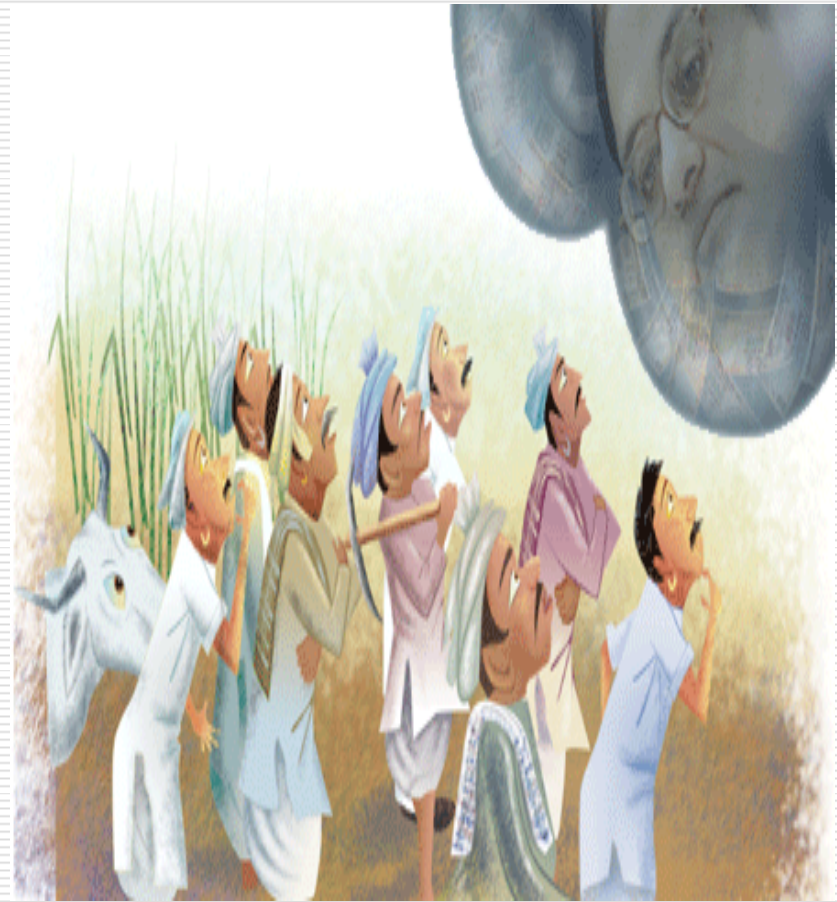


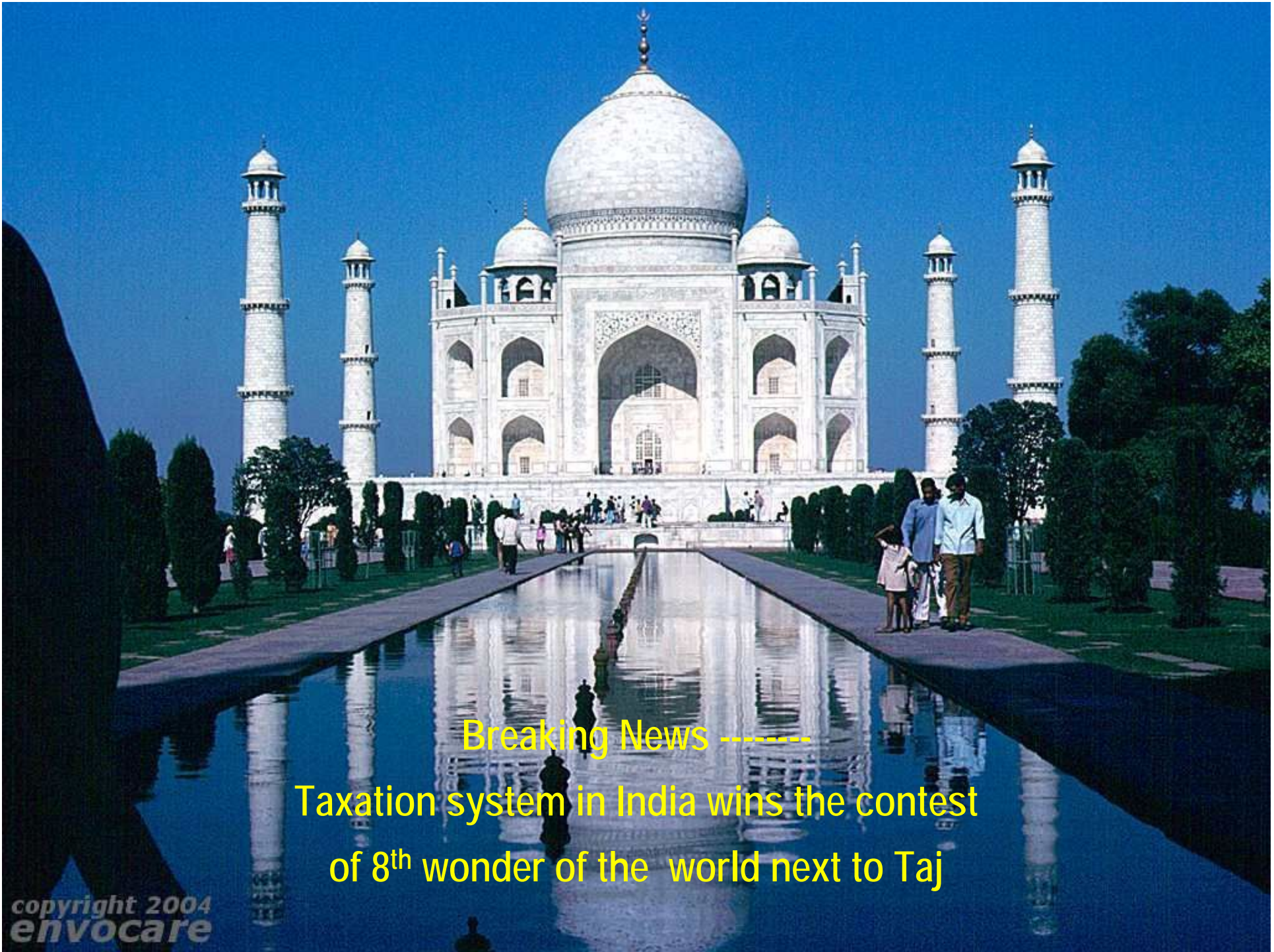
# Recent amendments in Service Tax Act / Rules - Issues

Presented  
by  
Niranjan Swain  
DGM(Finance)  
OPGCL



WELCOME TO PARTICIPANTS





Breaking News -----

Taxation system in India wins the contest  
of 8<sup>th</sup> wonder of the world next to Taj

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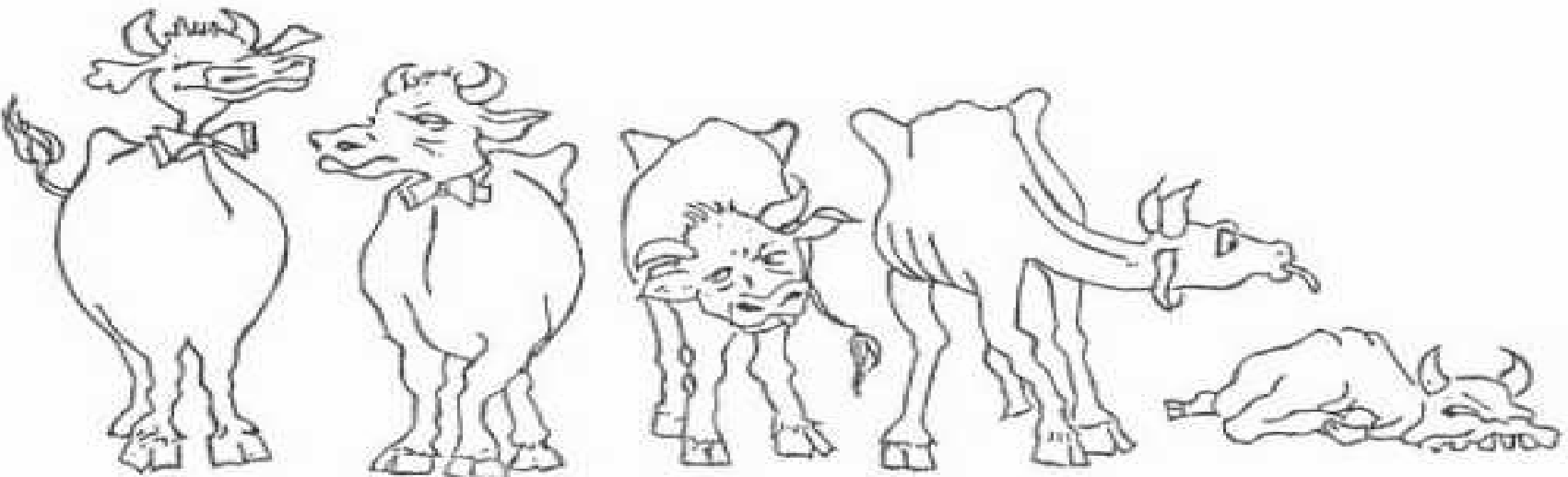
Love is a feeling , marriage is a contract and relationships are work

- Lori Gordon

Good Legislation is a feeling , business is a contract and all transactions are taxable

- Indian Taxation system

---



**C - a - r - i - t - y**

**Support from Tax  
experts &  
consultants**

**Harmonizing with Govt  
official**

**Compliance by Assessee**

**Tax Act / Rules**

## Tax Collection / Proposal (Rs. in Crores)

Year	Direct Taxes	Indirect Taxes	% (DT/IT)
1996-97	38,895	89,593	43%
2000-01	68,305	119,814	57%
2004-05	131,918	170,398	77%
2006-07	229,007	237,235	97%
2007-08	312,202	321,000	97%
2008-09	334,377	270,921	123%
2008-09	387,001	246,087	141%
2009-10	377,546	246,981	153%
2010-11	445,962	347,110	129%
2011-12(RE)	500,651	401,013	125%
2012-13(BE)	570,257	507,354	112%

	Revenue Forgone (Rs. in Crores)					
Particulars	2009-10		2010-11		2011-12	
	Revenue Foregone	Actual Tax collection	Revenue Foregone	Actual Tax collection	Revenue Foregone	Estimate Tax Collection
Corporate Tax	72,881	244,725	57,912	298,688	51,292	359,990
Income Tax	45,142	132,832	36,826	146,587	42,320	172,026
Excise Duty	169,121	102,858	139,744	135,813	212,167	164,116
Customs Duty	195,288	85,847	135,780	138,299	223,653	151,700
Total	482,432	566,262	370,262	719,387	329,432	847,832
Revenue Forgone to actual tax	85.20%		51.47%		41%	

**Revenue Foregone Vrs Subsidies ( Rs. in Crores)**

Year	Revenue	Subsidies
2005-06	206700	47522
2006-07	235191	57125
2007-08	285052	70926
2008-09	418095	129708
2009-10	443770	141351
2010-11	457548	173420
2011-12	529432	216297
2012-13		190015

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## Budget Speech of The present Finance Minister, Shri Pranab Mukherjee, has said

"As tax collectors, we may draw comfort from the fact that we manage to generate the targeted revenues. But there are questions that beg an urgent response.

- First, are collection made in the most efficient manner and do they potential ?
- Second, what is the hidden burden of taxes in the form of cascading and double taxation ?
- Third, why is our tax structure so complex and prone to disputes and litigation ?

These questions cannot be side stepped any longer as they have implication for the robustness and growth of the very base that yields our tax revenues"

The proposed GST can deliver on all these promises

## Taxing Power of the Centre- Seventh Schedule to our Constitution List I, called "Union List" - Entries relevant to taxation provisions are as follows

- 
- **Entry No. 83** - Duties of **customs** including export duties.
  - **Entry No. 84** –  
Duties of **excise on tobacco and other goods** manufactured or produced in India except alcoholic liquors for human consumption, opium, narcotic drugs, but including medicinal and toilet preparations containing alcoholic liquor, opium or narcotics.
  - **Entry No. 92A** - Taxes on the Sale or purchases of goods in inter State Trade or commerce other than newspapers,
  - **Entry No. 92B** - Taxes on consignment of goods in interstate trade or commerce.
  - **Entry No. 92C** – Tax on services [Amendment passed by Parliament on 15-1-2004, but not yet made effective].
  - **Entry No. 97** - Any other matter not included in List II, List III and any tax not mentioned in list II or list III. (*These are called 'Residual Powers'*)
-

## Taxing Power of the State & Centre- Seventh Schedule to our Constitution List II & III, called "State List & Concurrent List" -

### List II – State List –

- *Entry No. 51* - Excise duty on alcoholic liquors, opium and narcotics.
- *Entry No. 52* - Tax on entry of goods into a local area for consumption, use or sale therein (usually called Octroi).
- *Entry No. 54* - Tax on sale or purchase of goods other than newspapers except tax on interstate sale or purchase.

### List III - "*concurrent list*",

- includes matters where both Central Government and State Government can make laws.

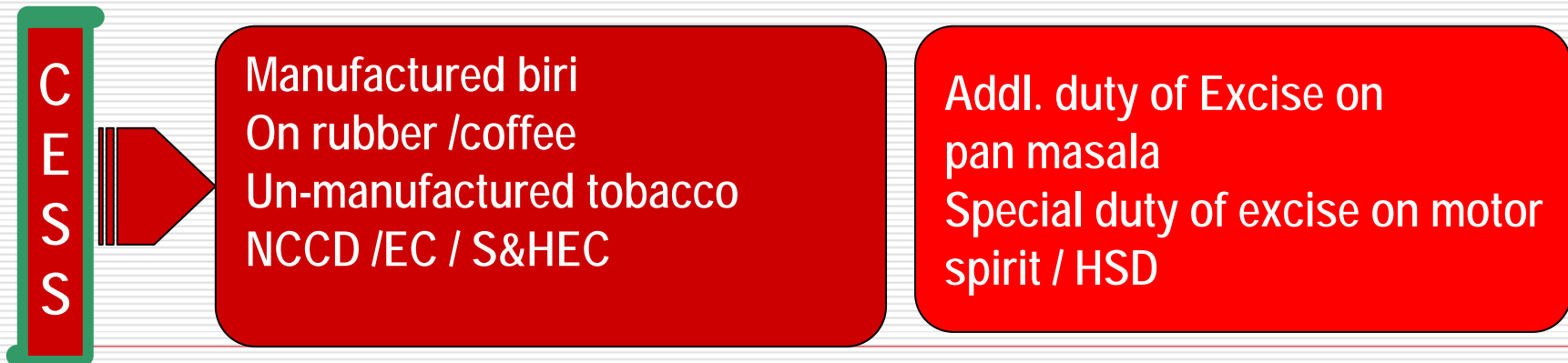


## Nature of Indirect Taxes in India

Tax / Levies	Relevant Statute	Imposing Authority	Taxable Event
Customs Duty	Customs Act, 1962 Customs Tariff Act, 1975	Federal Govt. Median Rate : 24.42%	Import / Export
Excise Duty / Cenvat	Central Excise Act, 1944 Central Excise Tariff Act Cenvat Credit Rules, 2004	Federal Govt. Median Rate : 10.30%	Manufacture / Production
Service Tax	Finance Act, 1944 Cenvat Credit Rules, 2004	Federal Govt. Median Rate : 10.30%	service provided to be provided
CST	Central Sales Tax Act, 1956	State Govt. Rate-2%	Interstate Sale
R &D Cess	Research and Development Cess Act, 1986	Federal Govt. Rate - 5%	import of technology

## Nature of Indirect Taxes in India

Tax / Levies	Relevant Statute	Imposing Authority	Taxable Event
Value Added Tax	VAT Act of respective State Government	State Govts. Rates 4% & 12.5%	Intra State Sale
Entry Tax	Specific provisions laid down by State Government	State Government	on the entry of goods
Local Levies	<ul style="list-style-type: none"> <li>Specific provisions laid down by State Government</li> </ul>	Municipal or Local Authority	



## What is the broad scheme of new taxation?

- At the outset 'service' has been defined in **clause (44) of section 65B** of the Act.
- **Section 66B** specifies the **charge of service tax** which is essentially that service tax shall be levied on all services provided or agreed to be provided in a **taxable territory**, other than services specified in the negative list.
- The **negative list** of services is contained in **section 66D** of the Act.
- Since provision of service in the taxable territory is an important ingredient of taxability, **section 66C** empowers the Central Government to make rules for determination of place of provision of service. Under these provisions the **Place of Provision of Services Rules, 2012** have been made.

## What is the broad scheme of new taxation of service tax ?

- To remove some ambiguities certain activities have been specifically defined by description as services and are referred as Declared Services (listed in section 66E).
- In addition to the services specified in the negative list, certain exemptions have been given. Most of the exemptions have been consolidated in a single mega exemption for ease of reference.
- Principles have been laid down in section 66F of the Act for interpretation wherever services have to be treated differentially for any reason and also for determining the taxability of bundled services.
- The system of valuation of services for levy of service tax and of availment and utilization of Cenvat credits essentially remains the same with only incidental changes required for the new system of taxation

# AMENDMENTS IN FINANCE ACT 1994

(effective from 01.07.2012)

---

- All services become taxable, except:-
    - Services in the negative list
    - Exemptions
    - Abatements / Compounding.
  
  - To make all services taxable, the following existing sections are made inoperative:-
    - Section 65 (definitions)
    - Section 65A ( Classification of services)
    - Section 66 (Rate of service tax)
    - Section 66A (Import of services)
-



# AMENDMENTS IN FINANCE ACT 1994

(Effective from 01.07.2012)

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- To make all services taxable the following sections are introduced:-
    - Section 65B (Interpretations)
    - Section 66B (Charge of service tax)
    - Section 66C (Determination of place of provision of service)
    - Section 66D ( Negative list of services- 17 Nos)
    - Section 66E (Declared services)
    - Section 66F ( Principles of interpretation of bundled services)
-

## What are the Changes effective from 1<sup>st</sup> July 2012

- **Guidance Note 1 Introduction**
- **Guidance Note 2 What is 'service'?**
- **Guidance Note 3 Taxability of a 'service'**
- **Guidance Note 4 Negative List**
- **Guidance Note 5 Place of Provision of Service**
- **Guidance Note 6 Declared Services**
- **Guidance Note 7 Exemptions**
- **Guidance Note 8 Valuation**
- **Guidance Note 9 Rules of Interpretation**
- **Guidance Note 10 Miscellaneous**

In addition, the Guide has the following three Exhibits:

- • **Exhibit A1 - List of services specified in the negative list**
- • **Exhibit A2 – Place of Provision of Service Rules, 2012.**
- • **Exhibit A3- List of exemptions in mega notification**

# What is Service (Sec 65B (44))

---

- any activity
  - for consideration
  - carried out by a person for another
  - and includes a declared service.
-

## What is Service (Sec 65B (44))

- 'Service' does not include –
  - ❑ • any activity that constitutes only a transfer in title of (i) goods or (ii) immovable property by way of sale, gift or in any other manner
  - ❑ • (iii) a transfer, delivery or supply of goods which is deemed to be a sale of goods within the meaning of clause (29A) of article 366 of the Constitution
  - ❑ • a transaction only in (iv) money or (v) actionable claim
  - ❑ • a service provided by an employee to an employer in the course of the employment.
  - ❑ • fees payable to a court or a tribunal set up under a law for the time being in force

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□ Negative List - [Exhibit A1 - Negative List.doc](#)

□ List of Services Exempted - [Exhibit A3- Exemptions.doc](#)

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## Declared Services

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- **Service defined - Section 65B (44) of the Act**
  - **Declared Service': as an activity carried out by a person for another for consideration and specified in section 66E of the Act.**
    - ❖ **1. Renting of immovable property;**
    - ❖ **2. Construction of a complex, building, civil structure or a part thereof, including a**
      - ❖ **Complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority;**
    - ❖ **3. Temporary transfer or permitting the use or enjoyment of any intellectual property right;**
    - ❖ **4. Development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software;**
-

## Declared Services

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- 5. Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
  - 6. Transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;
  - 7. Activities in relation to delivery of goods on hire purchase or any system of payment by instalments;
  - 8. Service portion in execution of a works contract;
  - 9. Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity.
-



## Declared Services-Renting of Immovable Property – Section 65B

---

### ↘ Excluded as specified in the Negative List

- ❖ Renting of vacant land, with or without a structure incidental to its use, relating to agriculture. (Sl. no. (d) (iv) of Exhibit A1)
  - ❖ Renting of residential dwelling for use as residence (Sl. No. (m) of Exhibit A1)
  - ❖ Renting out of any property by the Reserve Bank of India
  - ❖ Renting out of any property by a Government or a local authority to a non-business entity.
-

## Declared Services

---

➤ **Are there any exemptions in respect of renting of immovable property?**

❖ **Yes. These are:–**

- ❖ **Threshold level exemption up to Rs. 10 lakh.**
  - ❖ **Renting of precincts of a religious place meant for general public.**
  - ❖ **Renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a room below rupees one thousand per day or equivalent.**
  - ❖ **Renting to an exempt educational institution**
-

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

- **What would be the liability to pay service tax on flats/houses agreed to be given by builder/developer to the land owner towards the land/ development rights and to other buyers. If payable, how would the services be valued?**
  - **(a) sale of land by the landowner which is not a taxable service; and**
  - **(b) construction service provided by the builder / developer. – taxable**
  - ❖ **(i) from landowner: in the form of land / development rights;**
  - ❖ **(ii) from other buyers: normally in cash.**
-

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

- Not defined in the act
- Intellectual property right includes the following:-
  - ❖ Copyright
  - ❖ Patents
  - ❖ Trademarks
  - ❖ Designs
  - ❖ Any other similar right to an intangible property
- No provision for registration
- It will become taxable only if the place of provision of service of temporary transfer of intellectual property right is in taxable territory.

**Development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software**

<b>Category of software</b>	<b>Excise Duty Manuf. in India)</b>	<b>Customs Duty (imports)</b>	<b>Service Tax</b>	<b>Vat/ CST</b>
<b>Packaged software with MRP</b>	<b>Yes</b>	<b>No basic customs duty but CVD and SAD is payable</b>	<b>No</b>	<b>Yes</b>
<b>Packaged software where MRP not required</b>	<b>Excise Duty on cost of media</b>	<b>No basic customs duty but CVD and SAD is payable on cost of Media</b>	<b>Service tax on transfer of right to use software</b>	<b>Yes</b>
<b>Tailor made (customized) software</b>	<b>No</b>	<b>No</b>	<b>Yes</b>	<b>Yes</b>

**Development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software**

<b>Category of software</b>	<b>Excise Duty (manufacture in India)</b>	<b>Customs Duty (in case of imports)</b>	<b>Service Tax</b>	<b>Vat/CST</b>
<b>Paper license of software and PUK cards</b>	<b>No</b>	<b>No</b>	<b>Yes</b>	<b>Yes</b>
<b>Software downloaded from Indian Supplier</b>	<b>No</b>	<b>No</b>	<b>Yes-payable by supplier</b>	<b>No</b>
<b>Software downloaded on internet from out of India</b>	<b>No</b>	<b>No</b>	<b>Yes as import of service</b>	<b>Not Applicable to person Downloading software</b>

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

---

➔ Is the delivery of goods on hire purchase of any system of payment by instalments taxable? –

- ❖ No. as it is goods
  - ❖ Article 366(29A) of the Constitution of India such delivery of goods is deemed to be a sale of goods
-

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

---

**Following activities if carried out by a person for another for consideration would be treated as provision of service.**

- ❖ **Agreeing to the obligation to refrain from an act.**
  - ❖ **Agreeing to the obligation to tolerate an act or a situation.**
  - ❖ **Agreeing to the obligation to do an act.**
-



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**Service portion in execution of a works contract**

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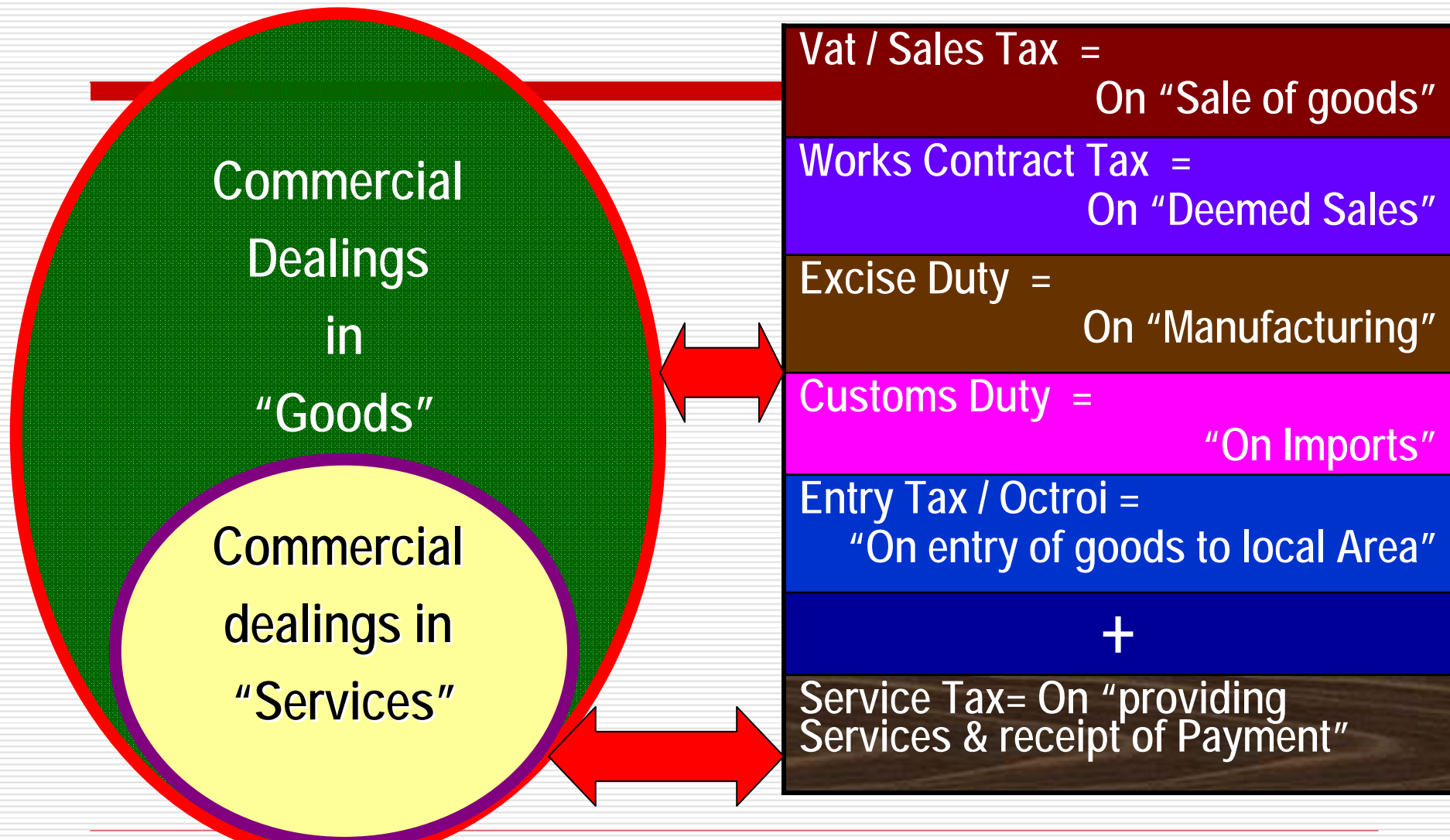
## Applicability of Works Contract Tax

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### *Budget speech of Finance Minister.*

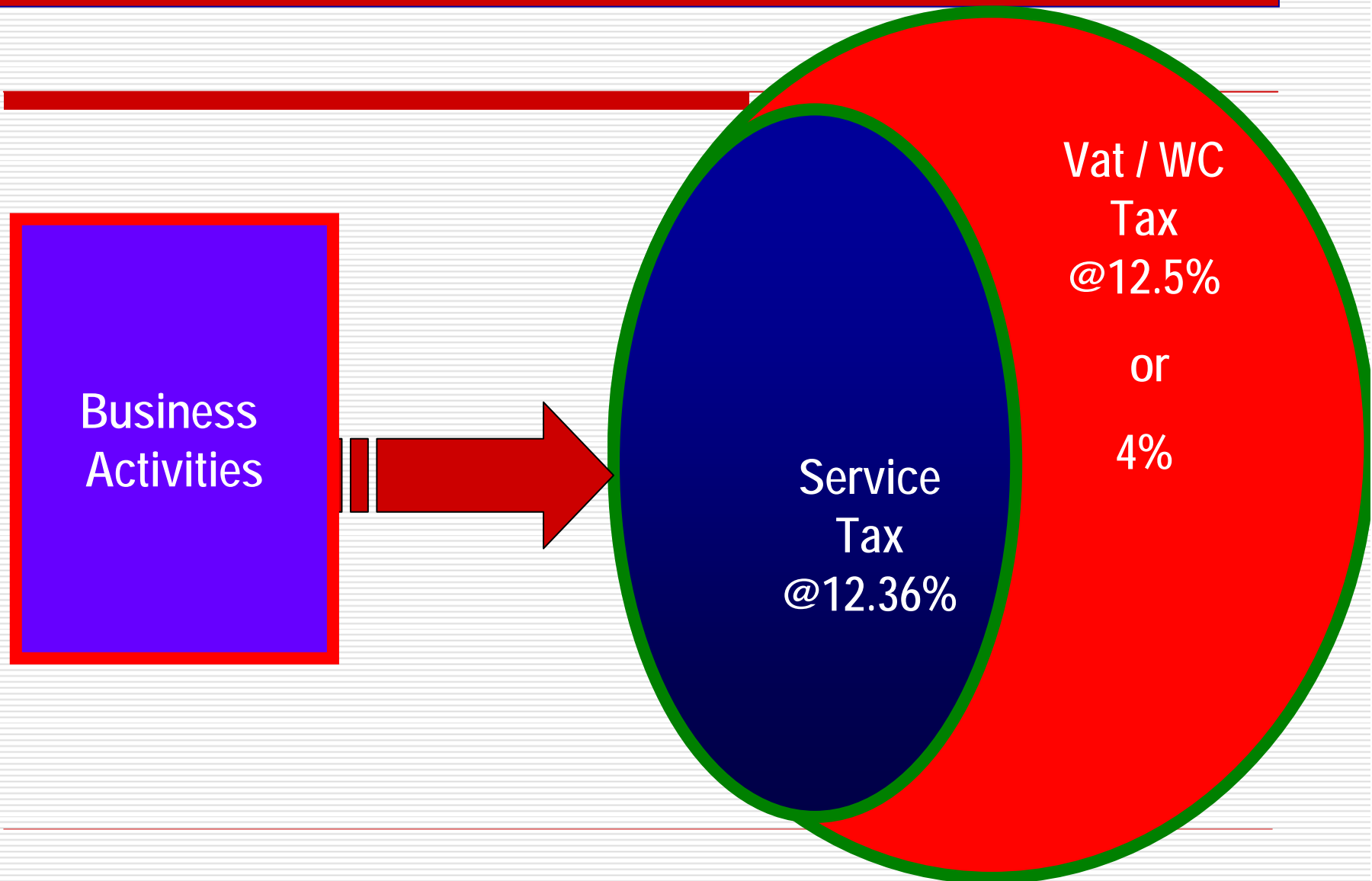
- “State Governments levy a tax on the transfer of property in goods involved in the execution of a works contract. The value of services in a works contract should attract service tax. Hence, I propose to levy service tax on services involved in the execution of a works contract. However, I also propose an optional composition scheme under which service tax will be levied at only 2 percent of the total value of the works contract”,
  - ➔ ST on Works Contract Services - June 1, 2007 vide Notification No.23/2007-ST/22.05.2007.
-

## Taxability under State / Central Act



Proposed New Taxation >>>>> "Goods & Service Tax"

# Taxability on works contract



## History of Works Contract Tax

- Works Contract is a composite contract
  - ❖ involved in transfer of property of goods
  - ❖ rendering of some services.
- 46<sup>th</sup> amendment to the Constitution clause (29A) –1983 - Builders Association of India v. UOI (1989)2 SCR 320 / 73 STC 370 (1989)

“tax on sale or purchase of goods” & it includes “a tax on transfer of property (whether as goods or some other form) involved in execution of works contract”.
- Sales tax laws amended by the States to include above.
- CST Act amended -11<sup>th</sup> May 2002.

## Supreme Court in Gannon Dunkerley's case (AIR 1958 SC 560)

---

- **works contract was essentially a contract of service and no sales tax could be levied on goods transferred in the course of execution of works contract.**
  - **It is only after the constitutional amendment that VAT or sales tax is leviable on such goods. The remaining portion of the contract remains a contract for provision of service.**
-

## What Prompted Govt. to Levy Tax on WC Services

---

Delim Industrial co ltd. V. State of Assam(2003)130 STC53(Gau) –

➤ WC tax payable only on goods not on design & engineering.

CCE&C v. Larson & Toubro Ltd. 2004 (174) ELT 322 -Tri-Del

➤ lump sum works contract cannot be vivisected & part of it can not be subjected to service tax

Daelim Industrial Co Ltd V. CCE Vadodora,2003(155)ELT457-Tri-Del

➤ Turnkey contract can not be vivisected artificially

➤ No levy service tax on design,& detailed engineering, commissioning of plant.

---

## What Prompted Govt. to Levy Tax on WC Services

Gannon Dunkerely & Co V. State of Rajsthan (1993)66 Taxman 229 / (1993) 88 STC 204 –

- WC TAX payable on value of goods transferred.
- Charges for labour, services, consumables & profit relatable to services etc. to be deducted.
- Taxable event is the transfer of property.
- Tax cannot be levied when goods which are not taxable under sec-,3,4 & 5 of CST Act.
- If no details produced by the contractor the legislator can prescribe scales of permissible deduction.
- There may be uniform rate for Works Contract & it can be different from individual rates.

Builders Association of India V. State of Karnataka (1993)88 STC 248



**Supreme Court in BSNL's case [2006(2) STR 161 (SC)],**

---

**a works contract can be segregated into a contract of sale of goods and contract of provision of service.**

---

# What is “Works Contract”?

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## **Section 65B(54) covers**

**such contracts which involve transfer of property in goods and are for carrying out the activities specified in the said clause (54) in respect of both moveable and immoveable Properties.**

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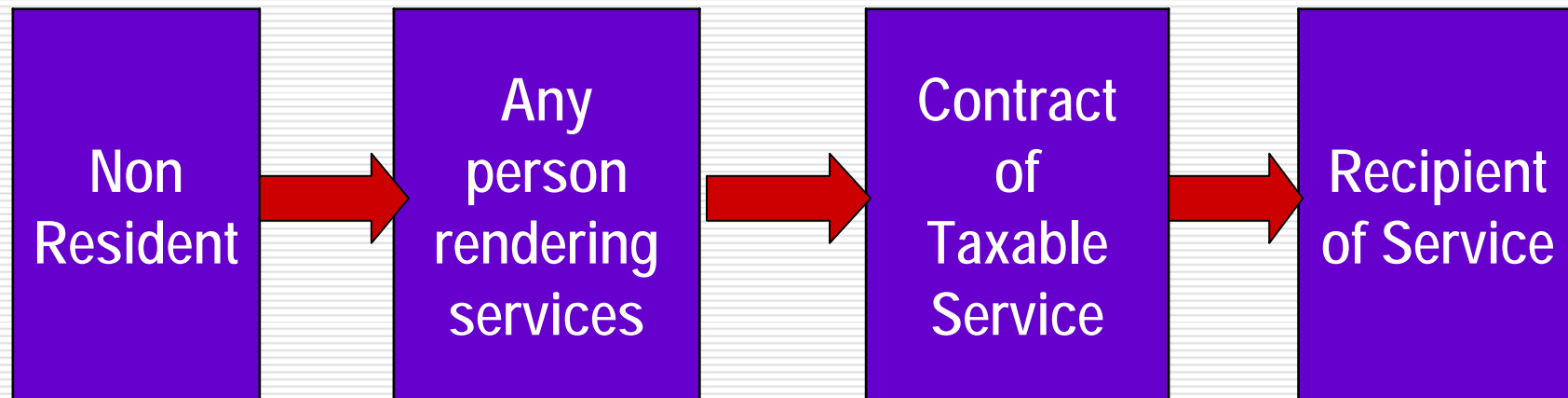
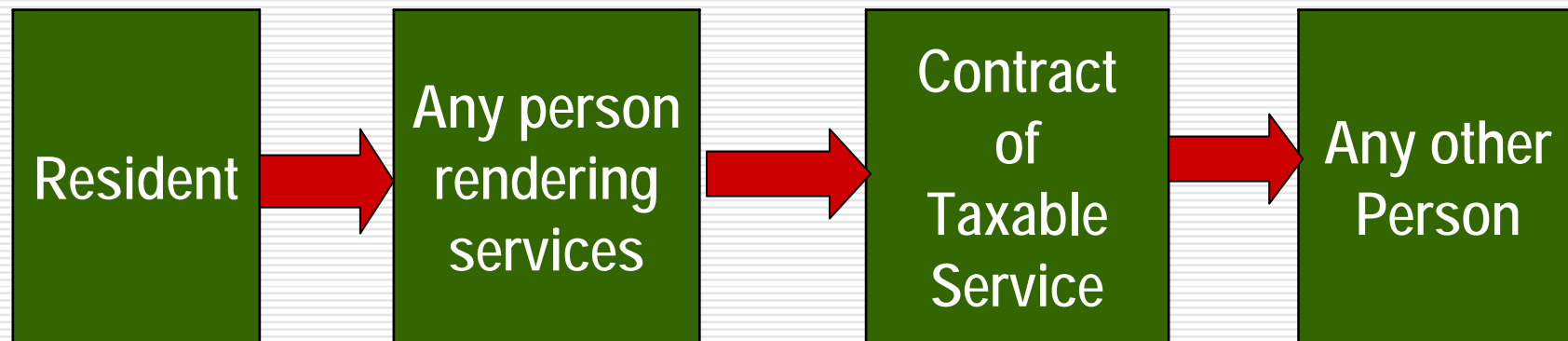
**Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity**

---

**What are the activities covered in this declared list entry?**

- ❖ **Supply of food or drinks in a restaurant;**
  - ❖ **Supply of foods and drinks by an outdoor caterer.**
-

## Who is liable to pay service tax



## How the Service Tax Levied

- Levied on Accrual (some cases option to pay cash basis).
- Amount received against service
- ❖ provided
- ❖ to be provided.



## Charge of Service Tax Section 67 (1) & Valuation

---

- With regard to its value then its value shall-
  - **(i) For Consideration:** Gross amount charged by the service provider for such service provided or to be provided by him;
  - **(ii) For a consideration not wholly or partly consisting of money:** be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;
  - **(iii) For Consideration which is not ascertainable:** be the amount as may be determined in the prescribed manner.
-

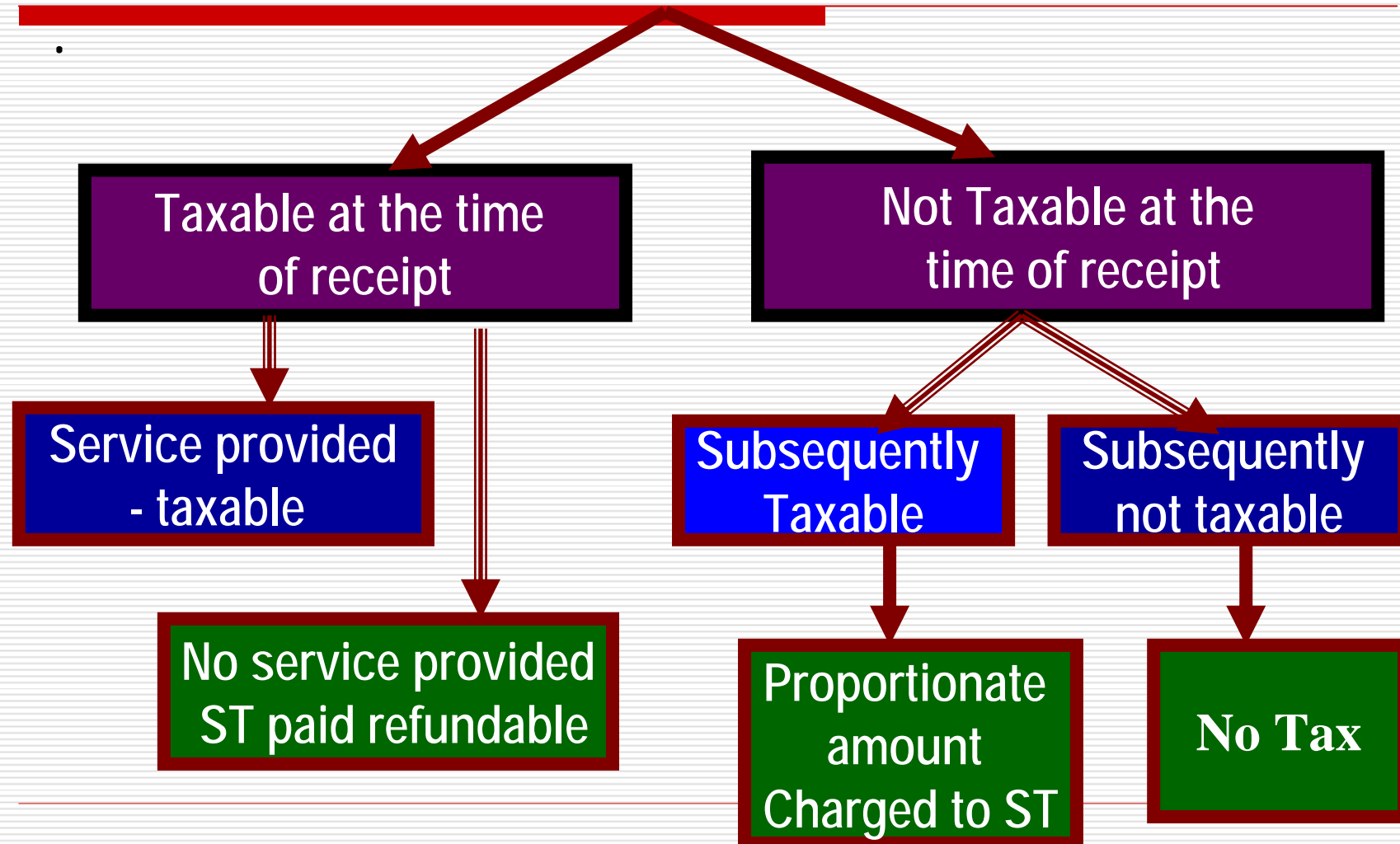
## Valuation of Service

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- **Section 67(3):**the gross amount charged includes any amount received towards the taxable service before during or after the provision of such service.
  - **Gross amount charged'? Explanation (c)of Section 67**

'Gross amount charged' has been defined in to include payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.
-

# Taxability of Advance Received





## Valuation of taxable services. & Sec-67 / Valuation Rules

---

- Service Tax is chargeable on any taxable services with reference to its value.
  - ST payable on value of taxable services & not on entire value of contract.
  - The value is to be determined under Service Tax (Determination of Value ) Rules 2006 made effective from dt.19.04.2006.
  - Service Provided Free of Cost- No service Tax is charged Circular 62 /11/2003 dt.21.08.2003.
-

## Valuation of taxable services. & Sec-67 / Valuation Rules

Ref. Sec.	Service Provided for a-	by service provider for such service provided or to be provided.	Rule for Value of Taxable Service
Sec 67(1)(i)	Consider - ation in money	On the basis of Consideration	Gross amount charged by service provider for such service provided or to be provided.
			Amount Received from the service receiver will be considered as gross amount charged.

## Valuation of taxable services. & Sec-67 / Valuation Rules

Ref. Sec.	Service Provided for a-	by service provider for such service provided or to be provided.	Rule for Value of Taxable Service
Sec 67(1) (ii) Rule 3	Consideration not wholly or partly consisting of money	(a) Value of similar Services ascertained Sec -67 & Rule 3(a).	shall be equivalent to gross amount charged by the service provider to provide similar service to third party in the ordinary course of business.
		(b) Where value of similar services cannot be ascertained : Sec-67 Rule 3(b).	Equivalent Money Value of Consideration to be determined by service provider himself & shall not be less than cost of such provision for such services <b>No method of cost calculation.</b> <b>No specific guideline from ICWAI like CAS-4</b>

# Notional Valuation as introduced by the Valuation Rules

## Consideration

Wholly Money

Gross Amount charged  
-even if the amount  
charged is low

Similar Services  
Provided to third party

Wholly or Partly  
not in Money

Similar services not provided-  
Market value as determined by the  
assessee - Can not be lower than the  
cost of provision of the services

Not  
ascertainable

As may be  
prescribed

## What is the manner of determining the value of non-monetary consideration? Section 67(1)(ii)

- Value of taxable service shall be the equivalent money value of such consideration.
- If the same is not ascertainable: determined under clause (iii) of section 67 read with rule 3 of the Service Tax (Determination of the value) Rules 2006 as follows:-
  - ❖ On the basis of **gross amount charged for similar service** provided to other person in the ordinary course of trade;
  - ❖ Where value cannot be so determined, the **equivalent money value** of such consideration, not less than the **cost of provision of service**.

## **Service Tax (Determination of Value) Rules 2006.**

---

### **Determination of value of**

- ❖ **service portion involved in execution of works contract.**
- ❖ **service in relation to money changing.**
- ❖ **service portion involved in supply of food and any other article of human consumption or any drinks in a restaurant or as outdoor catering where such value is not ascertainable.**

### **The said rules also specify certain**

- ❖ **expenditures or costs that are incurred by the service provider which have to be included or excluded**
  - ❖ **commissions or costs that are received by the**
  - ❖ **service provider that have to be included or excluded while arriving at the taxable value.**
-

# ABATEMENT

Description of taxable Service	Percent-
Financial leasing including hire purchase	10
Transport of goods by rail	30
Transport of passengers, with or without accompanied belongings by rail	30
Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises ( including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises	70

# ABATEMENT

Description of taxable Service	Percent-
Transport of passengers by air, with or without accompanied belongings	40
Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	60
Services of goods transport agency in relation to transportation of goods.	25
Services provided in relation to chit	70



# ABATEMENT

Description of taxable Service	Percent-
Renting of any motor vehicle designed to carry passengers	40
Transport of goods in a vessel	50
Services by a tour operator in relation to,-	25
(i) a package tour	
(ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour	10
(iii) any services other than specified at (i) and (ii) above	40

## ABATEMENT

Description of taxable Service	Percent-
<b>Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority</b>	25
<b>Works Contracts</b> <b>(i)Original Work</b> <b>(ii)Maitainanace or repair, reconditioning or restoration or servicing any goods</b> <b>(ii)NOT ABOVE BUT including contracts for maintenance, repair,completion and finishing services such as glazing, plastering, floor and wall tiling installation of electrical fittings.</b>	40% / 70% /60%

## Amendments under the Finance Act, 1994 (effective from the date of enactment of the Finance Bill 2012)

- ❑ **Sec 67A** • Rate of Service tax or value of a taxable service and rate of exchange shall be such rate / value applicable at the time when the taxable service has been provided or agreed to be provided. (as determined under the Point of Taxation Rules, 2011)
- ❑ **Reverse charge mechanism: Section 68(2):**  
both the service provider and service receiver will be considered as persons liable to pay tax on notified taxable services and to the extent specified against each one of them, where the service provider is an individual, firm or LLP and the service recipient is a body corporate



## Amendments to Point of Taxation Rules, 2011 (effective from 1 April 2012)

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- **Continuous supply of service-** include any service provided or to be provided on a recurrent basis, for a period exceeding three months with the obligation for payment periodically or from time to time
  - **Rule 2A inserted to define the date of payment as the earlier of the dates on which the payment is**
    - ❖ --entered in the books of accounts or
    - ❖ --credited to the bank account of the person liable to pay tax except in certain specified cases
  - **A new Rule 8A - to ascertain the point of taxation by way of best judgement where the taxpayer is unable to submit the details regarding the date of payment or date of invoice or both.**
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## Reverse charge under service tax

- ❑ Liability of tax is normally on 'service provider' - Section 68(1) of the Finance Act, 1994
- ❑ No TDS like Income Tax:
- ❑ *Service provider liable to pay service tax except in case of reverse charge* - Service provider is liable to pay service tax except - reverse charge - Rule 2(1)(d)(ii) of the ST Rules
- ❑ *Service provider not liable to pay service tax except in case of reverse charge* -  
*Navinon Ltd. v. CCE [2004] 6 STT 411 (Mum. - CESTAT) - followed in Bajaj Auto Ltd. v. CCE [2005] 1 STT 83 (Mum. - CESTAT) - same view in Calvin Wooding Consulting Ltd. v. CCE [2007] 9 STT 334 (New Delhi-CESTAT).*
- ❑ Person liable to pay service tax under reverse charge or tax shift
- ❑ Notification No. 30/2012-ST, dated 20-6-2012 & rule 2(d) of Service Tax Rules

**Person liable to pay service tax under reverse charge or tax shift  
Notification No. 30/2012-ST/ 20-6-2012 & Rule 2(d) of ST Rules**

Description of Service	Service Provider	Service Receiver	Liability of service tax
Insurance Agent [Rule 2(d)(i)]	Insurance Agent	Insurance company	100% by Ins. Company
Goods Transport Agency (GTA)	GT Agency - who issues consignment note	Consignor or consignee who is (a) factory, society, registered dealer of excisable goods, body corporate, PF, AOP and (b) Who pays or is liable to pay freight either himself or through his agent	A) No CENVAT Credit- 25% of value- B) Otherwise, 100% of value.  EXCEPTION: If receiver is in non taxable territory - Provider

**Person liable to pay service tax under reverse charge or tax shift Notification No. 30/2012-ST, dated 20-6-2012 & Rule 2(d) of ST Rules**

<b>Description of Service</b>	<b>Service Provider</b>	<b>Service Receiver</b>	<b>Liability of service tax</b>
<b>Services of Arbitral Tribunal</b>	<b>Arbitral Tribunal</b>	<b>Business entity</b>	<b>100% by SR</b>
<b>Legal Services of advocate or advocate firms</b>	<b>Individual advocate or advocate firms</b>	<b>Business entity having turnover exceeding Rs. Ten lakhs per annum, located in taxable Territory</b>	<b>100% by SR</b>

**Person liable to pay service tax under reverse charge or tax shift Notification No. 30/2012-ST, dated 20-6-2012 & Rule 2(d) of ST Rules**

<i><b>Description of service</b></i>	<i><b>Service Provider</b></i>	<i><b>Service Receiver</b></i>	<i><b>Liability of service tax</b></i>
<b>Support services by Government or Local authority excluding renting of immovable property and services specified in clauses (i), (ii) and (iii) of Section 66D(a) of Finance Act, 1994</b>	<b>Government or Local Authority</b>	<b>Business Entity located in taxable territory</b>	<b>100% by SR</b>



**Person liable to pay service tax under reverse charge or tax shift Notification No. 30/2012-ST, dated 20-6-2012 & Rule 2(d) of ST Rules**

<i><b>Description of service</b></i>	<i><b>Service Provider</b></i>	<i><b>Service Receiver</b></i>	<i><b>Liability of service tax</b></i>
<b>Renting or hiring of motor vehicle designed to carry passengers to any person who is not in the similar line of business</b>	<b>Individual, HUF, proprietary or partnership firm, AOP located in taxable territory</b>	<b>Business entity registered as body corporate located in the taxable territory</b>	<b>A) Tax on 40% of value - SR and Nil by SP B) If the SP intends to avail Cenvat credit, it can pay service tax on balance 60%.</b>

**Person liable to pay service tax under reverse charge or tax shift Notification No. 30/2012-ST, dated 20-6-2012 & Rule 2(d) of ST Rules**

<i><b>Description of service</b></i>	<i><b>Service Provider</b></i>	<i><b>Service Receiver</b></i>	<i><b>Liability of service tax</b></i>
<b>Supply of manpower for any purpose</b>	<b>Individual, HUF, proprietary or partnership firm, AOP located in taxable Territory</b>	<b>Business entity registered as Body corporate Located in the taxable Territory</b>	<b>Tax on 25% of value by service provider and 75% by service receiver</b>
<b>Service portion in execution of Works Contract</b>	<b>Individual, HUF, proprietary Or partnership firm, AOP located in taxable territory</b>	<b>Business entity registered as body corporate located in the taxable territory</b>	<b>A) Tax on 50% of value - SR B) 50% by SP</b>

**Person liable to pay service tax under reverse charge or tax shift Notification No. 30/2012-ST, dated 20-6-2012 & Rule 2(d) of ST Rules**

<i>Description of Service</i>	<i>Service Provider</i>	<i>Service Receiver</i>	<i>Liability of service tax</i>
<b>Import of service (services received from non-taxable territory)</b>	<b>Located in non-taxable territory</b>	<b>Located in taxable Territory</b>	<b>100% tax by SR</b>
<b>Sponsorship service</b>	<b>Any person</b>	<b>Any body corporate or partnership firm located in the taxable territory</b>	<b>100% by SR. EXCEPTION: If SR is not body corporate or PF or is not located in taxable territory, the SP</b>

## Reverse Charge – Other Issues

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**Payment of service tax by service receiver only after making payment to service provider**

- ❖ **For Service Provider:** ST is payable on accrual basis and not on receipt basis.
  - ❖ **For Service Receiver:** Tax will be payable after payment of bill is made by him to service provider - within 6 months from date of invoice.
  - ❖ **If no payment within six months - then service tax becomes payable.**
  - ❖ **Service from Associated Enterprise:** ST payable as soon as book entry is made or payment is made, whichever is earlier.
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## Reverse Charge – Other Issues

- ❑ **Tax should be paid in cash without utilising Cenvat credit**
- ❖ *ST paid under reverse charge is not output tax.*
- ❖ *Cenvat credit cannot be utilised when service tax is payable under reverse charge Explanation to rule 3(4) of the Cenvat Credit Rules, inserted w.e.f. 1-7-2012*
- ❖ *ST paid under Reverse Charge can be utilised for payout of service tax on output service.*
  
- ❑ **Small service provider - the Exemption not available**
- ❖ **No exemption as** small service provider [proviso (ii) to para 1 of 6/2005-ST, dated 1-3-2005].
- ❑ **Invoice:**
- ❖ **Even if service tax not charge in the Invoice - SR is still liable to pay his part of service tax (25% or 50% )as applicable.**

## Reverse Charge – Other Issues

- ❑ **Service tax payable on gross amount paid to service provider**
- ❑ **Service tax is payable on the entire amount paid to service provider and not by making back calculations.**
- ❑ **Invoicing when part of service tax is payable by service provider**
- ❑ **SP is required to raise Invoice by taking that part of Service Tax required to pay.- (25% in case of manpower supply and 50% in case of works contract) – Para 10.1.2 of CBE&C's Taxation of Services : An Education Guide published on 20-6-2012.**
- ❑ **Even if not charged by SP – but to be payable by SR (Para 10.1.3 of CBE&C's Taxation of Services : An Education Guide published on 20-6-2012.**

## Reverse Charge – Other Issues

- ❖ Cenvat credit of tax paid is eligible on the basis of GAR-7 challan (earlier TR-6 challan) by which the tax is paid [Rule 9(1)(e) of Cenvat Credit Rules,
- ❖ Service provider can claim refund of excess Cenvat Credit - Rule 5B of Cenvat Credit Rules as inserted w.e.f. 1-7-2012.
- ❖ Valuation of service by service provider and service receiver is independent
- ❖ Assessable value would be calculated on such payments done
- ❖ Free of cost material supplied and out of pocket expenses reimbursed or incurred on behalf, of the service provider need to be included in the assessable value in terms of Valuation Rules

## Reverse Charge – Other Issues

- ❖ Service recipient can independently avail or forgo an abatement or choose a valuation option depending upon the ease, data available and economics – Para 10.1-8 of CBE&C's Taxation of Services: An Education Guide published on 20-6-2012.

### Registration by SR

- ❖ "Every person liable to pay the service tax & & shall make an application for registration." section 69

### Filing of ST-3 by SR

- ❖ If SR is required to obtain registration, the question of filing of periodical return *i.e.*, ST-3, will arise.
- ❖ *Section 70 "every person liable to pay the service tax himself assess the tax due on the services provided by him and shall furnish & & a return in such form and in such manner & "*



## Reverse Charge - Other Issues

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- ❖ **Deduction of tax by service receiver from payment made to service provider?**
  - ❖ **How to deal such situation where the existing contract includes all taxes.**
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# POINT OF TAXATION

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❑ **POT for reverse charge cases:**

For reverse charge cases, POT shall be date of payment provided payment made within 6 months. Otherwise, on invoice basis.

❑ **POT for “Big firms” on invoice basis:**

If the value of services exceeds Rs. 50 Lakhs in previous year, POT shall be on invoice basis.

❑ **POT for minor payments:** Where payment upto Rs.1,000/- is received in excess of amount indicated in the invoice, POT to the extent of such excess amount, at the option of service provider, shall be determined based on invoice or date of completion of provision of service. (date of payment is ignored)

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# POINT OF TAXATION

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## □ **Best Judgment to determine POT:**

**New Rule 8A to provide that where the POT cannot be determined on the ground that date of invoice or date of payment or both are not available, Officer may require concerned person to produce accounts, documents, evidence and effective rate of tax prevalent at different point of time shall be applied by an order in writing, to the best of his judgment.**

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## Issue of Invoices / Bills / Challans

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## Issue of Invoice / Bill / Challans

- Issue of Invoice / Bill / Challans by a Service Tax assessee is mandatory.
- The same should be issued within 14 days
  - ❖ from the date of completion of taxable service or
  - ❖ receipt of payment towards the service, whichever is earlier.
- ❖ If the service is provided continuously for successive periods of time and the value of such taxable service is determined or payable periodically - from the last day of the said period.

*(Proviso to Rule 4A (1) of the Service Tax Rules, 1994).*

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## Contents of Bills / Invoices / Challans issued by SP.

- There is no prescribed format for the Invoice Bill / Challans.
- It should contain
  - ❖ Serial Number,
  - ❖ Name, address and registration number of the service provider,
  - ❖ Name and address of the recipient of service,
  - ❖ Description, classification and value of taxable service being rendered,
  - ❖ The amount of Service Tax payable (ST & EC separately).
- If the service provider is a Banking company, the details at Sl. No. & name of service recipient is not required.

*(Rule 4A of the Service Tax Rules, 1994).*

An example of an invoice is mentioned below :

Name & Address of the Service Provider & other identification information)						
Bill No. Reference		INVOICE / BILL			Date	
To Name of the Service Recipient Address of the service Recipient			Documentation Reference for claim of exemption based on the service recipient :			
Sl. No.	Description	Period/Units	Materials	Expenses	Services	Total
Declaration under Allied laws/ other Commercial informatio			Gross Total			
			Less presumptive Abatement			
			Taxable Value of Service			
Classification of Taxable service			Add Service Tax			
			Add Education Cess			
Date of Receipt			Gross Billing Value			
Service Tax RN/AC			Signature & Authentication information			

## Contents of Bills / Invoices / Challans – issued by Input Service Distributor.

- Input service distributor R-4A (2) shall issue invoice or a bill containing.
- ❖ Name and address of the person providing input services.
- ❖ Sl. Number and date of invoice, bill or challans issued by SP.
- ❖ Name and address of input service distributor.
- ❖ Name and address of the recipient of the credit distributed.
- ❖ The amount of credit distributed.
- ❖ Sl. Numbered and signed .



## Contents of Consignment Note issued by GTA-as SP.

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- Goods Transport agency (GTA) should issue a consignment note.
- It should contains following information:
  - ❖ Serial number;
  - ❖ Name of the consignor and consignee;
  - ❖ Registration No. of the vehicle;
  - ❖ Details of the goods transported;
  - ❖ Details of the place of origin & destination; and
  - ❖ Person liable for payment of Service Tax (consignor or consignee / GTA).

*(Rule 4B of the Service Tax Rules, 1994).*

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Whether the amount of Service Tax charged from the client should be indicated separately in the Bill / Invoice / Challan ?

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- It is mandatory to indicate the amount of Service Tax and the Education Cess separately in the Bills / Invoices / Challans (Sec.12A of the CE Act, 1944)
- It would also facilitate the recipient of the service to avail the CENVAT credit.

*(Rule 4A of the Service Tax Rules, 1994).*

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# Disclaimer:

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This presentation provides general information existing as at the time of preparation. The presentation is meant for general guidance and no responsibility for loss arising to any person acting or refraining from acting as a result of any material contained in this presentation. It is recommended that professional advice be taken based on the specific facts and circumstances. This presentation does not substitute the need to refer to the original pronouncements.

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Here is a short story with a beautiful message...



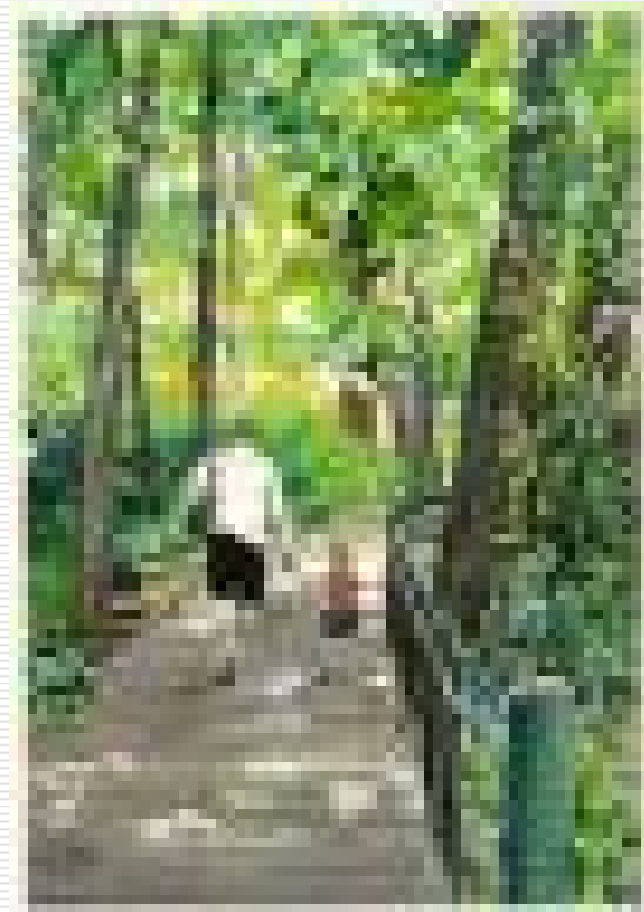
A Little girl and her father were crossing a bridge. The father was kind of scared so he asked his little daughter, "Sweetheart, please hold my hand so that you don't fall into the river." The little girl said, "No, Dad. You hold my hand."

"What's the difference?" Asked the puzzled father. "There's a big difference," replied the little girl. "If I hold your hand and something happens to me, chances are that I may let your hand go."

## Here is a short story with a beautiful message...

But if you hold my hand, I know for sure that no matter what happens, you will never let my hand go....”

- In any relationship, the essence of trust is not in its bind, but in its bond.
- So hold the hand of the person who loves you rather than expecting them to hold yours...
- This message is too short.....but carries a lot of Feelings



Thanking You

