly, as per Rule 7(5) of Central Excise Rules, 2003, the assessee shall be entitled to an interest at the rate of 6 percent p.a. on the amount of service tax refund consequent to the final assessment.\textsuperscript{113} Such interest in both the cases shall be paid for the period starting from the first day of the month succeeding the month in which the final assessment is made till the date of payment of tax or refund as case may be.

\textbf{III. Best Judgment Assessment:}

Section 72 has been reintroduced by the Finance Act 2008, to authorize the Central Excise officer for assessment on the basis of his best judgment after allowing assessee to represent his case where he fails to file the service tax return as required under section 70 or having made a return, fails to assess tax in accordance with the service tax provisions.
In any of the cases, the Central Excise officer may require the person to produce such accounts, documents or other evidences as he may deem necessary for the completion of the assessment after taking into account all the relevant material which is available or which he has gathered. Thereafter he shall make an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of the taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment. It may be noted that the provision of best judgment assessment under service tax can be invoked only in the two specified circumstances said above.

‘Assessment’ under service tax essentially means the correct determination of the tax liability on the taxable services provider or to be provided by the assessee. The term ‘Assessment’ is very wide and covers self assessment, provisional assessment and best judgment assessment are very wide and can misused/abused. These powers are associated with the new penal provisions introduced in the service tax law. Accordingly, the assessee will always comply with the penal provisions where assessing officer has made best judgment assessment by misusing his powers and turns the assessee under bureaucratic and red tape clutches. The concept of best judgment assessment yet not been provided under Central Excise. But it is intensively used in Income Tax Act 1961, and Sales Tax Act. In this regard, various judicial pronouncements uphold that the principle of natural justice should be followed by the authorities in applying best judgment assessment.
Adjudication of Cases:

Section 73 of the Act deals with adjudication of cases of short levy on non levy of service tax or service tax short paid or not paid erroneously refunded. Section 73(1) of the Act, gives powers to Central Excise officer to serve notice on the service provider within one year from the relevant date for non levy or nonpayment or short levy or short payment of service tax or erroneous refund of service tax to show cause why he should not pay the amount specified in notice.

For quick settlement of disputes this section prescribes that:
1. If the non levy or nonpayment or short levy or short payment or erroneous refund is by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of the Act or of the rules made there under with an intent to evade payment of service tax, the Central Excise officer can invoke the extended period of five years for the issue of show cause notice. The Central Excise office, after considering the representation, if any made by the service provider on whom notice is served, determine the amount of service tax due and such person shall pay the amount so determined section 73(2).

The service provider, who received cause notice, may pay the service tax in full or part as may be accepted by him and interest payable there on at the rate of 13% p.a. and penalty equal to 25% of the service tax specified in the notice within 30 days of the receipt of notice. If the service provider paid the full service tax with interest and penalty the dispute shall be deemed to be settled/ concluded.
It should be noted that where the person who paid service tax in full together with interest and penalty under section 73 (1A0, the proceedings against such person to whom show cause notice issued shall be conducted and also no further proceedings under Finance Act 1994, against him. Thus, section 73(1A) and 73(3) implies conclusion of entire proceeding under Finance Act, 1994.

2. If the service provider may pay the amount of service tax on the basis of his own ascertainment thereof, or on the basis of tax ascertainment by a Central Excise officer before of notice and inform the same to receipt of such information, the authority shall not serve any notice in respect of the amount so paid Section 73(3).

**Power of Adjudication:**

Section 83A related to power of adjudication. The power of adjudication for imposing penalty only vests with the Central Excise officer notified by the Board. The monitory limits as specified by the Board for the purpose of adjudication of cases under section 73 and 83A. The monitory limits prescribed are given follows:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Central Excise Officer</th>
<th>Amount of service tax or CENVAT credit specified in notice for the purpose of Adjudication</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Assistant Commissioner or Deputy Commissioner of Central Excise</td>
<td>Not Exceeding Rs. 5 Lakh</td>
</tr>
<tr>
<td>2</td>
<td>Joint Commissioner of Central Excise</td>
<td>Above Rs. 5 Lakh but not exceeding Rs. 20 Lakh (enhanced Rs. 50 Lakh w.e.f. 11-3-2008)</td>
</tr>
<tr>
<td>3</td>
<td>Addition Commissioner of Central Excise</td>
<td>Above Rs. 20 Lakh but exceeding Rs. 50 Lakh</td>
</tr>
<tr>
<td>4</td>
<td>Commissioner of Central Excise</td>
<td>Without limit</td>
</tr>
</tbody>
</table>
The monitory limits said above for adjudication of service tax cases are irrespective of whether or not such cases involve fraud, collusion, willful, mis-statement, suppression of facts or contra-vention of any provision of the Act or Rules made their under with an intent to evade payment of service tax and whether or not extended period has been evoked. Cases not involving nonpayment of service tax or mis utilization of CENVAT credit are to be adjudicated by the Assistant or Deputy Commissioner of Central Excise.

The different cases involving the same issue (as said above) having highest amount service tax or CENVAT credit may be adjudicated by Central Excise officer competent to decide the same.

The cases which are remands by the appellate authority by specifically mentioning adjudicating authority then such cases has be adjudicated by that authority only. Where the appellate authority does not specifically mention any adjudicating authority, it should be decided by the authority that passed the said remanded order. The above specified monitory limits will not be applicable in such cases.

Cases in respect of demand for an amount up to one thousand rupees toward nonpayment or short payment of service tax and the default is pointed out and the same along with interest pays by the service provider within one month, the penalty should be waived under section 80 of the Act. In other cases i.e. where the amount of tax involved is over Rs. One thousand penal action under section 76, 77 and 79 would be attracted.
Rectification of Mistakes:

Section 74 of the Finance Act 1994, provides for rectification of mistakes apparent from record. In the event of any mistake apparent from the record is noticed, the Deputy/Assistant of Central Excise may rectify the mistake within a period of two years from the date of passing original order. The rectification can also be done of the orders subject to appellate or revision proceedings but in this case only that portion of the order which has not been considered or decided in appeal or revision can be rectified. The amendment may be made either suo moto or on it being brought to the notice either by service provider or Commissioner of Central Excise or Commissioner of Central Excise (Appeals). However, in case the rectification enhances the tax liability or reduces the refund, it can be done by giving a notice and opportunity to service provider for representation of his case. The rectification may also lead to reducing the tax liability in which case a refund becomes due to the service provider.

Interest and Penalties under Service Tax

Service Tax provisions for the imposition of interest and penalty when an assessee avoids or delays the payment of service tax he is liable to pay. However, charging interest and penalty are two separate provisions under the Finance Act, relating to service tax. Interest and penalty are the two different concepts. Penalty is ordinary levied on an assessee for misconduct or for a deliberate violation of the provisions of law. While interest is a compensatory in character and is imposed on an assessee who has delayed or withheld payment of tax as and when it is due and payable. Thus, the interest is charged when the actual amount tax is withheld and
the extent of delay in paying of the tax in due date. Essentially, interest is compensatory and different from penalty which penal in character.\textsuperscript{119}

**Charging of Interest:**

Sections 75 and section 73B\textsuperscript{120} the Act deals with the provisions relating to the payment of interest on delayed payment of service tax.

**Payment of Interest under Section**

As per section 75 every person who fails to pay service tax or any part thereof, which he is liable to pay under section 68 of the Act, within the prescribed time, is required to pay interest on such amount for the period of delay. Under this section charging of interest is mandatory on delayed payment of service tax.

Under the amended section 75 of the Finance Act 1994, the Government notifies 13\% p.a.\textsuperscript{121} as the rate of interest to be charged for the period by which the deposit of tax or any part thereof has been delayed. It can be reduced or waived. It should be noted that no interest will be charged on service tax during the period of stay\textsuperscript{122} and where there is no tax liability for the assessee there is no liability for the interest also.\textsuperscript{123}

**Payment of Interest under Section 73B:**

As per section 73B, every person who is liable to pay service tax under 73A (1), 73A (2) and section 73A (4) is required to pay interest on the amount of service tax so determined irrespective of the cases where the amount becomes payable under section 37B of the Central Excise Act, 1944. Such amount of interest is voluntarily paid within the prescribed time without keeping right of appeal.
The payment of interest is mandatory under section 73B except in case the service tax becomes payable due to an order, instruction or direction by the Board under section 37B of Central Excise Act, 1944. Under section 37B, interest is not payable on the amount of service tax if it is voluntarily paid in full without keeping any right to appeal. The rate of interest in this regard is 13% p.a. as prescribed by the Government.

**Payment of Interest under CENVAT credit Rules:**

Rule 14 of the CENVAT credit Rules 2004, provides that “where the CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of section 11A and 11AB of the Central Excise Act or section 73 and section 75 of the Finance Act 1994, shall apply Mutatis Mutandis for effecting such recoveries.”

It should be noted that the interest under this section is chargeable in case of CENVAT credit is wrongly taken or utilized. There are certain contradictory judicial decisions\(^{124}\) and also circular\(^ {125}\) about the charging of interest in case of wrong utilization of CENVAT credit and not in case of wrong availment of credit. As per the wording of Rule 14, that interest would be recoverable when CENVAT credit is taken or utilized wrongly.

**Penalties under Service Tax:**

The amount of penalty is over and above the amount of service tax and interest is payable by the assessee. The main purpose of imposing penalty is to penalize the defaulter. However, the penalties under the service tax provisions are not mandatory and can be reduced or waived under section 80 of the Act on the
reasonable ground. Further, the penalty under service tax provision shall not be imposed for mere procedural irregularities.

**Penalty for failure to pay service tax section 76:**

Section 76 of the Finance Act 1994, provides a penalty in case a person who liable to pay service tax in accordance with section 68 or the rule made there under but fails to pay service tax including the person who fails to pay service tax including the person who fails to pay service tax for any period of time beyond due date. In this case a penalty will be imposed maximum of Rs. 200 per day during which such failure continues or at the rate of 2% per monthly whichever, is higher, subject to the amount of service tax payable. On other words, total amount of penalty shall not exceed the service tax payable. The days constituting the failure would start with the first day after the due date till the date of actual payment of service tax.

The penalty imposed under this section can be reduced or waived if sufficient cause is shown (section 80)

**Penalty for contravention of provisions of Service Tax and Rules section 77:**

As per the modified section 77 of the Act, provides penalties for multiple defaults. These are as follows-

- Failure to get registered, or failure to furnish information, produce documents or appear before the Central Excise Officer- The penalty for the default shall be Rs. 5000 or Rs. 200 per day of continuing such default, whichever is higher. Number of days of default would be counted starting with the first day after due date, till the date of actual compliance.
- Failure to keep, maintain or retain books of accounts or records, as prescribed, failure to pay tax Electronically or Issue of incorrect or Incomplete invoice or Non accounting thereof:
  
The penalty for the default may be extended to Rs. 5000

- Non Compliance or Contravention of any provision of the Act and rules made there under:
  
The penalty in this case may be extended to Rs. 5000. This is a general penalty and which shall be imposed only when there is noncompliance or contravention of any provision or rule. It should be noted that anything ‘done’ which is prohibited or ‘not done’ which is required to be done should be treated as ‘contravention’, only when the intention is to evade service tax. Something ‘done’ or ‘not done’ unintentionally cannot be treated as ‘contravention’. Thus, the section 77 should not be an instrument of harassment towards authorities.

Penalty for suppressing value of taxable service section 78:

Where any service tax has not been levied or not paid or short levied or short paid or erroneously refunded on account of fraud, or collusion or willful mis-statement or suppression of facts or contravention of any provision of service tax or of the rules made there under with intent to evade payment of service tax, the person committing such default shall be liable to pay penalty in addition to service tax and interest thereon. The penalty under this section shall not be less than the amount of service tax and not more than twice the amount of service tax not levied or not so paid or short levied or short paid or erroneously refunded. It should be
noted that the penalty for failure to pay service tax under section 76 shall not apply where penalty is levied under section 78.

Further, it is provided that where the service tax so determined along with interest payable there on under section 75 and the amount of payable so reduced is paid by the defaulting person simultaneously within 30 days of the communication of the order of the AC/DC of Central Excise, the penalty shall be reduced to 25% of the service tax determined under section 73(2).

**No penalty if reasonable cause is shown:**

If the assessee proves that there was reasonable cause for failure referred to in that section, no penalty shall be imposed on him. Thus, the penalty under section 76, 77 and also section 78 can be waived under this section on reasonable ground.

**Penalty for wrongly CENVAT credit taken or contravention of the provisions of CENVAT credit Rules (Rule 15):**

If any person, takes CENVAT credit in respect of input services wrongly or in contravention of the provisions of these CENVAT credit Rules in respect of any input service then such person shall be liable to a penalty which may be extend to maximum of Rs. 2000.

In a case, where the CENVAT credit in respect of input services has been taken or utilize wrongly by reason of fraud, collusion, willful-misstatement, suppression of facts or contravention of any provision of the Finance Act 1994, or the rules made there under with intention to evade payment of service tax then service provider shall also be liable to pay penalty under section 78 of the Finance Act, 1994.
Any order levying above mentioned penalty shall be issued by the Central Excise Officer by following the principles of natural justice.

**Publishing names and information under section 73D:**

A new section 73D “provides for publishing the name of any person and particulars of any proceedings in relation to such person in public interest. The Government has been empowered to publish the names and particulars of specified persons in the public interest under section 73D, who have intentionally evaded or failed to pay service tax. The purpose of publishing name and particulars of any person is to inform the whole world that such person is a defaulter and owes money to the Government that nobody should deal with such person with respect to his properties etc.**

As per the service tax (publication of names) Rules 2008, if the commissioner of Central Excise, having jurisdiction over such person is satisfied that it is necessary in the public interest to publish the name and any other particulars as he deems fit, he shall after due verification of the facts, and the circumstances of the case forward a proposal (in Annexure appended to these Rules) for such publication to the jurisdictional Chief Commissioner examine and if he is satisfied that circumstances of the case justify such publication may make a recommendation within 15 days from the receipt of such proposal to the board. On the receipt of the recommendation by the Board or on its own the Central Government may publish the name and particulars of such person in a manner as specified in Rules 3.

According to these Rules, the publication of the names shall be made only in cases involving an amount exceeding Rs. 1 crore.
or more. However in cases of repeated offenses such limit shall be Rs. 25 Lakh.

The above also clarified that in case a person is a firm, company or other association of persons, the name of the partners of the firm, directors, managing agents, secretaries, treasurers or manager of the company or any other association, as case may be, may also be published if in the opinion of the Central Government.

It may be noted that, no publication under this section shall be made in relation to any penalty imposed under this chapter until the time for presenting an appeal to the Commissioner (appeals) under section 85 or the tribunal under section 86 as case may be has expired without an appeal having been presented or the appeal, if presented has been disposed off.

After considering the provisions relating to interest and penalties, it is further said that the Service Tax being a voluntary one and supposed to be more permissive than Central Excise. However, certain provisions of Central Excise are also applicable in relation to interest and penalties chargeable under the Act.

**Appeals under Service Tax**

Provision of appeal is an important legal remedy of our legal system. It has been provided to every person, who aggrieved from any judicial or quasi-judicial order, passed in relation to him. Such person can sought for remedy by way of filing appeal before suitable forum. However, the right to appeal is a conditional right and subject to the fulfillment of conditions as imposed by concerned Act or law.
In this view, the provisions for filing an appeal before the Commissioner (Appeals) and Tribunal has been provided under section 85 and 86 of the Finance Act 1994, and further for filing an appeal before the High Court and the Supreme Court, the provisions of the Central Excise Act, 1944, are applicable. The procedure for hearing an appeal before the Commissioner (appeals) and Tribunal is the same for service tax as the provisions applicable under the Central Excise Act, 1944, for Central Excise matters. Besides, an assessee may optional for filing a writ petition before the High Court if the circumstances so warranted.

I. Appeal to Commissioner (Appeals):

Section 85 of the Finance Act 1994, contains the provisions relating to making an appeal to the Commissioner of Central Excise (appeals). This is the first level of Appellate Authority.

**Person who can file an Appeal:**

Any person is aggrieved by the order of Central Excise officer, passed under section 71, section 72 or section 73 or denying his liability to be assessed or by an order levying interest or penalty or any order denying refund claim, may appeal to the Commissioner of Central Excise (appeals) under section 85(1) under this section, it is the first appeal to the Commissioner of Central Excise (appeals) Except in case of an order passed by the Commissioner of Central Excise (in which case the first appeal lies directly to the Tribunal).

It should be noted that where the refund of service tax was credited to consumer welfare fund in the view of revalidation provisions there can be no appeal against such order.131
Form and manner filing Appeals:

The appeal is to be filed in form ST-4 and shall be verified in the prescribed manner section 85 (2) read with Rule 8(1). The appeal shall be filed in duplicate along with a copy of order appealed against (Rule 8 (2)).

Time limit of filing Appeal:

The appeal should be filed within three months from the receipt of order section 85 (3). It means such appeal should be reach the office with three months. Such time limit under Central Excise Law is two months. 132 On sufficient cause, Commissioner of Central Excise (appeal) can further extend for three months.

Pre- Deposit:

As per section 83 of the Act, section 35E of Central Excise Act 1944, is also applicable to service tax. According to 35E where the appeal filed against the duty demanded or penalty levied, pending the appeal, the assessee will have to deposit the duty demanded or penalty levied with adjudicating authority. However, the appellate authority may dispense with the requirement of pre-deposit on an application made by the applicant. If in the opinion of the Appellate authority, pre-deposit may cause undue hardship to the appellant. The Appellate authority may waive the pre-deposit within 30 days from the date of filing such application.

Notice to the assessee:

The Commissioner of Central Excise (appeals) cannot pass an order for enhancing the service tax, interest or penalty without giving a notice and a reasonable opportunity of showing cause against such enhancement section 85(4). Thus, the Appellate
authority issue notice to the assessee and give an opportunity of showing cause if an order is against him.

**Passing an order of appeal:**

The Commissioner of Central Excise (appeals) shall hear and determine the appeal and pass such an order as he thinks fit and such orders may include an order enhancing service tax, interest or provide that if it is possible, the Commissioner (appeals) shall decide every appeal within a period of six months from the date of its filing and withdrew the powers of the commissioner (appeals) to remand matters to the adjudicating authority for fresh consideration.\(^{133}\)

**II. Appeals to the Appellate Tribunal:**

Section 86 of the Finance Act 1994, provides for the institution of Appellate Tribunal which can be approved both by the aggrieved assessee and the Department. ‘Appellate Tribunal’ to means the Customs, Central Excise and Service Tax Appellate Tribunal (CESTAT) \(^{134}\) constituted under section 129 of the Customs Act, 1962 (Section 65(5)).

**Person who can file Appeal:**

Any assessee or the department who feels aggrieved by the order of Commissioner of Central Excise (appeals) or order of the Commissioner of Central Excise can file appeal before the CESTAT.

It should be noted that the Department is allowed to file an appeal against its orders. It can file appeal in the following situations: \(^{135}\)
1. **File of Appeal on the direction of committee of Commissioners of Central Excise**

   The orders passed under section 85 by the Commissioner of Central Excise (appeals) can be appealed against at the direction of the Committee of Commissioner of Central Excise appointed by the Board for this purpose. The committee may direct any Central Excise officer to file appeal on his behalf (Section 86 (2A)).

2. **Filing of Appeal on the direction of the committee of chief Commissioners of Central Excise**

   The orders passed by the Commissioner of Central Excise under section 73 or section 83A of the Act, can be appealed at the direction of the committee of Chief Commissioners of Central Excise appointed by the Board for this purpose. The committee may direct a Central Excise Commissioner to file appeal on behalf of the Department section 86(2).

**Appeal against Orders:**

   Appeal can be filed against the order of the Commissioner of central Excise or order of the Commissioner of Central Excise or order of the Commissioner of Central Excise (appeals). In the former case, the Tribunal act as first forum of appeal while in second case, it acts as second forum of appeal.

**Form of Appeal :**

   The appeal can be filed in the forms as prescribed by the Rule 9 of Service Tax Rules, 1994. In case of filing the appeal by assessee, form ST-5 and for filing the appeal by the department ST-7 shall be prescribed. The appeal either in form ST-5 or ST-7 shall be filed in quadruplicate, by attaching equal number of copies of
the orders appealed against. At least one such copy should be a certified copy.

**Enclosures to the Appeal :**

- The form of appeal including the statements of the facts and the grounds of appeal shall duly accompanied by-
  - Four copies of order appealed against
  - A copy of the order passed by the Board directing concerned Commissioner/ officer under section 86 (2) and section 86(2A)
  - Demand Draft of Fees (as prescribed)

Besides English the form of appeal can be filled up in ‘Hindi’ also.

**Time Limit of filing Appeal:**

The Appeal shall be filed within 3 months from the date on which the order sought to be appealed against is received by the assessee, the Board or by the Commissioner as case may be (section 86 (3)). The tribunal can admit an appeal after expiry of such time limit on the sufficient cause for not filing it within said period.\(^{138}\)

**Fees for filing Appeal:**

When the department files an appeal to the Appellate Tribunal no fees is payable. But an assessee is filing an appeal he has to pay fees as prescribed by section 86(6) (6A). The amount of appeal fees is based on the disputed demand (i.e. the amount of service tax interest and penalty).
Following table gives amount of prescribed fee-

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Disputed Demand(Rs.)</th>
<th>Amt. of Fee (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Rs. 5 Lakh or less</td>
<td>1000</td>
</tr>
<tr>
<td>2</td>
<td>Rs. Lakh to 50 Lakh</td>
<td>5000</td>
</tr>
<tr>
<td>3</td>
<td>Above Rs. 50 Lakh</td>
<td>10000</td>
</tr>
</tbody>
</table>

A uniform fee of Rs. 500 has been prescribed for the grant of stay or rectification of mistake or the restoration of an appeal or any application or any other proposes.

The fee is to be paid in the form of crossed DD in favour of the Assistant Registrar of the Bench of the Tribunal drawn on any Nationalized Bank located at the place where the Bench is situated.

**Pre-Deposit:**

As per section 35F of Central Excise Act, 1944 as applicable to service tax matters by section 83, where the appeal is proposed to be filed against an order enhancing tax liability, the appellant need to pre-deposit the disputed amount as demanded in the order. However, the Tribunal shall waiver of pre-deposit of disputed amount on the application for the same if it thin fit that such pre-deposit will cause undue hardship to the assessee.\(^{139}\)

**Filing of Memorandum of Cross Objections:**

As per section 86(4), when the appeal is filed with the Appellate Tribunal, a notice is sent to the order party informing that an appeal has be preferred. In turn, the assessee or the concerned Commissioner is required to file memorandum of cross-objections in ST-3A as prescribed by Rule 9 of Service Tax Rules, 1994. The memorandum is to be filed in quadruplicate within 45...
days from the date of receipt of notice by the Tribunal. This period can be waived by the Tribunal on sufficient cause for not filing the same within said period. Such memorandum either in English or Hindi and duly verified in the prescribed manner by giving details of cross objections should be filed of memorandum section 86(6).

**Disposal of memorandum:**

The memorandum of cross objections is to be disposed off by the Appellate Tribunal as if it were an appeal presented within the specified time.

**Restoration of Appeal:**

An appeal may be dismissed by the Tribunal on the grounds of non appearance of the assessee or his representative or for some other person. At this stage an assessee may file an application for restoration of appeal along with a fee of Rs. 500 stating in clear the suitable reasons for asking restoration of appeal.

**III. Appeal to High Court/ National Tax Tribunal:**

Section 35G of Central Excise 1944, as made applicable to the service tax matters, by virtue of section 83 of the Finance Act, 1994. This section provides that every person aggrieved from any order passed by CESTAT can file an appeal under section 35G of Central Excise Act, 1944. Accordingly, the Commissioner of Central Excise or other party aggrieved by the order of the Appellate Tribunal may file the appeal to the High Court such appeal shall be filed within 180 days from the date of receipt of order by precisely mentioning in the form of memorandum of appeal the substantial question of law involved. If an appeal is filing by other party, a fee of Rs. 200 shall be payable. An appeal
to High Court (other than the one relating to rate or valuation of taxable services) if the High Court is satisfied that the case involves a substantial question of law, shall formulate that question. However, such formulation of question shall not restrict the power of the High Court to hear the appeal on any other substantial question of law not formulate by it. The High Court may determine any issue which has not been determined or wrongly determined by the Appellate Tribunal.

As per section 35G of the Act, that such appeals shall be heard by a bench of not less than two judges and shall be decided by the majority opinion. If there is no majority on a particular point of law, it shall be referred the case to one or more of the other judges of the High Court and such point shall be decided according to the majority of opinion of the judges including those who first heard it.

After hearing such case, the high court would be delivered its judgment on the question of law involved therein in accordance with section 35k of Central Excise. This judgment is to contain the grounds on which such decision is based. A copy of judgment is to be sent under the seal of the court with the signature of Registrar to the Appellate Tribunal. Thereafter the Appellate Tribunal is to pass such orders as are necessary to dispose of the case in conformity with such judgment. However, the effect of the order passed in appeal is to be given by the Central Excise officer on the basis of a certified copy of the judgment. In such kind of appeals, the provisions of the code of civil procedure, 1908 relating appeals to High Court shall, as far as may be applied.
It should be noted that the appeal to the order of CESTAT proposed to be lie with the National Tax Tribunal in place of the High Court. For this purpose, the Government has established\textsuperscript{140} a National Tax Tribunal under the National Tax Tribunal Act, 2005.\textsuperscript{141} All the direct tax and indirect tax cases pending with the High Court would be transferred to the National Tax Tribunal. As per the National Tax Tribunal Act, it is envisages amendments in the Central Excise Act 1944, to insert the references of NTT instead of the references to the High Court. Different provisions of the National Tax Tribunal Act are to become effective from different dates as notified by the Central Government. However, the constitution of NTT and transferring the jurisdiction of High Courts to such NTT is being opposed by many and the case of the same is upheld with the Supreme Court. As far as the progress of the case up to May, 2010 the application provisions of NTT Act are still a distant reality.

IV. Appeal to Supreme Court:

Section 35L of the Central Excise Act 1944, as applicable to the service tax matters by virtue of section 83 of the Finance Act 1994, provides that an appeal before the Supreme Court shall be made in the following situations:

a. Against any High Court judgment delivered in an appeal made against the order of the Appellate Tribunal. The High Court shall, however certify it to be a fit case for appeal to the Supreme Court.

b. Against any order of CESTAT relating, among other things to the determination of any question having relation to the rate of service tax or value of taxable services.
It should be noted that the appeal against the Tribunal order involving the question relating to the rate of tax or valuation alone would lie before the Supreme Court.142

After hearing the case relating to any situation as said above, the Supreme Court would delivered the judgment on the question of law involved therein in accordance with the provisions of section 35L of Central Excise. This judgment is to contain the grounds on which such decision is based. A copy of the judgment is sent under the seal of the Court with signature of the Registrar to the Appellate Tribunal. Thereafter the Tribunal is to pass such orders as are necessary to dispose of the case in conformity with such judgment.

On the perusal of entire provisions relating to appeals, it is clear that right to appeal is conditional right. It can be exercised only after fulfillment of conditions, proper preparation of paper work and filing thereof, court fee and compliance of the provisions of the law. It is also important to mention here that Finance Act, Central Excise Act and the Rules do not a bridge over High Court Rules and Supreme Court Rules during the filing of appeals. The application of different Courts Rules will also equally important in case of appeals.

**Advance Ruling in Service Tax India**

A new Chapter V-A has been inserted by the Finance Act 2003, in the Finance Act 1994, to provide for advance rulings with respect to service tax. Advance ruling means the determination, by the authority of a question of law or fact specified in the application, regarding the liability to pay service tax, in relation to
a service, proposed to be provided, by the applicant, who may be any of the following:

- A nonresident setting up a joint venture in India in collaboration with a non resident or a resident.
- A resident setting up a joint venture in India in collaboration with a non resident.
- A wholly owned subsidiary Indian company, of which the holding company is a foreign company.

The same has been clarified in case of Re McDonald India Pvt. Ltd. [(2004) 165 ELT 404 (AAR)], where it has been held that advance ruling cannot be availed by ongoing business/undertaking which has already commenced business.

The question on which advance ruling may be sought shall be in respect of:

- Classification of any service as a taxable service;
- The valuation of taxable services;
- The principles to be adopted for the purposes of determination of value of the taxable service;
- Applicability of notifications;
- Admissibility of credit of service tax

Section 96C prescribes the application in Form AAR (ST) required to be made to the authority in prescribed form and manner. The application should be made in quadruplicate and accompanied by a fee of rupees two thousand and five hundred only. The application can be withdrawn within a period of 30 days.
from the date of the application. The authority is required to give its ruling within 90 days of the receipt of valid application.

An application may be rejected by the prescribed authority if the question or subject matter of ruling sought in the application is such which is already pending before any assessing officer, Tribunal and court of law or such questions already stands decided by any court or bench of Tribunal.

The advance ruling pronounced on a matter referred to the authority is binding only on the applicant and his jurisdictional assessing officers and only in respect of question referred to by the applicant. However, if there is a change in the law or facts on the basis of which ruling was pronounced, such advance ruling will not be binding.