

**SYLLABUS
T.Y. B.COM.**

**RELATED APPLIED COMPONENT GROUP – PAPER-V
DIRECT AND INDIRECT TAXES**

| | | |
|-------------------|---------------------|-----------------|
| SECTION-II | INDIRECT TAX | 40 Marks |
|-------------------|---------------------|-----------------|

SERVICE TAX (20 MARKS)

1.1. Basic Terms :

- Taxable Service
- Input Service
- Output Service

1.2. Provisions related some important services :

- Practising Chartered Accountants
- Business Auxiliary
- Commercial Training and Coaching
- Renting of Immovable Property
- Mandap Keeper
- Works Contract

1.3. Other important aspects :

- Computation of Tax of above taxable services (including abatements)
- Service tax and cess payable
- CENVAT credit related to service tax(only basic principles)
- Registration and returns

MVAT (20 MARKS)

2.1. Definitions:-

Section

- 2(4): Business
- 2(8): Dealer
- 2(12): Goods
- 2(13): Importer
- 2(15): Manufacturer
- 2(20): Purchase Price
- 2(22): Resale

- 2(24): Sale
- 2(25): Sale Price
- 2(27): Service
- 2(33): Turnover of sales and rule 3

2. 2. Incidence and levy of tax

- S. 3: Incidence of Tax:
- S.4 : Tax payable
- S.5: Tax not leviable on certain goods
- S.6: Levy of tax on goods specified in the schedule
- S.7: Rate of tax on packing material
- S.8: Certain sales and purchases not liable to tax

2.3. Payment of tax and recovery

Section 42. Composition of Tax and Notification 1505/Taxation-I

2.4. Set- off Refunds etc.

Section 48 & 49 Set- off Refunds etc. along with rules 52, 53, 54.& 55

Notes:

1. Syllabus restricted to study of specified sections , specifically mentioned rules and notifications only
2. All topics include computational problems/case study
3. The law in force on 1st April immediately preceding the commencement of Academic Year will be applicable for ensuing examinations.



| PATTERN OF QUESTION PAPER | | |
|--|-----------------------------------|----------------------------|
| For regular students/ IDE students final examination at the University level to be conducted | | |
| Section –II: – Indirect Taxes | | 40 Marks |
| | Service Tax (20 marks) | MVAT (20 marks) |
| No. of questions to be asked | 2 | 2 |
| No. of questions to be answered | 2 | 2 |
| | Marks | Marks |
| 1 Question with internal option one on theory including short problems and other on objective questions including <i>inter alia</i> (a) multiple choice (b) fill in the blanks (c) match the columns (d) true or false | 10 | 10 |
| 1 Question with internal option both on computational problems | 10 | 10 |
| Section III: for IDE Students – Income Tax Only (In lieu compulsory project of 20 marks to be submitted by regular students) | | |
| Total 20 Marks | Duration 1/2 hour | |
| 1 Question with internal option on practical topic | | 10 |
| 1 Question-answer in one sentence | | 10 |



SECTION-II

INDIRECT TAXES – SERVICE TAX

1

SERVICE TAX- PRELIMINARY

Synopsis

1. Introduction and objectives:
2. Legal framework
3. Tax Rate
4. Taxable Services
5. Valuation of Taxable Service
6. Point of Taxation Rules,2011
7. Self Examination Questions

1. INTRODUCTION AND OBJECTIVES:

- 1.1. The lesson deals with the service tax, the newest but one of the most significant taxes recently introduced, its framework and provisions for levy of the tax. The lesson begins with tracing the history of service tax in India and goes on to discuss various legal provisions relating to the service tax.
- 1.2. There was a long felt need for bringing service sector to tax. The Chelliah Committee on Tax Reforms recommended introduction of service tax on the service sector as a union levy on a selective basis. Based on the, recommendation the Chelliah Committee, the service tax was first imposed with effect from 1st July, 1994 on few selected services and not on all the services. In 2004 the parliament amended the constitution of India, 2004, and inserted a new article 268A for imposition of service tax by the central government and appropriation and distribution thereof between the Central and the States. Despite being relatively a new tax, Service tax has become a significant contributor to the exchequer. There is general belief that the Service tax is forerunner to the now proposed Goods and Service Tax GST Regime.

2. LEGAL FRAMEWORK :

- 2.1.** There is no separate statute for service tax. Instead, it is governed by Sections 64 to 96 -I of Chapters V & VA of the Finance Act, 1994 as amended from time to time. The Act extends to the whole of India (including the designated areas in the Continental Shelf and Exclusive Economic Zone of India except the state of Jammu & Kashmir. Besides, the Finance Act, 2004 Chapter VI - for levy of Education Cess @ 2% on the Service Tax and (iii) The Finance Act, 2007 – for levy of Secondary and Higher Education Cess of 1% on Service tax are also relevant.
- 2.2.** For administration of the service tax regime, following rules are relevant :
- Service Tax Rules, 1994
 - Service Tax (Advance Ruling) Rules, 2003
 - CENVAT Credit Rules, 2004
 - Export of Services Rules, 2005
 - Service Tax (Registration of Special Category of Persons) Rules, 2005
 - Service Tax (Determination of Value) Rules, 2006
 - Taxation of Services (Provided from Outside India and Received in India)Rules, 2006
 - Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007
 - Service Tax (Publication of Names) Rules, 2008
 - Service Tax (Provisional Attachment of Property) Rules, 2008
 - Service Tax Return Prepares Scheme, 2009
 - Service Tax (Removal of Difficulty) Order, 2010 and
 - The Point of Taxation Rules, 2011
- 2.3.** Besides, several notifications, trade notices, circulars and orders granting exemptions, abatements and clarifications are issued on various issues from time to time by the Central Government and the Central Board of Excise & Customs (CBEC) , that has been assigned with the task of administration of Service Tax in India. For meanings of various terms, definitions of services and service providers etc., the Act refers to various other laws such as Architects Act, 1972, Chartered Accountants Act 1949, Motor Vehicles

Act, 1988, Banking Regulation Act, 1949 etc. Words and expressions not defined in the Act but defined in Central Excise Act, 1944 or rules made there under, apply to service tax as well.

- 2.4. Broadly the Scheme of Finance Act, 1994, which is the parent statute providing for levying of service tax is as follows;

| Section | Subject matter |
|---------|---|
| 64 | Extent, commencement and application of the service tax |
| 65 | Definition of various terms used in the Act |
| 66 | Empowers the Central Government to levy and collect service tax on taxable services |
| 67 | Explains the method of valuation of taxable services |
| 68 | Specifies persons liable to pay taxes on services rendered |
| 69-96 | Provides for various procedural matters including registration, filing of returns appeals, revision, assessment, penalties etc. |

All reference to the section are to the sections of Finance Act, 1994.

3. TAX RATE

Current rate of service tax w.e.f. from 01-04-2012 is 12% *ad valorem* on the value of taxable services rendered . In addition, education cess @ 2% and secondary and higher education cess @ 1% are also leviable on service tax, making effective levy of **12.36% increased from the previous rate of 10.3% since 24-2-2009.**

Originally, Service tax was introduced with effect from 1-7-1994 on three services with the tax rate of 5% subsequently increased to 8% w.e.f. 14-5-2003 and 10% plus 2% Education Cess w.e.f. 10-9-2004 taking the total levy to 10.2%.

Service tax rate was 12% plus education cess of 2% (total 12.24%) w.e.f. 18-4-2006 till 10-5-2007 and with the introduction of secondary and higher education cess of 1% rose to 12.36% during the period 11-5-2007 to 23-2-2009. The trend was reversed as a part of the stimulus to Indian economy during the recession and service tax rate was reduced to 10.36 % w.e.f. 24-2-2009 onwards vide Notification No. 8/2009-ST dated 24-2-2009.

4. TAXABLE SERVICES:

Section 66, which is the charging section, which provides for levy of service tax on taxable services prescribed under Section 65(105). Under Section 65(105) 'taxable service' means any service provided or 'to be provided'.

On a collective reading of the two sections, it will follow that entering into a contract for providing service and the rendering or provision of taxable service are the two taxable events attracting service tax liability.

Question that a particular service is taxable or not on a particular date will depend on the law prevailing on the date on which the services were rendered to a client or a customer. Similarly rates of tax will also depend upon the rates prevailing on the date of rendering services.

The term 'taxable services' does not include services provided free of cost. The services to be provided in future are taxed only if payment in its respect is received in advance.

5. VALUATION OF TAXABLE SERVICE

5.1. Section 67 of Finance Act, 1994 contains provisions for valuation of taxable services for charging service tax. It provides that service tax is payable on "the gross amount charged by the service provider for such service provided or to be provided by him" and it includes "any amount received towards the taxable service before, during or after provision of such service". Thus, service tax is payable when advance is received in respect of a taxable service to be provided.

5.2. Gross Amount charged

Under section 67(2)], with effect from 10.9.2004 , 'gross amount charged' is equal to value of taxable service' plus service tax payable, where the gross amount charged is inclusive of service tax payable. Accordingly tax is calculated by making back calculations. In other words when charges for services are inclusive of service tax, the value of taxable service shall be arrived at as follows:

$$\text{Value of taxable services} = \frac{\text{Gross amount charged (inclusive of service tax)} \times 100}{100 + \text{Rate of service tax i.e 112.36}}$$

And

$$\text{Service tax liability} = \frac{\text{Gross amount charged (inclusive of service tax)} \times 12.36}{100 + \text{Rate of service tax i.e 112.36}}$$

Illustration-1 :

A Chartered Accountant raises a bill for audit service at a gross amount of Rs. 55,150 inclusive of service tax. Find out the value of taxable services rendered and the service tax payable on the services.

Solution:

Under explanation 2 to section 67, the value taxable service and the service tax are deemed to be equal to the gross amount charged. Since the service tax rate is 12.36%, the gross amount will be $100 + 12.36 = 112.36\%$ inclusive of service tax.

Therefore Value of Taxable service will be $55150/112.36\% =$ Rs. 49,083 and service tax will be Rs. 6,067 being 12.36 on Rs. 49,083.

5.3. Liability for service tax on receipt basis

As, the taxable event is provision of service, liability for service tax arises when service is provided. However, service, tax is payable only when the value of taxable service is received.

The Act refers to the word "Value" of service and not amount of service. Therefore services will be taxed when there is a match between the amount and the value of service provided. It is on this ground that the advances were not taxed as the services were not rendered.

Now with the new amendment the legal position is drastically changed. In case the assessee has not collected service tax from its clients but is liable to pay service tax, the receipts generated by such assessee shall be deemed to be inclusive of service tax (CCEx v. Advantage Media Consultant)

The Finance Act, 2011 read with The Point of Taxation Rules, 2011 has, with effect from 01-05-2011 changed the basis of service tax liability from receipt to accrual, whichever is earlier for all service providers except individuals and partnership firms having turnover of taxable service upto Rs 50 lakh. As a result the liability will accrue on cash basis for one set of service providers and on accrual basis for another set of service providers. Point of taxation or accrual method is discussed separately.

Illustration -2

A Chartered Accountant provides audit services for the year 2011-12 by 30-09-2012 and immediately raises the bill for the audit services rendered. The payment of audit fee is received on 10-04-2012. Determine the date on which liability for payment of service tax arises.

Solution:

There is no liability for service tax for the year 2011-12 as the audit services are not rendered on that date. The taxable event when the liability for payment of service tax will arise is 30-09-2012 but liability for payment of service tax arises only on 10-04-2012 and the service tax will be payable for the quarter ended 30-06-2012. Alternatively, the firm may at its option, or incase its gross taxable service during a financial year exceed Rs.50 Lakh, the date of liability will be 30-09-2011.

5.4. Whether Service tax payable on advance money received

Where payment for taxable service is received in advance, tax is to be paid on value of service attributable to relevant month/quarter [Explanation to Rule 6(1)]. However, for the purpose of valuation of taxable service, the service provider is required to include any sum received towards taxable service before, during or after the taxable service is provided or to be provided [Explanation 3 to Section 67]. It may be noted that prior to May 13, 2005 advance money was not taxable until the services were actually rendered. However, the finance Act, 2005 has changed the situation drastically by inserting Explanation 3 to s. 67 which reads as follows:

“For removal of doubt it is hereby declared that the gross amount charged for the taxable service shall include **any amount received towards the taxable service before, during or after provision of such service.**”

In other words, a person is liable to pay the tax as soon as the consideration towards the taxable service is received.

Illustration-3

1. In the above Illustration, if a sum of Rs. 25,000 is paid as advance towards audit fee on 15-05-2011, when would the liability to pay service tax would arise?

Solution:

Under Explanation 3 to Section 67, the service tax will be payable in the month of May 2011. Actual valuation of liability in on 10-04-2012 will be Rs. 50,000 but credit will be given for the tax paid on advance money received.

Illustration- 4.

A Chartered Accountant provides taxable audit services for the accounting year 2010-11 valued at Rs 20 lakhs on which service tax liability was arrived at Rs 2,47,200. A immediately raises the bill for Rs 22,47,200 on 30-09-2011. Arrive at the service tax liability and the time of payment in the following cases:

- a) Rs 20 lakhs is received on 31-05-2012 in full and final settlement of the bill.
- b) Rs 5 lakhs is received as advance on 03-11- 2010 and Rs 17 lakhs is received on 31-05-2012 in full and final settlement of the bill.
- c) Rs 10 lakhs is received as an advance on 03-11-2011. The client refuses to pay any further and the remaining amount become bad debts.

Solution:

The service tax liability will be as under:

- a) The service tax liability would arise on 31-05-2012 (date of receipt of payment) and would be payable in the quarter ending June 2012. Sum of Rs, 20 lakhs would be deemed to be inclusive of service tax u/s 67 [2] Accordingly the service tax liability would be Rs.2,20,007 i.e [20 lakhs x 12.36*12.36/112.36]
- b) Service tax will arise when on Rs 5 lakhs is received as advance on 02-11 2010 and will be payable in the quarter ending December 2010. Service tax payable will be Rs 55,002 i.e Rs 5 lakhs x 12.36*12.36/112.36

The service tax liability on Rs 17 lakhs would arise on 31-05-2012 and would be payable in the quarter ending June 2012. Service tax liability will be Rs.1,87,007 ie. Rs 17 lakh, 12.36*12.36/112.36

- c) The service tax liability on Rs 10 lakhs would arise on 03-11-2011 and will be payable in the quarter ending December 2011. Service tax liability will be Rs. 1,10,004 ie. [10 lakh*12.36/112.36] No further tax liability would arise since the remaining amount was not received by the assessee.

Under the point of taxation rules, the service tax liability will arise on 30-09-2011 when the service was completed and the invoice was raised. This will be applicable on firm having turnover of taxable services of Rs.50 Lakh or more.

5.5. Services to be provided- Advance Taxable

As a consequential amendment to include the advance amounts received in the value of taxable services provided, definition of "taxable service" will include, not only the "service provided" but also "services to be provided" with effect from May 13, 2005 being the date of enactment of Finance Act, 2005. Under the Point of Taxation Rules, date of payment of advance will be the date of liability even if no service is provided.

5.6. Value of services provided from outside India to be included

In recognition to the principle that service tax is a tax on services rendered India, including taxable services provided from outside India to a recipient in India vide explanation to section 65(105) inserted w.e.f . 13.5.2005. and now it is put beyond doubt that **it is the place of taxable service rendered and not the domicile of the service provider that will decide the taxability of the service.**

On this analogy foreign firms providing taxable service to Indian clients will be liable to pay service tax on their Indian turnover of taxable services. However, in such cases the recipient of the service shall pay the service tax u/s 68(2)

5.7. Free services or notional amounts not included:

Service tax is not payable on services provided free of charge. Notional value of free services is disregarded. However, if any service is for a consideration that is not ascertainable or in kind, then the valuation of the taxable service will have to be done in accordance with the provisions of the Service Tax (Determination of Value) Rules, 2006. Alternatively, if any service is rendered for a consideration that is not wholly or partly consisting of money, then the service tax liability will arise on the amount in money with the addition of the equivalent of the consideration that may have been received in forms other than money.

Illustration-5:

A coaching class charges normal tuition fee of Rs. 10,000 for students from South Mumbai colleges, Rs. 5,000 for students coming from rural area and no fees to students for children of freedom fighters and teachers. 20 students were admitted from each of the four categories. Find out the value of taxable services and also the service tax liability

Solution:

| | |
|---|-------------|
| General Students | Rs 2,00,000 |
| Rural Students | Rs 1,00,000 |
| Children of Freedom fighters | Free |
| Children of teachers | Free |
| Gross Value of Services Provided | Rs 3,00,000 |
| Since the service tax is not charged separately | Rs 33,001 |
| The service tax liability shall U/s 67 be | |
| RS 3,00,000* 12.36/112.36 | |

In the above example any concessional tariff is not subjected to service tax.

5.8. Reimbursements not included in the value of taxable services.

Under rule 5(1) As a rule reimbursement of certain expenses incurred by a service provider like travelling, boarding and lodging, etc. while providing a taxable service. often termed as **'out of pocket' expenses are really charges for taxable services and are includible in the value of taxable services.**

However, expenditure incurred by a service provider on behalf of service receiver and then recovered from him is not part of service provided, but is incurred by him as per business practice or convenience. - Rule 5(2) provide that the expenditure or costs that a service provider incurs, as a pure agent of the client, shall be excluded from the value if such service provider fulfils prescribed conditions

Vide various trade notices, CBEC has clarified **that no service tax is payable on reimbursement/out of pocket expenses incurred on behalf of the service recipient**, subject to documentary evidence in respect of certain services such as Consulting Engineer's Services, Customs House Agent's Services etc. some of such expenses are Octroi, demurrage. Coolie charges, railway tickets , custom duty, port fees etc.

Illustrations-6:

A Chartered Accountant based in Mumbai goes for audit work at Bangalore. The Auditee Company reimburses Rs. 9, 800 being the actual cost of travel and hotel bills. Discuss the taxability of the sum.

Solution:

The Chartered Accountant has not incurred the travelling expenses 'on behalf of the client' In fact a Bangalore audit will necessarily require travelling to that city. Hence the reimbursement of expenses of Rs. 9,800 will be liable to service tax.

But assuming that the Chartered Accountant has been summoned on behalf of the client by any authority like stock exchange explain the accounting treatment of certain items, such a visit will not be customary visit for audit but on behalf of the client and in this case service tax will not be payable on Rs. 9,800 because it is towards reimbursement of expenses only subject to presentation of documentary evidence of Air Tickets, hotel bills etc.

5.9. Cost of materials supplied not included in the value of taxable services

Service tax is a tax on the value of services. Supply of material is not a "service". In BSNL v. Union of India, the Supreme Court reiterated the position that 'sale' element is not liable to service tax; only the 'service' element is chargeable.

Therefore, service tax is not chargeable on cost of materials supplied by the service provider to the recipient of the services. In fact, in case of some services like construction services which are composite in nature (i.e. include labour as well as cost of material) an *ad hoc* abatement is allowed from the total amount charged to the customer.

The nature of the transaction depends on the intention of the parties. If the parties intended to enter into a contract of purchase and sale of goods, the transaction will be 'sale' even though some services might have been provided, will be taxed separately.

The exemption is subject to presentation of documentary proof and subject to the conditions that -

- a. Service provider has not availed credit under CENVAT Credit Rules, 2004 for such input or capital goods sold; or
- b. In case such credit is availed by service provider, the amount equal to such credit is paid before sale of such goods or materials.

6.POINT OF TAXATION FOR PAYMENT OF TAX

6.1 One major change made in service tax effective from 01-04-2011 is the introduction of Point of Taxation [POT] Rules, 2011 (as amended **upto 01-04-2012**) to introduce the provisions relating to payment of service tax on accrual basis instead of actual receipt basis and to specify date relevant for determining rate of service tax. For the transitory period option was granted to assessee to continue payment on receipt basis upto 30-06-2011, if they so desire.

6.2 Basic Terms;

"Point of taxation" means the point in time when a service shall be deemed to have been provided- Rule 2(e)

"Invoice" means the invoice referred to in rule 4A of Service Tax Rules, 1994 and shall include any document as referred to in the said rule -. Rule 2(d):

"Continuous supply of service" means any service, which is provided or to be provided continuously or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time, or where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition- Rule 2(c);

The following services have been notified as “continuous supply of services”

- (a) Telecommunication service [65(105)(zzzx)]
- (b) Commercial or industrial construction [65(105)(zzq)]
- (c) Construction of residential complex [65(105)(zzzh)]
- (d) Internet Telecommunication Service [65(105)(zzzu)]
- (e) Works contract service [65(105)(zzza)]

“Date of payment”:- Rule 2A

- (i) date of payment shall be; :
 - a. Date on which payment is entered in books of account or
 - b. Date of credit in bank account of the person liable to pay tax
 Whichever is earlier
- (ii) Date of credit in bank account will be the date of payment if :
 - a. there is a change in effective rate of tax or
 - b. when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account; **and**

the credit in the bank account is after four working days from the date when there is change in effective rate of tax or a service is taxed for the first time; and

(iii) the payment is made by way of an instrument which is credited to a bank account, Date of payment will always be construed as the date on which any payment is received is to be determined under any other rule.

6.3 Time-limit for issue of invoice –Rule 4A

(a) Under Rule 4A **every** service provider is required to issue an invoice, bill or challan in respect of taxable service provided or to be provided within **30 days** from the date of

- of completion of such taxable service or
- receipt of any payment towards the value of such taxable service, whichever is earlier.

(b) The time limit will be **45 days** for a banking company or other financial institution or a finance company (NBFC)

(c) The time limit will be 30 days of the completion of each taxable event In case of continuous supply of service,

6.4 Determination of point of taxation- Rule 3 and Rule 6 :

Point Of Taxation or the deemed date of provision of service shall be **the earliest day** of the following:

(A) **Date of issue of invoice** if the invoice issued within the time limit of 30 or 45 days as given above ;

- (B) **Date of the completion of taxable service or event**, if invoice is not issued within the above time limit
- (C) **Date of receipt of the payment** by the service provider if the payment is received before the time specified above to the extent of such payment.
- (D) Each advance to be regarded as a separate point of taxation

This position is tabulated below :L

| POINT OF TAXATION - GENERALLY – RULE -3 | | |
|---|---|-------------------------------|
| Point of Time -1 | Point of Time -2 | Point of time |
| 3(a)- Issue of invoice | Completion of service or receipt of payment | Time of invoice |
| 3(a) Completion of service | Issue invoice within 30/35 days | Time of Invoice |
| Proviso to 3(a) Completion of service | Invoice not issued within 30/35 days | Date of completion of service |
| 3(b) and expln to rule 3 Receipt of payment or advance | Invoice or completion of service | Time of receipt of payment |

Illustration-10 :-

Find out the point of taxation if the:-

- (a) Service was completed on 10-04-2012
- (b) Invoice was issued on 20-04-2012 and
- (c) payment was received on 30-04-2012

Solution :

Earliest of the three, 10-04-2012 will be the POT.

Illustration-11:-

What will be the effect if in the above case, the service was completed on 10-06-2012,

Solution : -

Point of Taxation will be 20-04-2012

Illustration-12:-

On 01-04-2012 , A receives the payment in advance for service to be provided by the end of each quarter .A does not issue any invoice till the work is completed. What will be the POT?

Solution ;

01-04-2012 being the advance shall be treated as the date of payment even if no invoice was issued.

Illustration-13:-

A undertakes a contract of internal audit of a company subject to following terms “

1. The Company pays on 01-04-2012 Rs 1,00,000 in advance to mobilize the requisite audit staff
2. A raises bill in respect of the work done during a quarter by the end of succeeding quarter. The Company settles the bill within a month of the date of invoice deducting Rs 25,000 every quarter towards the advance paid to A.
3. Assume that every quarter the amount billed was Rs 1,00,000
4. Company was not satisfied by the performance of A and refused to pay the bill for the last quarter.

Determine the tax liability of A assuming that A is covered by point of taxation Rules.

Solution

A is liable to pay tax on accrual basis - Rule 7.

Under S. 67 (Expln -2), gross amount payable is equal to the value of service provided or to be provided and amount of service tax. Hence liability of A will be as follows:

1. Any advance for service to be provided is taxable u/s 67. Hence A will be liable to pay service tax in respect of the advance of Rs 1,00,000 received on 01-04-2012 irrespective of the fact that neither the service was not provided, nor the invoice was raised. Service Tax of Rs 11,000 i.e. $[Rs\ 1,00,000 * 12.36/112.36]$ will be payable in the June-2012 quarter by 05-07-2012
2. A raises the invoice of Rs 1,00,000 for first quarter [April- June, 2012] on 30-09-2012 and it is paid by 31-10-2012. Against this, the advance of Rs 25,000 is adjusted (taxed earlier). Hence, A will have to pay service tax of Rs 8,250 i.e. $[75,000 * 12.36/112.36]$ by 05-07-2012 for the first quarter – even if the bill was raised in the next quarter as this a case of continuous service and the taxable event is complete at the end of each quarter 30-06-2012 in this case.
3. Similarly, for the quarter July- Sept, 2012, taxable event will arise on **30-09-2012**, although the date of invoice and date of payment will be 31-12-2012 and 31-01-2013 respectively. A shall pay service tax of Rs 8,250 by 05-10-2012.
4. For the third quarter October- December, 2013, taxable event will be 31-12-2012 (Date of invoice 31-03-2013 and date of

payment 30-04-2013); A shall pay service tax of Rs 8,250 by **05-01-2013**.

5. For the last the quarter Jan- March, 2013, A shall pay service tax of Rs 8,250 by **31-03-2013**, date of taxable event being 31-03-2013 (Date of invoice 30-06-2013 and date of payment 30-04-2013). With the completion of audit, the taxable service is rendered giving rise to the accrual of the value of taxable service.
6. If the company has not paid the amount, still A will be liable to pay service tax on accrual basis.

6.5 Point Of Taxation on change of effective rate of tax – rule 4

During the current financial year rates of service tax have been revised from 10.3% to 12.36% with effect from 01-04-2012. To deal with this situation and to determine which of the date will be the effective point of taxation, as it will affect the service tax liability by almost 20%, Rule 4 has been inserted.

The provisions are summarised under

a. If the service was provided before the change of rate

(i) Date of receipt of payment and date of invoice both are after the change of rate – Point of taxation will be earliest of the two dates, implying **the new tax rate** to be applicable

(ii) Invoice is issued before the change but payment is received after the change, date of invoice will be the Point of Taxation and **old rate** will be applicable.

(iii) Invoice issued after the date, but payment is received prior to change, date of payment will be the point of taxation and **old rate** will be applicable,

a. If the service was provided after the change of rate

(i) Date of receipt of payment and date of invoice **both are prior to the change of rate** – Point of taxation will be earliest of the two dates, implying **the old tax rate** to be applicable

(ii) Invoice is issued before the change but payment is received after the change, date of payment will be the Point of Taxation and **new rate** will be applicable.

(iii) Invoice issued **after** the date, but payment is received **prior** to change, date of invoice will be the point of taxation and **new rate** will be applicable,

To sum up, Service provided before the change of rate, will be taxed at **old rates** except when the issue of invoice and receipt payment both were after the change in rate and service provided after the change of rate, will be taxed at **new rates** except when the issue of invoice and receipt payment both were after the change in rate .

This position is tabulated as under:

| Point Of Taxation on Change of Effective Rate of Tax | | | | | Present law |
|--|--------------------------|---------------------------|--------------------------|------|-------------|
| Provision of service | Date of issuing invoice | Date of receiving payment | Point of taxation | Rate | |
| Provision of Service Before the date of change | after the date of change | after the date of change | Earlier of the two | NEW | NEW |
| | prior to change | after the date of change | Date of issue of invoice | OLD | NEW |
| | after the date of change | prior to change | Date of payment | OLD | OLD |
| Provision of Service after the date of change | prior to change | after the date of change | Date of payment | NEW | NEW |
| | prior to change | prior to change | Earlier of the two | OLD | OLD |
| | after the date of change | prior to change | Date of issue of invoice | NEW | OLD |

Illustration- 14

Find out the point of taxation and the rate of tax applicable from the following:

Old Rate 10.3% changed to New Rate 12.36% on 01-04-2012
Date of providing service – Case A – 01-03-2012 Case B -01-05-2012

Assume date of issue of invoice Prior date 15-03-2012 , Post-change date- 15-05-2012 respectively and payment within seven days at both points .

Solution

| Point Of Taxation on Change of Effective Rate of Tax | | | | | Present law |
|--|-------------------------|---------------------------|-------------------|--------------|--------------|
| Provision of service | Date of issuing invoice | Date of receiving payment | Point of taxation | Rate | |
| 01-03-2012 | 15-05-2012 | 22-05-2012 | 15-05-2012 | 12.36 | 12.36 |
| | 15-03-2012 | 22-05-2012 | 15-03-2012 | 10.3 | 12.36 |
| | 15-05-2012 | 22-03-2012 | 22-03-2012 | 10.3 | 10.3 |
| 01-05-2012 | 15-03-2012 | 22-05-2012 | 22-05-2012 | 12.36 | 12.36 |
| | 15-03-2012 | 22-03-2012 | 15-03-2012 | 10.3 | 10.3 |
| | 15-05-2012 | 22-03-2012 | 15-05-2012 | 12.36 | 10.3 |
| Under the old scheme, the date of payment received was only relevant | | | | | |

6.6 Point of Taxation in case of a new service –Rule 5

If a service was not liable to service tax and is taxed for the first time, no tax shall be payable if the *payment was received before* such service became liable to service tax against the invoice issued either before the service became taxable or within a period of 14 days from that date. It may be noted that grace period of 14 days is allowed only to issue of bill and not to the payment. Payment has to be received before the date on which the service became taxable.

6.7 Point Of Taxation on Cash basis- Rule -7

| Service | Point of Taxation |
|---|---|
| Export of Services | Date of Receipt of Payment within the time allowed or extended by the RBI |
| The persons covered u/s 68(2) of the Finance Act, 1994; (such as goods transport service , where the receiver pays the service tax | the date on which payment is made if the date is within a period of six months of the date of invoice, otherwise this rule will not apply (exist) |
| Individuals or proprietary firms or partnership firms of the following professional providing taxable services:(upto 31-03-12) | Date of Receipt of Payment |

| | |
|---|---|
| (i) Consulting Engineer (ii) Practising Chartered Accountant (iii) Scientist or a Technocrat (iv) Legal Consultancy Services (v) Practising Company Secretary (vi) Practising Cost Accountant (vii) Interior Decorator (viii) Architect | |
| Associated Enterprises as defined in Rule 2(b) read with sec 92A of I.T. Act,1961 if AE providing the service is located outside India. | The date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier. |
| Individual and partnership firms (including LLP) (including professional firms given above) having total turnover of taxable services of less than Rs 50 lakh in the previous year of the total entity and not individual unit vide [Fourth proviso to Rule 6(1) of Service Tax Rules inserted w.e.f. 1-4-2012] | Date of Receipt of payment |

After 01-04-2012 this firms will be treated as part of Individuals or firm (LLP) as discussed below.

6.8 Point of Taxation in case of Copyrights etc- Rule 8 ,

Sometimes whole of the amount of consideration like royalties and payments pertaining to copyrights, trademarks, designs or patents, is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services **by a person other than the provider** results into any payment of consideration.

In such a case, the service shall be treated as having been provided –

- each time when a payment in respect of such use or the benefit is received by the provider in respect thereof, or
- an invoice is issued by the provider, whichever is earlier.

In other words, every payment or benefit will be the point of taxation.

6.9. Determination of point of taxation in other cases.- Rule -8A

Where the point of taxation cannot be determined as per these rules as the date of invoice or the date of payment or both are not available, the Central Excise officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.

7. SELF EXAMINATION QUESTIONS

1. What is the constitutional validity of the levy of service tax?
2. What is Service? How it is value
3. What are the items not included in the definition of taxable service?
4. When does the liability of payment of service tax areas?
5. X contracts with Y, a real estate agent to sell his house and thereupon Y gives an advertisement in television costing Rs 5 lakhs. Y billed Rs 15 lakhs to X including charges for TV advertisement showing them separately in invoice. Y says that the value of taxable service in his case is Rs 10 lakhs only, as he acted as a pure agent of X while taking advertisement. Compute service tax to be billed.
[if ads are issued to sell the house, part of services. If ad issued separately on sellers' behalf to be excluded]
6. A clearing and forwarding agent charges Rs 50,000 for his services, which includes Octroi charges Rs 10,000 paid on behalf of the client. Compute the value of the taxable service and service tax liability.
(Octroi will be excluded)
7. A service, provider incurs costs such as travelling expenses, postage, telephone, etc. of Rs 20,000. He charges Rs 80,000 for his services and indicates the said costs separately on the invoice issued to the recipient of service. Compute the amount of service tax to be billed by the service provider.
(Taxable unless the service provider is a pure agent]



EXEMPTIONS FROM SERVICE TAX

Synopsis:

1. Introduction and objectives
2. Exempted services
3. Small Service Providers
4. Export of Services
5. Services provided to United Nation or an International Organisations
6. Services provided to Developers/ SEZ Units
7. Import of Services
8. Illustrations
9. Self examination Questions

1. INTRODUCTION AND OBJECTIVES:

U/s 93 of the Finance Act, 1994, the Central Government may grant partial or total exemption, in respect of some services by issuing an 'exemption notification'. Such exemption may be partial or total, conditional or unconditional.

Besides, some services are exempted from service tax as they do not fall in any of the clauses describing taxable services. Services provided by general doctors are not covered under the purview of service tax and as such are not taxable. Then there are some services, which are exempt in certain circumstances or if rendered by certain persons or rendered to certain persons or places.

This lesson intends to explain the concept of exemptions available in respect of service in different circumstances.

2. EXEMPTED SERVICES

Rule 2(e) defines 'exempted services' as taxable services which are exempt from the whole of service tax leviable thereon, and includes services on which no service tax is leviable under

Section 66 of the Finance Act. Exemption may be granted in many ways:

- a. Some services are covered in the definition of the taxable services, but specific exemption is granted in the clause itself or by way of notification.
- b. In respect of some services, only a portion is taken as the taxable services. Rest of the services is exempted. These exemptions are considered at their respective places. For example, in respect of a practising Chartered Accountant representation by a Chartered Accountant was not covered under the purview of taxable services upto 30-04-2011. Similarly lawyer's services are liable only if rendered by or to a business entity e/g. a firm of lawyers to a company.
- c. Some service are not taxable if rendered to certain recipients e.g. services rendered to UN and other International Organisations, SEZ, etc.
- d. Export of taxable service is exempted under Export of Services rules, 2005 subject to fulfillment of certain conditions.
- e. Small service providers are exempted from service tax upto a limit of Rs. 10 lakhs subject to certain conditions.

3. SMALL SERVICE PROVIDERS

3.1. Threshold limit

Small service provider rendering services of an aggregate value not exceeding ten lakhs rupees including exempt and non-taxable services in any financial year are exempt from the whole of service tax leviable thereon.

Further, if the value of services provided is less than Rs 10 lakhs in previous year then they are not required to pay service tax in current financial year till they reach turnover of Rs 10 lakhs.

However, Registration is required if turnover exceeds Rs 9 lakhs per annum.

Aggregate value" means the sum of total of the **first consecutive payments received during financial year, gross** amount as prescribed under section 67.

*With the introduction of Point of Taxation Rules, the above definition has been changed with effect from 01-04-2012 vide notification N0 5/2012 –Service Tax dated 17-05-2012 as follows: ("aggregate value" means the sum total of value of taxable services charged in the first consecutive *invoices issued or required to be issued*, as the case may be, during a financial year but does not*

include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66 of the said Finance Act if any.

3.2. Exceptions

The exemption is not available in the following cases:

1. Taxable service provided by a person under a brand name or trade name of another person(including name, mark, logo, label, signature or other written word) whether registered or not. The exemption is not available if service is provided under brand name of other person.
2. Such value of taxable service for which service tax is payable by person other than service provider as specified in section 68(2)). Read with Service Tax Rules 1994. Where tax has been paid by the assessee as recipient of the service like in case of goods transport agency, exemption is not available to consignee/ consignor. For illustration in case transport of goods by road service, where service tax is payable by the user of services.
3. Services provided to a SEZ unit or developer for consumption within SEZ are exempt. In case of specified services are utilised for export, refund is admissible.
4. Services provided by RBI .service provided to RBI is.

3.3. Conditions for exemption

The above exemption is available subject to following conditions:

1. Exemption is optional, which once exercised in a financial year, cannot be withdrawn during remaining part of such financial year;
2. Service provider SHALL NOT avail CENVAT credit under Rule 3 or Rule 13 of CENVAT Credit Rules, 2004 in respect of the following :
 - a. service tax on any input service used for providing such taxable service for which exemption is opted for;
 - b. duty on capital goods received in his premises during period in which the service provider has availed the exemption;
3. Service provider SHALL avail CENVAT credit ONLY on inputs or input services used for providing taxable services received on or after the day he starts paying tax;
4. Service provider to pay amount of CENVAT credit taken by him for inputs lying in stock or in process on the day on which he starts availing exemption;
5. Balance unutilised CENVAT credit on account of inputs and input services (used in providing service for which exemption

is availed) shall lapse on the date on which he starts availing exemption in other words the same can not be claimed.

6. For arriving at aggregate value of taxable service, services provided under all the categories of service rendered from one or more premises are to be included.

3.4. Determination of the threshold limit

In order to calculate the threshold limit of Rs. 10 lakhs following principles are adopted:

1. Threshold limit is calculated in respect of **all the premises** from where the services are provided.
2. The threshold limit includes **all the services** provided by the service provider in cases where the service provider provides more than one taxable services.
3. The limit is calculated with reference to the financial year.
4. The aggregate value of threshold limit of Rs. 10 Lakhs means: the sum total of first consecutive in respect of
 - a. payments received in respect of taxable services in respect of services excluded from POT and
 - b. Bills raised or to be raised in respect of taxable services in all the other cases.
5. Threshold limit does not include the value of services which are tax free under other notifications.
6. In case of a goods transport agency (GTA), the payments made by the user of service u/s 68(2) (i.e., company, firm, factory etc, will be excluded for ascertaining the exemption limit.

4. EXPORT OF SERVICES

Export of services in normal sense refers to rendering of services out of India. Thus, ordinarily services rendered outside India are not covered by the service tax provisions and no service tax is payable if taxable service is exported as per Export of Service Rules. If such tax is paid, it is refundable. Further, Rebate/refund of service tax paid on input services is obtained if taxable service is exported.

Any service can be exported outside India if;

- (a) the service is be provided from India and used outside India and
- (b) Payment for such service is received by the service provider in convertible foreign exchange.

In addition, there are some conditions based on the category of service (e.g. immovable property outside India, service performed outside India, recipient is located outside India). However, the exemption is subject to several legal conditions discussed below.

4.1. Export of services upto 14th March, 2005

Export of Taxable services means the following:

In relation to category A services- taxable service provided in relation to immovable properties situated outside India (like insurance, architect, real estate agent etc.), the immovable property should be located outside India, *service should at least be partly performed outside India.*

In relation to category B services –taxable services performed wholly or partly outside India like Courier agency, Practising Chartered Accountant, event manger and clearing & forwarding agent, in such cases services even if performed partly outside India shall be considered as services performed outside India,

In relation to category C services- which inter alia include the banking & financial services (residual category covering all the other services not covered above)-such taxable services which are provided and used

1. in relation to commerce or industry and the recipient is located outside India. In case the recipient has an office or establishment in India, then the order from & provision or rendering of services at both must be outside India and the payment must be received in India in convertible foreign exchange.
2. in relation to services other than commerce or industry ,the recipient is located outside India at the time when such services are received

Illustration -1:

An European gets the services of a motor garage to fix his car in Mumbai and makes payment in convertible foreign exchange. It will not be export of service as service is used in India.

Illustration-2:

A Chartered Accountant gives his consultancy on tax matter to a non- resident, who remits the fees in Indian currency, the

exemption will not be available although the service is used outside India

Illustration-3:

An advertising agency makes a film for Singapore Tourism and receives payment in dollar for services provided in India. This will be case of service exported “from’ India to be used outside India. It will qualify exemption as export of service.

4.2. Rebate on Export of services

Following is the legal position in respect of export of service after 14th March, 2005, the date on which Export of Service Rules, 2005 came into effect.

With effect from 15th March, 2005 any taxable service may be exported out of India to any country other than Nepal & Bhutan without payment of whole of the service tax and educational cesses. The rebate is available at 100% of service tax and educational cesses on taxable services exported to any country other than Nepal and Bhutan subject to certain procedural compliances such as filing of claim in form ASTR -1 together with documentary evidence of payment of such taxes and a declaration that such services have been exported.

Similarly, rebate of service tax paid on such taxable service or service tax or duty paid on excisable goods, as the case may be, of whole of the used in providing such services paid will be allowed subject to a minimum of Rs. 500 upon filing of claim in form ASTR-2 together with necessary documents. In other words, rebate will not be admissible if it is less than Rs. 500. In case of default entire tax amount may be recovered with interest.

5. SERVICES PROVIDED TO UNITED NATION OR AN INTERNATIONAL ORGANISATIONS

As per notification no.16/2002 dated 2.8.2002 taxable services rendered to the United Nation and other International organisations as declared by the Central Government under section 3 of the UN (Privileges & Immunity) Act, 1974 are exempt from service tax. Any taxable service provided to Diplomatic Missions for official use of such mission as well as for the personal use or for the use of the family members of diplomatic agents or career consular officers posted in a foreign diplomatic mission or consular post is exempt in terms of the notifications No. 33/2007-St dated 23rd May, 2007 and 34/2007-ST dated 23rd May, 2007 respectively.

6. SERVICES PROVIDED TO DEVELOPERS/ SEZ UNITS

Taxable services of any description provided to a developer of Special Economic Zones (SEZ) or a unit (including unit under construction) of Special Economic Zones by any service provider for consumption of services within such Special Economic Zones is exempt from whole of the service tax leviable thereon subject to the conditions that –

- a. the developer has been approved by the Board of Approvals to develop, operate and maintain the Special Economic Zones;
- b. the unit of the Special Economic Zones been approved by the Development Commissioner or Board of Approvals, as the case maybe, to establish unit in the Special Economic Zones,
- c. the developer or a unit of Special Economic Zones shall maintain proper account of receipt and utilisation of the said taxable services.

(Notification No. 4/2004 dated 31.3.2004 as amended)

For this purposes,

- a. “Developer” means a person engaged in development, operation or maintenance of Special Economic Zones and also includes any person authorised for such purposes by the developer,
- b. “Special Economic Zone” means a zone specified as Special Economic Zone by the Central Government under explanation 2(iii)to the proviso to the section 3(1) of the Central Excise Act, 1944.and
- c. “Board of Approvals” means the combined Board of Approvals for export oriented units and Special Economic Zone units as notified in the Official Gazette, from time to time, in the Ministry of Commerce and Industry.

7. IMPORT OF SERVICES

Taxable services are taxed under Section 66A of the Finance Act. Where any taxable service is

- A. provided or to be provided by a person who:
 - i. has established a business or.
 - ii. has a fixed establishment from which the service is provided or to be provided.

- iii. has his permanent address or usual place of residence in a country other than India, and

B. received by a person who has place of business, fixed establishment, permanent address or usual place of residence, in India, then such service shall be taxable service. It shall be treated as if the recipient had himself provided the services in India and all the service tax provisions shall apply accordingly. The import of services shall be taxable if it is used for the purpose of the recipient's business or profession. The categories A, B and C are similar to that of export provisions. The service tax paid on such import of services shall be eligible as CENVAT credit.

If the service received by the recipient qualifies as 'input service' under Rule 2(l) of the CENVAT Credit Rules, 2004, the recipient can claim the CENVAT credit on the service tax paid by him on the imported services.

As per Rule 2(l) of the CENVAT Credit Rules, 2004, "input service" means any service,-

- i. used by a provider of taxable service for providing an output service; or
- ii. used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal, and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto 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 and outward transportation upto the place of removal

8. EXEMPTION IN RESPECT OF COST OF GOODS AND MATERIALS:

When a taxable service (such as catering, construction) includes cost of goods and material sold apart from the service charged to the recipient, a proportionate amount equal to the value of goods and materials sold by the service provider to the recipient of service shall be exempt from service tax leviable if -

i) No credit of duty paid on such goods and materials sold has been taken under the provisions of the CENVAT Credit Rules, 2004 or

ii) if such credit has been taken by the service provider on such goods and materials, he has paid back the amount equal to such credit availed before the sale of such goods and materials.

Recently, this deduction is provided in the form of a composition amount e.g. 4.8% in case of a construction contract or by way of abatement or reduction from the gross value.

9. SERVICES RENDERED TO SPECIFIED PERSONS

i. Reserve Bank of India :(RBI)

- All taxable services provided or to be provided **by the RBI to any person are exempt from service tax**
- Taxable service provided or to be provided **to the RBI** by any person, when the service tax for such services is liable to be paid by the RBI u/s 68(2) are exempt in the hands of the service provider .
- Taxable services received in India from outside India by the Reserve Bank of India are exempt u/s 66A.

ii. TBI & STEP

Services provided or to be provided by a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India shall be exempt from the levy of the service tax.

10. ILLUSTRATIONS :

1. A Chartered Accountant has three offices at Fort, Thane and Bandra having turnover of Rs.8, 50,000, Rs.1,50,000 and Rs.2,00,000 respectively. He wants to claim benefit of threshold limit at each of the three offices. Advise him.

Solution;

The threshold limit of Rs. 10 Lakhs will be calculated by taking the total taxable services from all the three offices. He can not claim separate threshold limit for each of the three premises.

2. B registers turnover of taxable service of Rs. 8 Lakh by 30th June, 2011. He exercises the right to exemption. Because his

service tax liability works out to Rs. 1, 00,800 being 12.6% of Rs. 8 Lakh. During this period he estimated set off claim of only Rs. 80,000. In the later part of the year the turnover shoots upto additional Rs. 3 Lakhs. He finds that correct CENVAT credit Rs. 95,000 not Rs. 5,000. B wants to withdraw the option. Advise him.

Solution:

Option once granted can not be withdrawn during the financial year. However, once he crosses the threshold limit of Rs. 10 Lakh, he has to start paying service tax on the remaining services which are taxable. Any CENVAT credit arising then can be claimed against his liability for Service Tax.

3. Advise A Coaching class which imparts training for GMAT to a Nepali student and claims it to be export of service.

Solution:

It will not be export of service since the service is not accruing out of India.

4. Will the services rendered by a Chartered Accountant by auditing the books of a Dubai based company in Mumbai be export of service. .

Solution:

If audit fee is received in India in Indian currency , It will not be export of service as the service has not accrued outside India.

However, if the fee is received in convertible foreign exchange it will be export of service even if rendered from in India foreign exchange is being received into India from outside India.

5. What will be tax liability of a Chartered Accountant who audits the accounts of a multinational corporation also having some offices in India;

Solution:

It will be export of Service since the service accrues out of India and foreign exchange is received from abroad.

6. A mandap keeper providing services in Macau for IIFA awards and claims it to be an export of service, will he succeed?

Solution:

Yes, as the immovable property in relation to which Mandap services are provided is outside India, it will be export of services.

9. SELF EXAMINATION QUESTIONS

- 1) What are the incentives available to exporter of services?
- 2) What are the conditions for claiming rebate of service tax?
- 3) What is meant by export of services?
- 4) What is 'import of service'? Is import of services taxable?
- 5) In which cases are small service providers taxable?
- 6) A Chartered Accountant from Jammu and Kashmir conducted audit for the Shimla warehouse of ABC Ltd. The bill was of Rs 75,000. What should be the service tax to be collected?

(Hint: No service tax liability since the scope of service tax does not extend to Jammu and Kashmir)

- 7) An architect undertook a contract for the renovation of a house in Kashmir. He charged a lump-sum for the contract for Rs 5 lakhs. Calculate the service tax liability of the architect.

(Hint: No service tax liability since the scope of service tax does not extend to Jammu and Kashmir)

- 8) JKL Co Ltd provided services valuing Rs 7 lakhs during the FY 2011-12. During, 2012-13 it has provided taxable services valuing Rs 10 lakhs and has received payments towards taxable services Rs 7.5 lakhs. It also received services in the nature of transport of goods by road valuing Rs 50,000, in respect of which it is the person liable for the payment of service tax. Compute the service tax liability of JKL Co. Assume that goods transport service is exempt to the extent of 75% of value thereof.

(Ans: both the years, service provided covered by exemption. ST on transport service u/s 68(2): $50,000 \times 25\% \times 12.36/112.36 = \text{Rs } 1,375$)

- 9) KJ & Co Chartered Accountants raised bills for Rs12,75,000 in September, 2012 including a bill for Rs 75,000 to UN. They have not received payments for bills of Rs 1.5 lakhs till date, but receive a sum of Rs 50,000 in advance from XYZ Ltd on 25-09-2012 for the service was to be provided in October 20102 Calculate the taxable value of services and amount of service tax payable.

(Not covered by POT, gross amount chargeable $12.75 - 0.75 - 1.5 + 0.50$) Rs 11 lakhs and service tax liability Rs 1,21,003)

- 10) In Q 9 assume KJ & Co are covered by Point of Taxation Rules and ascertain the tax liability.

(Gross amount chargeable $(11.75 - 0.75 + 0.50)$ Rs 11.50 lakhs and service tax liability Rs 1,26,504)

- 11) B is a small provider of services. Thinking that the taxable services rendered by him would not exceed Rs. 10 lakhs, he availed the option of not paying service tax under the threshold limit. Subsequently, the services provided by him were of Rs. 10 lakhs. He realised he did not claim a CENVAT Credit of Rs. 90,000. Can he now claim the credit by changing his option to set-off of service tax?

(Hint: No, option once exercised cannot be changed. Additionally, registration is required once the turnover exceeds Rs 9 lakhs.)



TAXABLE SERVICES

SYNOPSIS:

1. Taxable service
2. Types of Taxable Services
3. Valuation of Taxable Services
4. Self Examination Questions
5. Appendix

1. INTRODUCTION AND OBJECTIVE :TAXABLE SERVICE

Service Tax was introduced for the first time in 1994. To that end, the Finance Act, 1994 contained sections 64 to 96, which deal with the levy of service tax. Initially only three services viz Telephone Services, Insurance Services and Share Broking services were covered. Three more services - Advertising Services, Pager Services and Courier Services were added to the list in 1996. Thereafter, more and more services were covered and as of February, 2011 there are as many as 119 taxable services. During this period, six services were omitted from the list. Moreover, the scope of many taxable services was widened from time to time. Several new services have been added w.e.f. 01/05/2011.

The lesson aims to deal with the broad scheme of the law relating to service tax, concept of "Taxable Service" and other relevant provisions in the paras to follow. References to sections in this chapter are with reference to the sections contained in the Finance Act, 1994 as amended from time to time, unless the context means otherwise.

2. TAXABLE SERVICE

Section 65 defines "Taxable Service" to mean any of the services defined in that section provided by a person to his

customer/ client. The list of taxable service is given in Section 65(105). Therefore, the event that attracts the service tax is the rendering or provision of service listed in Section 65(105) *by a person to his customer/ client.* It is important as all the services rendered or provided by a person are not liable to service tax unless such services are included in Section 65(105). Obviously , the question that a particular service is taxable or not on a particular date will depend on the law prevailing on the date on which the services were rendered to a client or a customer. Similarly rates of tax will also depend upon the rates prevailing on the date of rendering services.

One must note that the *taxable services must be provided for a consideration.* Services provided free of cost are outside the scope of the term 'taxable services'. As per the present law , liability to service tax arises on the date on which services were rendered or provided but liability to pay service tax is linked with the receipt of payment in respect of services rendered or to be provided in future . Thus even the advance payment received for rendering any taxable service is liable to service tax

The position is drastically changed w.e.f. 01-05-2011 with the introduction of Point of Time Rules in respect of almost all the services with some exception of Cost etc .The new provisions broadly provide that the service tax will be payable on accrual, receipt or raising of invoice , whichever is earlier.

The list of taxable services is given in appendix at the end of the lesson –

Following services were omitted from the list of Taxable Services

1. Telephone
2. Pager
3. Leased Circuit
4. Telegraph
5. Telex
6. Facsimile (FAX)

As per the syllabus, only six of the taxable services viz. practicing Chartered Accountancy, Business Auxiliary, Commercial Training and Coaching, Renting of Immovable Property, Mandap Keeper and Works Contract are relevant and will be dealt with in detail in the next chapter.

3. VALUATION OF TAXABLE SERVICES

Value of taxable service means the gross amount received by the service provider for the taxable service provided or to be

provided by him. Taxable value has to be determined as per the provisions of Section 67 of the Finance Act read with the Service Tax (Determination of Value) Rules, 2006.

For certain services, a specified percentage of abatement is allowed from the gross amount collected for rendering the services subject to the conditions, inter alia, that the Cenvat credit has not been availed by the service provider and the benefit under Notification No. 12/2009-ST dt 20.6.2003 has also not been availed.

There is also a composition scheme for 'works contract service' where the person liable to pay service tax in relation to works contract service provided or to be provided instead of paying service tax at the rate specified in Section 66 of the Act by paying an amount equivalent to 4% of the gross amount charged for the works contract. The gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, paid on transfer of property in goods involved in the execution of the said works contract.

The problems on valuation of taxable services which are in syllabus will be covered in detail in the subsequent chapters.

4. SELF EXAMINATION QUESTIONS

1. Explain the concept of taxable services.
2. List out the names of at least 10 of the various taxable services that are covered under service tax.
3. Define the concept of 'valuation of taxable service'.



APPENDIX
TAXBLE SERVICES - SECTION 65(105)

| | | | |
|----|---|----|---|
| 1 | (a) Stock Broker | 34 | (zn) Port |
| 2 | (d) General Insurance | 35 | (zo) Repair, Reconditioning, Restoration or Decoration of Motor Vehicle |
| 3 | (e) Advertisement Agency | | |
| 4 | (f) Courier | 36 | (zq) Beauty Treatment |
| 5 | (g) Consulting Engineer | 37 | (zr) Cargo Handling |
| 6 | (h) Custom House Agent | 38 | (zs) Cable Operator |
| 7 | (i) Steamer Agent | 39 | (zt) Dry Cleaning |
| 8 | (j) Clearing & Forwarding Agent | 41 | (zv) Fashion Designer |
| 9 | (k) Manpower recruitment or supply agency | 42 | (zw) Health Club and Fitness |
| | | 43 | (zx) Life insurance |
| 10 | (l) Air Travel Agent | 44 | (zy) Insurance auxiliary services concerning life insurance business |
| 11 | (m) Mandap Keeper | | |
| 12 | (n) Tour operator | | |
| 13 | (o) Rent A Cab scheme operator | 45 | (zz) Rail Travel Agent |
| 14 | (p) Architect | 46 | (zza) Storage and warehousing |
| 15 | (q) Interior decorator | 47 | (zzb) Business Auxiliary |
| 16 | (r) Management or Business consultant | 48 | (zzc) Commercial Training or Coaching Centre |
| 17 | (s) Chartered Accountant | 49 | (zzd) Commissioning & installation agency |
| 18 | (t) Cost Accountant | 50 | (zze) Franchise |
| 19 | (u) Company Secretary | 51 | (zzf) Internet Cafe |
| 20 | (v) Real Estate Agent | 52 | (zzg) Management, maintenance or repair |
| 21 | (w) Security Agency | 53 | (zzh) Technical testing and analysis |
| 22 | (x) Credit Rating Agency | 54 | (zzi) Technical inspection and certification |
| 23 | (y) Market Research Agency | 55 | (zzk) Foreign Exchange Broker |
| 24 | (z) Underwriter | 56 | (ztl) Other Port |
| 25 | (za) Scientist or Technocrat | 57 | (zzm) Airport or a civil enclave |
| 26 | (zb) Photography | 58 | (ztn) Transport of Goods by Aircraft |
| 27 | (zc) Convention | 59 | (zzo) Business Exhibition |
| 28 | (zh) On-line Information & Data Base Access or retrieval | 60 | (ztp) Transport of goods by road |
| 29 | (zi) Video tape Production | 61 | (ztp) Commercial or Industrial Construction |
| 30 | (zj) Sound Recording | 62 | (ztr) Intellectual Property |
| 31 | (zk) Broadcasting agency | 63 | (zts) Opinion Poll |
| 32 | (zl) Insurance auxiliary services concerning general insurance business | 64 | (ztt) Outdoor Caterer |
| | | 65 | (ztu) Programme Producer |
| 33 | (zm) Banking or Financial institution | 66 | (ztv) Survey and Exploration of Mineral |

| | | | |
|----|---|-----|---|
| 67 | (zzw) Pandal or shamiana | 93 | (zzzw) Credit card, debit card, charge card or other payment card |
| 68 | (zzx) Travel Agent | 94 | (zzzx) Telecommunication |
| 69 | (zzy) Forward Contract | 95 | (zzzy) Mining of mineral, oil or gas |
| 70 | (zzz) Transport of goods other than water through pipeline or other conduit | 96 | (zzzz) Renting of immovable property |
| 71 | (zzza) Site formation and clearance, excavation and earthmoving and demolition | 97 | (zzzza) Works contract |
| 72 | (zzzb) Dredging | 98 | (zzzzb) Development and Supply of Contents |
| 73 | (zzzc) Survey and Map Making | 99 | (zzzcc) Asset management |
| 74 | (zzzd) Cleaning Activity | 100 | (zzzcd) Design |
| 75 | (zzze) Club or Association | 101 | (zzzze) Information Technology Software |
| 76 | (zzzf) Packing Activity | 102 | (zzzff) Management of Invst. |
| 77 | (zzzg) Mailing List Compilation and Mailing | 103 | (zzzgg) Stock Exchange |
| 78 | (zzzh) Construction of Complex | 104 | (zzzhh) Commodity Exchange |
| 79 | (zzzi) Registrar to an issue | 105 | (zzzzi) Processing and Clearing House |
| 80 | (zzzj) Share Transfer Agent | 106 | (zzzjj) Supply of Tangible Goods |
| 81 | (zzzk) Automated teller machine operations, maintenance or mangt. | 107 | (zzzkk) Cosmetic Surgery or Plastic Surgery |
| 82 | (zzzl) Recovery of any sums | 108 | (zzzll) Transport of Coastal Goods; and Goods transported through Inland water Service |
| 83 | (zzzm) Sale of space or time for advertisement | 109 | (zzzmm) Legal Consultancy Service |
| 84 | (zzzn) Sponsorship | 110 | (zzznn) Games of chance, including lottery, Bingo or Lotto |
| 85 | (zzzo) Air transport of such passenger embarking in India for domestic journey or international journey | 111 | (zzzzo) Clinical Establishment |
| 86 | (zzzp) Transport of goods by Rail | 112 | (zzzpp) Keeping or maintaining of medical records |
| 87 | (zzzq) Support services | 113 | (zzzqq) Promotion or marketing of a brand of goods, service, event or endorsement of name |
| 88 | (zzzr) Auction of property | 114 | (zzzrr) Commercial use or exploitation of any event |
| 89 | (zzzs) Public Relation | 115 | (zzzss) Electricity exchange |
| 90 | (zzzt) Ship Management | 116 | (zzztt) Copyright |
| 91 | (zzzu) Internet telecommunication | 117 | (zzzuz) Preferential Location |
| 92 | (zzzv) Transport of such person embarking from any port or other port in India, by a cruise ship. | 118 | (zzzvv) Restaurant |
| | | 119 | (zzzvw) Hotel, inn, guest house, club or camp-site |



SPECIFIC TAXABLE SERVICES

Synopsis

1. Introduction and Objectives
2. Practising Chartered Accountancy Services
3. Business Auxiliary Service
4. Commercial Training and Coaching
5. Renting of Immovable Property
6. Mandap Keeper
7. Works Contract
8. Classification of Taxable Services
9. Illustrations
10. Self Examination Questions

1. INTRODUCTION AND OBJECTIVE:

1.1. Taxable services are the services included in classification of Taxable Services section 65(105) of the Finance Act, 1994.

Of the 119 taxable services defined in Section 65(105), six services viz Practising Chartered Accountancy, Business Auxiliary Service, Commercial Training and Coaching, Renting of Immovable Property, Mandap Keeper and Works Contract are in syllabus .The lesson aims at a detailed study and analysis of the provisions relating to these six services, their implication and tax effects

1.2 The lesson also deals with an important question of classification, when a service provider provides taxable services prima facie classifiable under two or more sub-clauses e. g, a Chartered Accountant runs a Coaching Class and also acts as a Management Consultant and all three activities are three independent heads of services defined under Section 65(105). In such cases, the following principles will be applicable:

- 1) If a service is classifiable under a specific description, then the most specific description will be preferred to a general description.
 - 2) If the services are composite ones combining more than one services which can not be classified according to their description as per (a) above, such services will be classified according to the service category that gives them their essential character.
 - 3) If both the above tests fail, the service will be classified in the category under sub-clause that occurs first, among sub-clauses which equally merit consideration
 - 4) Still, if the classification is not resolved, the service will be classified in the category, which comes earlier in the clauses of Section 65.
- 1.3.** With effect from 01-04-2012, amount of service tax payable will be at the uniform rate of 12.36% inclusive of 12% Service Tax, 2% of Service tax as Education Cess and 1% of Service tax Secondary and Higher Education Tax as for all the services.

2. PRACTISING CHARTERED ACCOUNTANT

2.1 Taxable event and who is liable? :

On and from 16/10/1998 services provided or to be provided to any person by a practising Chartered Accountant in his professional capacity, in any manner are classified as taxable services under section 65(105)(s) of the Finance Act, 1994.

2.2. Scope of service and essential conditions:

The section is applicable if the following conditions are to be satisfied:

- a) Service is provided by a person or a concern,
- b) Such person or concern is a practising Chartered Accountant holding a certificate of practice from the Institute of Chartered Accountants of India and the Service is provided
 - i. to another person
 - ii. in professional capacity
 - iii. in any manner.
- c) Service may be past service provided on and after 16/10/1998 or,
- d) Services may be provided in future i.e. any advance payment received towards the services to be rendered will be to service tax ,

Section 65(83)] defines Chartered Accountant as “a person who is a member of the Institute of Chartered Accountants of India and is entitled to hold a certificate of practice granted under the Chartered Accountants Act, 1949 and includes any concern engaged in rendering services in the field of chartered accountancy. Further a Chartered Accountant working with another chartered accountant or a firm of Chartered Accountants is deemed to be in practice despite the employment.

2.3. Services provided in “professional capacity” “in any manner”

Services rendered by a Chartered Accountant in his professional capacity are auditing, accounting, tax practice, certification, consultancy, arbitration, valuation or acting as liquidator etc.

Illustrations-1:

Certification services for exchange control purposes provided by a practising chartered accountant under the Foreign Exchange Management Act, 1999 to a client will be taxable services.

Illustrations-2

Services of accounting or auditing or costing or certification provided by a practicing chartered accountant, will also be taxable services.

Illustrations-3

Management consultancy services provided by a Practising Chartered Accountant will be covered under this clause.

Illustrations-4

A Chartered Accountant teaching in College will not be providing services in his professional capacity; hence any remuneration from teaching activities will not be taxable.

Illustrations-5

Authorship of a textbook in accountancy by a Practising Chartered Accountant, will not amount to providing services in his professional capacity; hence any remuneration from such activities will not be taxable.

Illustrations-6

A practising chartered accountant provides services to a client of appearing before the Foreign Exchange Appellate tribunal or the Income Tax Appellate Tribunal as his authorized representative, he shall NOW be liable to pay Service Tax as the exemption granted to representation services before the statutory authorities is withdrawn w.e.f 01-05-2011 vide Notification No.32/2011 – Service

Tax , dated April 25, 2011., which has withdrawn the Notification 25/ 2006-ST dated 13-7-2006) granting exemption to such service.

2.4. Export of service by a Chartered Accountant

With effect from 27/02/2010, a Chartered Accountant will qualify for export of service even if the service is provided from India. Till 27-2-2010, these qualified as export of service only if performed outside India.

Therefore all KPOs providing return filing service from India for their foreign clients would now qualify for exemption as exporters of such services under amended Rule 3(1) (ii) of Export of Service Rules.

2.5 Exemptions:

A Chartered Accountant will be entitled to normal exemptions like any other service provider e.g

1. Exemption as a small service provider upto Rs. 10 lakh
- 2 Services provided to the UN and International Agencies
3. Services provided to Special Economic Zones (SEZ) and SEZ developers
4. Services provided by Reserve Bank of India
4. Export of service as discussed above
5. Proportionate value of goods and material provided by the Service Provider and included in service.

2.6. Valuation of Taxable services

Gross amount including reimbursement of expenses [except when the reimbursement is in respect of expenses paid under the mandate or on behalf of the client] charged to a client in respect of the taxable services would be the value of taxable services provided and attract service tax currently at 12.36% .

3. BUSINESS AUXILIARY SERVICE

3.1. Scope and who is liable?

Section 65(105)(zzb) provides for levy of service tax with effect from 1-7-2003 on "Any service provided or to be provided to a client, by any person in relation to business auxiliary service" will be taxable and Section 65[19] defines 'Business auxiliary service' as follows:

'Business auxiliary service' means any service in relation to —

- (i) Promotion or marketing or sale of goods produced or provided by or belonging to the client; or
- (ii) Promotion or marketing of service provided by the client;

Explanation: — For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, “service in relation to promotion or marketing of service provided by the client” includes any service provided in relation to promotion or marketing of games of chance, organised, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo or

- (iii) Any customer care service provided on behalf of the client; or
- (iv) Procurement of goods or services, which are inputs for the client;

Explanation - For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, “inputs” means all goods or services intended for use by the client.

- (v) Production or processing of goods for, or on behalf of, the client; or
- (vi) Provision of service on behalf of the client; or
- (vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as-

- billing, issue or collection or recovery of cheques, payments,
- maintenance of accounts and remittance,
- inventory management,
- evaluation or development of prospective customer or vendor,
- public relation services, management or supervision, and includes services as a commission agent, but does not include any activity that amounts to manufacture of excisable goods within the meaning of Section 2(f) of the Central Excise Act, 1944

Explanation - For the removal of doubts, it is hereby declared that for the purposes of this clause,—

“Commission agent” means any person:

- who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration,

and includes

- any person who, while acting on behalf of another person —
- (i) deals with goods or services or documents of title to such goods or services; or

- (ii) collects payment of sale price of such goods or services; or
- (iii) guarantees for collection or payment for such goods or services; or
- (iv) undertakes any activities relating to such sale or purchase of such goods or services.

3.2 Value of Taxable Service:

Value of taxable service shall be the gross amount charged by the service provider of such service rendered by him.

3.3. Scope of Service:

Broadly speaking the business auxiliary services are support services provided by any person” (Earlier term concern” has been substituted by person.] to a client for following:

- promotion or marketing of his goods/services, provided by the client
- providing customer care service on behalf of the client, or
- providing any incidental or auxiliary support service to the client for conduct of his business These services include ;
 - job work on behalf of client for manufacturing production or processing of goods , which is not ‘manufacture’ or
 - providing service on behalf of the client ,
 - procurement of goods and services which are input for client
 - other incidental services
 - billing, issue or collection or recovery of cheques, payments,
 - maintenance of accounts and remittance,
 - inventory management, evaluation or development of prospective customer or vendor,
 - public relation services, management or supervision,
 - commission agents
 - Sales agents
 - Purchase agents
 - Processing of loan papers
 - *Del credere* agent
 - Mutual fund agents
 - Call centres &
 - Medical transcription centres
 - brand ambassadors

The scope of service is progressively expanded. In the beginning, only the service provided by a ‘concern’ was taxable.

Now the word 'concern' has been substituted by any "person", hence service provided by any person will be taxable. Similarly, commission agents were included in the list of services from 9/07/1994 onwards.

3.4. Exceptions:

Following activities will not be considered as "business auxiliary services"

- a. Job work if it amounts to 'manufacture' of 'excisable goods' as it is chargeable to excise duty
- b. Normal trading i.e. Purchase and sale of goods.
- c. Similarly trading in service is not provision of service
- d. Commission paid to Directors or the salesman is also not considered as "business auxiliary services"

3.5. Service Specific Exemptions:

A. The following services are **fully exempt** from service tax under this head:

1. Services in relation to agriculture, printing, textile processing or education which consisted of
 - a) procurement of goods or services, which are inputs for the client; or
 - b) production or processing of goods for, or on behalf of, the client; or
 - c) provision of service on behalf of the client; or
 - d) service incidental or auxiliary to any activity specified in sub-clauses (a) to (c) [Notification No. 14/2004-ST dated 10-9-2004].
2. Services of commission agents in relation to sale or purchase of agricultural produce - Notification No. 13/2003-ST dated 20-6-2003.
3. Job work if the goods after processing are returned back to client or the raw material supplier for use in or in relation to manufacture of 'other goods' by the client. The 'other goods' should be such that appropriate duty should be payable on such goods and such goods should not be wholly exempt from excise duty or chargeable to nil rate of duty - Notification No. 8/2005-ST dated 1-3-2005.
4. Job work in relation to manufacture of pharmaceutical products, medicines, perfumery, cosmetics or toilet preparations containing alcohol which are charged to excise duty under Medicinal and Toilet Preparations (Excise Duties) Act, 1955 have been fully exempted from service tax - Notification No. 32/2009-ST dated 1-9-2009.

5. Services of Sub-broker on stock exchange vide Notification No. 31/2009-ST dated 1-9-2009.
6. Value of inputs (not being capital goods)used in providing service in the course of manufacturing or processing of alcoholic beverage provided CENVAT credit is not claimed in respect of such inputs- vide Notification No. 39/2009-ST dated 23-9-2009.
7. Processes outsourced in gem and jewellery sector which amount to 'manufacture' within the scope of Section 2(f) of the Central Excise Act, 1944. Any service of production or processing in relation to the manufacture of cut and polished diamonds of gold or other precious metals and plain and studded diamonds of gold and other precious metals would be exempt from service tax. Notification No. 21/2005-ST dated 7-6-2005
8. Service provided by notified news agencies specified u/s10 22B of Income Tax Act, 1961 vide Notification No.1 13/2010-ST dated 27-12-2010., provided such news agency is set up solely for collection and distribution of news and does not distributes its income to its members in any manner.

B. Partially exempt services:

Abatement of 30% is available when Business Auxiliary Service is provided in relation to production or processing of parts and accessories used in the manufacture of cycles, cycle rickshaws and hand-operated sewing machines, for, or on behalf of, the client subject to the condition that gross amount charged from the client is inclusive of the cost of inputs and input services, whether or not supplied by the client and the job worker does not avail any CENVAT Credit. Thus, effective rate of duty will be charged on 70% of taxable value. Notification No. 1/2006-ST dated 1-3-2006.

C. It has been clarified that agents receiving commission from mutual funds will be liable to tax under this service head

D. It is also clarified that canvassing or propaganda say for advertising will not be advertising service but business auxiliary service.

4. COMMERCIAL TRAINING AND COACHING

4.1. Scope of the Section and Definitions:

With effect from 01.07.2003, 'Commercial training or coaching' services have been brought in the service tax net. The section was amended by the Finance Act, 2010 with retrospective effect from 01.07.2003 to clarify that absence of profit motive clarified is not material to determine the liability for service tax.

"Commercial training or coaching' services ' are defined in Section 65(105)(zzc) "any service provided or to be provided to

any person, by a commercial training or coaching center in relation to commercial training or coaching for a consideration whether or not such training or coaching is conducted with a profit motive”

Commercial training or coaching’ means any training or coaching provided by a commercial training or coaching centre [section 65(26)].

Under section 65(27) ‘Commercial training or coaching centre’ means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include pre-school coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force

4.2. Conditions:

On a collective reading of the above definitions and provisions, following conditions to attract must be satisfied to attract the service tax liability:

- a. There must be provision of ANY coaching or training which is different from “education”
- b. Such coaching or training must be provided by a ‘Commercial training or coaching centre’.
- c. Home tuitions given individually not at a ‘Commercial training or coaching centre’ will not be chargeable to service tax.
- d. The coaching centre need not have profit motive. As long as the coaching or training is imparted for a consideration, it will be chargeable to service tax

4.3. Taxable services:

An analysis of the legal provisions shows that following services will be taxable services:

- i. Private coaching or training services,
- ii. Computer training or coaching Institutes,
- iii. Coaching imparted to students of standards 1 to 9,
- iv. Postal or interactive online coaching ,
- v. Training provided to employees by employer through an outside agency,
- vi. Commercial training programme to prepare the candidates or impart skills etc.,
- vii. “Commercial training or coaching for all unrecognized courses irrespective of the fact that such courses are

conducted by an institute which also conducts courses which may lead to grant of a recognised degree or diploma.

4.4. Exempted Service:

Exemption is two ways: Some services are excluded by the section itself hence are not taxable services and some services are exempted because of notifications granting exemptions to such services. These are dealt below:

A. Services excluded by the section :

- i. Pre-school coaching and training centre(with effect from 01-05-2011)
- ii. Any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force vide Notification No. 10/2003-ST dated 20-6-2003
- iii. Home tuitions.

B. Services not taxable because of the exemptions granted by notifications:

- i. Services provided by recognised colleges for training of competitive examinations or entrance tests.
- ii. Training provided to employees by employer free of charge.
- iii. Continuous education programmes for professional development and/or creating awareness of latest developments [but not to prepare the candidates or not to impart skills etc.] as it is not commercial training.
- iv. Vocational and recreational training Institutes. vocational training institute” means an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational Training, (NCVT) offering courses in designated trades as notified under the Schedule I of the Apprentices Act, 1961 The List figuring under Schedule I of the Act covers engineering as well as non-engineering skills/trades (Notification No.3/2010-ST, dated 27th February, 2010).
- v. any preschool coaching and training; or (ii) any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which is recognised by any law for the time being in force;when provided by any commercial coaching or training centre w.e.f 01-05-2011.

4.5. Illustration-7:

SIS, a proprietorship concern, is a coaching institute to prepare students for GMAT. Whether the entity would be liable to service tax.

Solution:

SIS being a “commercial coaching and training institute”, will be liable to pay service tax.

Illustration-8

Mrs. Kapoor, the owner of SIS classes a private coaching centre imparts tuitions from her home for GMAT?

Solution

Even if Mrs. Kapoor is taking tuitions from her home as the owner of SIS, which is a “commercial coaching and training institute” . Mrs. Kapoor’s home is the place of establishment. Hence, the services provided by Mrs. Kapoor would still be liable to service tax. It is immaterial that the place of establishment is also her residence.

. Illustration-9

Mrs. Kapoor, the owner of SIS classes a private coaching centre imparts tuitions to the students at their homes for GMAT?

Solution

If Mrs. Kapoor visits students’ homes to provide training on GMAT, it will be classified as home tuitions and hence will be exempt from service tax.

[Please note that the intention of the law is to tax commercial coaching at a place where students come and not to tax the coaching provided by teachers, who visit the homes of students.]

4.6. Value of taxable service:

Value of taxable service shall be the gross amount charged by the service provider of such service rendered by him. The value of taxable services shall not include the value of the material like textbooks, study material, etc. under the purview of service tax.

Illustration-10:

As a part of CA curriculum, the Institute of Chartered Accountants of India (ICAI) has made a 250 hour computer training compulsory. The course costs Rs 5,000 and can be done at NIIT Ltd. Will such

service offered by NITI Ltd be chargeable to tax? If yes, what should be the amount billed by NITI Ltd to the student?

Solution

The ICAI is a statutory institute , which confers degree / certificate recognised by law. Hence, it will not be chargeable to service tax vide notification No. 10/2003-such coaching or training is exempted from service tax which form an essential part of the course or curriculum leading to issuance of recognized certificate, diploma, degree or any other educational qualification if the receiver of such service makes payment for the entire course or curriculum to the institute or establishment issuing such certificate, diploma etc. and not to the commercial coaching or training center.

But NITI Ltd is a commercial coaching or training centre, hence course fee Rs 5,000 charged by it will be liable for service tax.

The service tax liability shall be = Rs 5,000 X 12.36% = Rs 618
Therefore the student should be billed Rs 5,618.

Illustration-11

Smart Tutorial offer postal coaching to SSC students. Whether the fee charged by them will be chargeable to service tax.

Solution:

Commercial coaching provided through postal means would also be covered under service tax and the charges including postal charges collected for rendering this service would be subjected to service tax.

Illustration-12

XYZ Ltd hires Shiva Academy to deliver training on communication skills for its employees. Whether fee paid to Shiva Academy for their services would be chargeable to service tax?

Solution:

The training imparted by Shiva Academy shall be chargeable to service tax since Shiva Academy is an external commercial coaching and training institute. As per Circular No.65/14/2003 dated 05.11.2000, if an employer hires an outside commercial coaching or training centre for imparting some training to its employees, then the payment made by the said employer to such coaching center will be chargeable to service tax.

Illustration-13

Shiva, HR manager for XYZ Ltd imparts training to the employees of XYZ Ltd. Whether the fees paid to Shiva would be chargeable to service tax?

Solution

In-house services provided by the employer by providing training to employees will not be chargeable to service tax.

Illustration-14

Jeevan, from Navjivan Coaching Academy is sent from the Academy to coach a student for CAT examination at his residence. The cost of provision of such service is Rs 1,00,000. The conveyance expenses of Rs 7,500 are charged separately to the student. Should such service be charged to tax? What would be the amount chargeable to service tax? What should be the gross billed amount to the student?

Solution

Navjivan Coaching Academy is a coaching or training centre, which provides commercial coaching by sending individuals to the premises of service receivers. The service will be liable to service tax. Hence the gross amount of Rs 1,07,500 inclusive of Rs. 1,00,000 as fees Rs 7,500 received as reimbursement of conveyance expenses will chargeable to tax under rule 5 . Service tax liability will be Rs. 13,287 [$12.36\% \times \text{Rs } 1,07,500$]. Gross billed amount should be Rs 1,20,787 and include Rs 1,00,000 for coaching, Rs 7,500 as out-of pocket expenses and Rs 13,287 for service tax liability

Note-1. : Reimbursement of expenses to individuals, who are rendering services on behalf of an institution, is part of the fee. Actual reimbursement is only the method of determining the amount of conveyance charges.

Note-2: If the institute deputed the tutor to home as part of their coaching package of Rs. 1,00,000 and the student voluntarily reimburses conveyance expenses in his individual capacity, it will not be chargeable to service tax as it is not the part of amount billed for rendering service.

Note-3: The Tutor undertakes visit at the specific request of a client and deputing tutors at the pupil's home is not part of the package offered by the institute, reimbursement of expenses to the tutor will be reimbursement of expenses incurred on behalf of the pupil and will not form part of the service provided.

Illustration-15

Jeevan is taking the tuition in his personal capacity and charges fee of only Rs. 1,00,000. Would he be liable to pay service tax? If so what should be the billed amount?

Solution

When Jeevan is an individual imparting home tuitions and not a coaching centre, Hence he is not liable to pay service tax on tuition fees of Rs 1,00,000 .

5. RENTING OF IMMOVABLE PROPERTY

5.1. Definitions:

1. Renting of Immovable Property Service : [Section 65(105)(zzzz) with effect from 01/06/2007]:

'any service provided or to be provided; to any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce '

Explanation 1. - For the purposes of this sub-clause, "immovable property" includes -

1. *building and part of a building, and the land appurtenant thereto;*
2. *land incidental to the use of such building or part of a building;*
3. *the common or shared areas and facilities relating thereto; and*
4. *in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate, but does not include-*
 1. *vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;*
 2. *vacant land, whether or not having facilities clearly incidental to the use of such vacant land;*
 3. *land used for educational, sports, circus, entertainment and parking purposes; and*
 4. *building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.*

Explanation 2. - For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce".

2. “Renting of immovable property”- [Section 65(90a)]

“Renting of immovable property includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include –

1. renting of immovable property by a religious body or to a religious body; or
2. renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre;

Explanation 1 – For the purposes of this clause, “for use in the course or furtherance of business or commerce” includes use of *immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings.*

Explanation 2 – For the removal of doubts, it is hereby declared that for the purposes of this clause “renting of immovable property” includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property

3. ‘Commercial training or coaching centre-[section 65(27)].’

Commercial training or coaching centre’ means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include pre-school coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force

5.2. Scope of service

From the definitions various terms given above, it follows that in order to attract the liability for service tax, conditions should be satisfied:

From the definition it follows that

- Section covers only the immovable property.
- Movable properties are outside its scope.
- Such property **must be rented out.**
- Method of renting may be by way of renting, letting, leasing, licensing or other similar arrangements of immovable property.
- Renting out must be in **the course of business or commerce** or in furtherance of business or commerce.
- Renting out for purely residential purposes is not included in the section

- Renting may be **partly** for business or commerce and partly for residential or any other purposes.
- *Renting* includes allowing use of space on non-exclusive basis or Transfer or control of possession of the immovable property is irrelevant.
- Thus the section includes renting of
 - factories, offices, warehouses, theatres, warehouses multiple use buildings ,
 - exhibition halls meeting or conference halls ,
 - plant and machinery permanently embedded or attached to earth
 - Lease of factory or
 - Renting out for commercial coaching

To overcome the judicial controversy that service under this head is not valid as there is no value addition, the definition of 'Renting of immovable property service was amended with retrospective effect from 1-6-2007 to provide that

- the activity of 'renting' itself is a taxable service and
- renting of vacant land, where the agreement or contract between the lessor and lessee provides for undertaking construction of buildings or structures on such land for furtherance of business or commerce during the tenure of the lease, shall be subjected to service tax.

5.3. Service not covered:

Service of renting of following immovable properties is not taxable under this section:

| Renting of Asset | Purpose / use / conditions |
|-------------------------|---|
| 1. Vacant land | Solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining |
| 2. Vacant land | Whether or not having facilities clearly incidental to the use of such vacant land; |
| 3. Vacaant Land | Used for educational, sports, circus, entertainment and parking |
| 4. Building | Used solely for residence or for accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities. |
| 5. Immovable property | By a religious body or to a religious body |
| 6. Immovable property | An educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching center. |
| 7. Theatre | By theatre owner to distributor of film |

5.4. Valuation of service:

Value of service of renting will be equal to rent **actually received** from service receiver in respect of service provided or to be provided (i.e. advance rent included) as reduced by **any property tax actually paid** (Not payable). If property tax pertains to more than one property or partly to portion rented and partly to other portion, deduction will be proportionately allowed in respect of property tax attributable to rent received. No deduction will be allowed in respect of any penalty or interest paid to the local authority for delayed payment of property tax.

Where a property lease out is jointly owned by many owners, separate exemption **may not be** available to each of the joint owners as property that is leased since the service is one and not divisible.

In the case of composite contracts involving renting as well as provision of services, the classification would depend on the nature of services involved and whether the contract is one essentially of renting or one where renting is only incidental to certain taxable services being provided and if no such classification is possible entire composite receipts will be taxable under this head.

Illustrations-16:

7. Das gives his office on rent to Chinmaya Mission for carrying on a school, Would the activity be liable to service tax?

Solution

Since the property is given on rent to a religious body, the service would not be liable to service tax.

Illustrations-17:

A give his immovable property on rent. Rent for the period Jan-June 2012 is Rs 7,20,000. A has paid Municipal taxes of Rs 3,00,000 covering period Jan-2011 to December, 2012.

Solution :

Value of Taxable service will be Rs 645,000 [7,20,000-Proportionate Rent for six months (Rs 3,00,000*6/24) i.e.75,0000] and tax liability will be $7,20,000 \times 12.36/112.36 = \text{Rs } 79,203$.

Illustrations-18:

The vacant plot at Kharghar was given to XYZ Ltd for a lease of 99 years. Would the same be liable to service tax?

Solution

Since vacant land is covered as an exemption, the rent received will not be liable to service tax.

6. MANDAP KEEPER

1.1. Definitions:

With effect from 01-07-1997 Section 65(105)(m) provides for levy of service tax on mandap Keeper's services i.e.

“Any service provided or to be provided to any person, by a mandap keeper in relation to the use of a mandap in any manner including the facilities provided or to be provided to such person in relation to such use and also the services, if any, provided or to be provided as a caterer”.

Under Section 65(67) **“Mandap keeper”** means “a person who allows temporary occupation of a mandap for consideration for organising any official, social or business function”.

Explanation.—For the purposes of this clause, social function includes marriage”

“Mandap” means any immovable property as defined in section 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor coverings therein let out for consideration for organising any official, social or business function. However, under the Transfer of Property Act, 1882, immovable property' does not include timber, growing crops or grass.

Explanation : Social function includes marriage.

Under Section 65(24) **“Caterer”** means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion

1.2. Scope of service

The analysis of relevant provisions brings out the following points:

1. Section extends the scope of service to:
 - renting of Mandap
 - renting of facilities amenities such as furniture, fixtures, light fittings and floor coverings provided alongwith the Mandap and
 - providing services like catering.

2. Renting means temporary occupation of a mandap.
3. Renting of Mandap must be for a consideration. It implies that mandap provided free of cost will not be taxable on notional basis.
4. Mandap must be let out for holding official, social or business functions including marriages
5. Thus ,the following would also be included under the scope of service tax:
 - Any sports ground or gymnasium let out for holding official, social or business functions
 - Renting of banquet halls for conducting the seminars/conferences
 - Making club premises available for their members on payment of fee/ charges for holding such functions of
 - Hotels and restaurants if banquet halls, rooms, gardens, etc. is let out for holding any marriages, parties, conferences, shows, etc.
 - Renting hall premises for dance or music performances
 - Mandap let our for the stay of “baaraat”
 - Renting of schools, colleges, building, open ground for social function
 - Pavilion owners, private or Government undertaking, for letting out space for trade fair
 - Service provided as a caterer
 - Open land let out for any business exhibition, or marriage will fall in the category of Mandap under this section.

6.3. Exclusions from scope of service:

The Scope of service is limited to provision of Mandap service for holding official, social or business functions. Therefore, if the activities which are NOT official, social or business functions, will be excluded from the scope of Mandap services. Some of such activities are:

1. Hiring of any premises for Political meetings.
2. Hiring of studio for Shooting of Film / T.V. serials
3. Holding sports tournaments , drama , music concerts
4. Use of precincts of a religious place [Vide notification No. 14/2003-ST dated 20-6-2003]
5. Temporary structure are taxed as Pandal or Shamiana Contractor’s Service and not as Mandap Services.

6. Hiring the theatre on rent showing the screening of cinema or premiere shows of movies which is a part of entire process of making and releasing the feature films in cinema theatres ,
7. Art Galleries [vide Board's Circular No. 42/05/2002-ST issued vide F.No. 176/3/2001-CX 4 dated 29/4/2002]

6.4. Valuation of service:

S 67 deals with the valuation of Mandap keeper's service as follows

- i. The value of the taxable service shall be **the gross amount charged** by the mandap keeper from the client:
 - a. for use of Mandap
 - b. the facilities provided to the client in relation to such use and
 - c. the charges for catering, if any.
- ii. Gross amount will **include electricity charges** charged to the customer, whether on actual basis or otherwise, even if separate bills are issued one for the rental and the other for electricity charges.
- iii. Gross amount will also **include charges for providing furniture, fixtures, lighting fittings, vessels, crockery, cutlery, decoration** etc (Ministry's F.No.B-43/3/97 TRU dt.26.06.1997), unless if such supply is made by a **third party not associated** with the Mandap services provider in any manner.
- iv. However , Gross amount will **not include** statutory levies like Sales Tax, Expenditure Tax VAT etc
- v. If the bill also includes charges for catering services or supply of food, an abatement of 40% of the total amount charged will be allowed as abatement and tax will be levied only on 60% of the gross amount billed to the client . This is subject to two conditions :
 - a. bill or challan issued indicates that it is inclusive of the charges for catering in such cases (vide Notification No.21/97-ST dt.26.06.1997) and
 - b. CENVAT credit is not claimed in respect of such service..

This abatement would generally apply in the case of hotels, clubs, Banquet Halls etc also acting as mandap keepers. It may be noted that Catering service means supply of substantial meal which include High tea or unlimited breakfast - Notification No. 1/2006-ST dated 1-3-2006.
- vi. Gross amount will not include general donations received

- vii. At present, there is to be no service tax, if **booking** for Mandap is **cancelled** as no service has been rendered. Service Tax need not be paid at the time of booking of the Mandap but only when the service is actually rendered and bill raised by the Mandap Keeper to his client. Security amount if any paid while booking the Mandap need not be included in the assessable value, if it is refunded. Under points of taxation, an advance will be subject to tax.
- viii. If taxable services have been provided by a mandapkeeper for the use of the precincts of a religious place. Religious place meant for conduct of prayers or worship pertaining to a religion.

6.5. Export of Mandap Services :

Under the amended rule 3(i) of The Export Service Rules, w.e.f. 27-2-2010, mandap service will be 'Export of Service' only if immovable property is situated outside India.

Illustrations-19:

JK lets out its banquet hall for an engagement function and charges Rs 50,000 per hour. The hall is booked for 4 hours for the ceremony. Whether the amount charged by JK Banquet hall will be liable to service tax? If yes, what should be the amount to be billed to the client?

Solution

Halls, rooms etc. let out by hotels / restaurants for a consideration for organising social, official or business functions are covered within the scope of "mandap" [section 65(66)], and such hotels and restaurants are covered within the scope of "mandap keeper" [section 65(67)].

Accordingly, Service Tax is leviable on services provided by hotels and restaurants in relation to letting out of halls, rooms, etc. for organizing any official, social or business function under mandap keeper service [section 65(105)(m)].

Since the hall is let out for 4 hours, the amount due will be Rs 50,000 * 4 = Rs 2,00,000. The service tax liability on the same would be at the rate of 12.36% i.e. Rs 2,00,000*12.36 = Rs 24,720.

Illustrations-18:

ABC Hall allowed Chinmaya Mission to use its hall for organising bhakti sangeet. The normal charges of such letting out would be Rs 50,000. Whether the same would be liable to service tax? If yes,

what should be the amount to be billed to the customer? Would the situation be any different if the hall was given free of cost as donation?

Solution:

ABC Hall is not within the precincts of Chinmaya Mission, it does not fall under the definition of, use of precincts of religious places, hence the charges paid by Chinmaya Mission will be chargeable to service tax at the rate of 12.36% i.e. Rs 50,000* 12.363% = Rs 6,180. The gross amount to be billed to Chinmaya Mission should be Rs 56,180. Bhakti Sangit is not a religious function . .

If the hall is given free of cost as donation for the purposes of bhakti sangeet, it would not be chargeable to service tax as only the actual consideration attracts service tax not notional amount.

7. WORKS CONTRACT

7.1. Definition of service and relevant terms:

Section 65(105)(zzzza) provides for levy of service tax on works contracts service with effect from 01/06/2007 :

“Any service provided or to be provided; to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams

Explanation - For the purposes of this sub-clause, “works contract” means a contract wherein, –

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) such contract is for the purposes of carrying out,
 - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift **and** escalator, fire escape staircases or elevators; or
 - (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
 - (c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;”

Under Section 65(30a) ‘**Construction of complex**’ means—

(a) construction of a new residential complex or a part thereof; or

b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or

(c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex “

“**Residential complex**” is defined in Section 65(91a) and “means any complex comprising of—

(i) a building or buildings, having more than **twelve** residential units;

(ii) a common area; and

(iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system,

located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include :

a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

Explanation: For the removal of doubts, it is hereby declared that for the purposes of this clause,:

a) “**personal use**” includes permitting the complex for use as residence by another person on rent or without consideration

(b) “**residential unit**” means a single house or a single apartment intended for use as a place of residence “

7.2 Scope of service:

In order to attract the provisions of this section, it must be noted that this section applies only in respect of **service provided in relation to a work contract** for carrying out only specified items given in the section. Works contract is always a composite contract for supply of goods and services. The specified items broadly

include erection of plant or machinery, civil works for construction of buildings or residential complexes and other turnkey engineering projects etc. Further, the section is applicable on the work contractor and not on construction as such. Constructions is separately taxable under section 65(105)(zzzh/(zzzq)

Thus the broad scheme is to levy

- VAT on the goods component of the contract and
- Service tax on the services supplied to the client.

7.3 Exclusions from Scope of services:

Since the section covers only the specified works contracts , the following will be exclude from the scope of this section :

1. Works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams
2. Works contract (e.g. maintenance, job work, processing etc..
3. A contract for sales of a ready flat will not be taxable under this head as it is not a construction contract. But, if a flat is booked with a builder or developer in a building which is under construction, the construction activity will attract service tax under this head. .
4. Construction work done for a person himself will not be work contract. Accordingly a builder entering into contract for sale of flat or a developer entering into contract for construction of an individual flat for personal residential use of client are not liable to pay service tax.
5. Construction and works contract services relating to ports exempt, but no exemption to finishing or repairing services - Notification No. 25/2007-ST dated 22-5-2007.

7.4 Valuation of services

Taxation scheme for works contract services provides two options to a service provider either to opt for either

- the valuation in the normal course or
- for the composition scheme.

Both the options are elaborated below:

A. Valuation in the Normal Course

Under the first option a service provider has to calculate value of service in normal course and pay service tax at normal rate on such 'value'. The valuation is done under Rule 2A of Service Tax (Determination of Value) Rules, 2006 (in short '**Valuation Rules**'). In such case, assessee can avail CENVAT credit of input services, inputs and capital goods ,

Under the Rule 2A , the value of works contract service shall be equivalent to the **gross amount charged** for works contract **less the value of goods transferred** during the course of execution of works contract. The gross amount shall not include the VAT and sales tax paid on the goods transferred but shall include the following –

- (a) Labour charges for execution of the works
- (b) Amount paid to a sub-contractor for labour and services
- (c) Charges for planning, designing and architect's fees
- (d) Charges for obtaining on hire or otherwise, machinery and tools used for execution of the works contract
- (e) Cost of consumables such as water, electricity, fuel used in the execution of the works contract
- (f) Cost of establishment of the contractor relating to supply of labour and services
- (g) Other similar expenses relating to supply of labour and services and
- (h) Profit earned by the service provider relating to supply of labour and services.

This option is based on determination of value of service on actual basis by considering the gross billed amount as base and reducing from it the value of goods supplied. Moreover, the assessee is also required to calculate the amount of CENVAT credit available. In practice, the process is very complicated and time consuming. Therefore, the assessee is given the second option to go for composition scheme instead of normal valuation.

B. Composition Scheme:

Under the composition scheme, the assessee can pay service tax at 4.944% of 'gross amount charged for works contract' (inclusive of education cess and secondary and higher education cess i.e 4.8% Service Tax Plus 2% EC and 1% SHEC).

Under rule 3(2) of the Contract (Composition Scheme for Payment of Service tax) Rules, 2007' the assessee cannot avail CENVAT credit of duty and cess paid on inputs used in work contract. However, the assessee can avail Cenvat credit of input services and capital goods used for providing the service as well as the input service credit (subcontractors, insurance, telephone, manpower supply, architect etc).

Under both the options, **VAT/sales tax will not be included** in the 'value' for purpose of calculating service tax.

Small sub- contractors are also entitled to claim general exemption upto Rs. 10 lakhs.

Illustrations-19

A is the sub-contractor of B , who is the main contractor. A provides services to B under a works contract amounting to Rs 4 lakhs (excluding VAT) . B in turn charges his client Rs 6 lakhs and discharges the service tax liability on the same. Whether A is required to pay the service tax?

Solution

A is liable for service tax for the works contract, unless he is a small contractor claiming general exemption up to Rs. 10 lakhs. His service liability will be on @ 12.36% on gross amount of Rs 4 lakhs billed by him to B :

Therefore Service Tax liability: $\text{Rs } 4,00,000 \times 12.36\% = \text{Rs } 49,440$.
A will be entitled to claim CENVAT credit, if any.

Alternatively, if A opts for the composition scheme, his tax liability would be: $4.944\% (4.8\% + 3\%) \times \text{Rs } 4,00,000 = \text{Rs } 19,776$.
There will be No CENVAT credit on inputs.

Illustrations-20

17. A submits the following details to find out the gross charges and the net charges for the contract.

| | | |
|---|-----|----------|
| Amount charged for works contract | Rs. | 1,04,000 |
| VAT paid | Rs | 4,000 |
| Value of transfer of property in goods involved of works contract | Rs | 70,000 |

Solution

VAT is to be excluded. Hence Gross charges for the contract will be Rs 1,00,000 i.e. $\text{Rs } 1,04,000 - \text{Rs } 4,000$

Since the value of the goods provided is Rs. 70,000 , Net charges for the contract will be $\text{Rs } 30,000 = [\text{Rs } 1,04,000 - \text{Rs } 4,000] - \text{Rs } 70,000 = \text{Rs } 30,000$

Liability for service tax will be Rs 3,708 being 12.36% on Rs 30,000 subject to CENVAT credit, if any .

Under the composition scheme, service tax will be Rs 4,944 being 4.944 % on Rs 1,00,000 . There will be No CENVAT credit on inputs.

8. ILLUSTRATIONS

Illustration --21

Paresh, a Chartered Accountant raises invoice for following services rendered to his clients.

| | |
|--|----------------|
| 1. Honorarium for arranging the marriage of his client's daughter | Rs. 10,000. |
| 2. Filing sales Tax Return | 2, 20,000 |
| 3. Preparation of Excise records | 10,000 |
| 4. Audit of a Sales tax dealer under VAT | 20,000 |
| 5. Tax Audit | 2, 80,000 |
| 6. Consultancy and filing of tax returns | 20,000 |
| 7. Certification of Annual Return to be filed before a Registrar | 10,000 |
| 8. Lending signature on a prospectus as an expert | 2, 12,000 |
| 9. Signature on a prospectus as director of the company | 8,000 |
| 10. Working out a diversification plan for a Company | 3,00,000. |
| 11. Giving identification before a Notary attesting signature identifying a client | 5,000. |

Solution ;

| COMPUTATION OF SERVICE TAX LIABILITY | |
|--|-----------|
| 1. Honorarium for arranging the marriage of his client's daughter – being personal not professional capacity | Rs NIL |
| 2. Filing sales Tax Return | 2, 20,000 |
| 3. Preparation of Excise records | 10,000 |

| | |
|---|-----------------|
| 4. Audit of a Sales tax dealer under VAT | 20,000 |
| 5. Tax Audit | 2, 80,000 |
| 6. Consultancy and filing of tax returns | 20,000 |
| 7. Certification of Annual Return to be filed before a Registrar | 10,000 |
| 8. Lending signature on a prospectus as an expert | 2, 12,000 |
| 9. Signature on a prospectus as the director of that Company | Nil |
| 10. Working out a diversification plan for a Company client | 3,00,000. |
| 11. Giving identification before a Notary attesting signature of client | 5,000. |
| Gross Value of Taxable Service (U/s 67) | 10,77,000 |
| Service Tax $10,77,000 \times 12.36/112.36$ | 1,18,474 |

If question says value of taxable services, Service Tax would be 12.36% Rs.10,77,000 X 12.36% = Rs.1,33,117.

Illustration --22

ABS & Co provides auditing services to accompany based in Nepal worth Rs 50,000. Will the services be liable to service tax? If yes, calculate the service tax liability.

If the client pays Rs 50,000 in full settlement of the billed amount, what would be the service tax liability of ABS & Co.?

Solution:

Since the services have been rendered to a beneficiary in Nepal, the same cannot be construed as export of services. Hence the auditing services of Rs 50,000 will be liable to service tax. The service tax liability will be:

@ 12.36% of Rs 50,000 i.e. Rs 6,180

If the client pays Rs. 50,000, then the service tax liability will be Rs 4,669

= Rs 50,000*12.36/112.36 = Rs 5,500

Illustration --23

Applicability of service tax on commission income earned on distribution and marketing of units of mutual fund. Clarify whether:

- 1) the commission received by distributors on mutual fund distribution as liable to Service Tax under the category of Business Auxiliary Services?
- 2) the services provided is exempt from service tax in terms of Notification No.13/2003 dated 20.06.2003 (exemption for commission agents)

Solution

In this connection, it is clarified that the services provided as referred above are primarily in nature of the services of commission agent in relation to clause (ii) and (iv) of the category of services mentioned in the definition of Business Auxiliary Services and hence should be leviable to service tax under this category. This activity does not get covered under exemption Notification No.13/2003-ST dated 20.06.2003 as this is not in relation to sale or purchase of goods. The exemption provided under Notification 13/2003-ST is applicable only for commission agents dealing in goods.

Illustration --24

Lottery tickets are printed by the State governments and are sold through agents or distributors. Tickets are delivered by the State Government to the distributors at a discounted price as compared to the face value of the tickets. Whether the services provided by the distributors/agents are liable to service tax.

Solution

Organization and selling of lotteries are globally treated as supply of service. Service provided by the distributors or agents in relation to promotion or marketing of lottery tickets are liable Service Tax.

Illustration --25

Will Insurance Agents, Clearing and Forwarding Agents working on commission basis fall under the definition of business auxiliary service?

Solution

No The Insurance service and Clearing and Forwarding Service are services with more specific descriptions and also these services were made taxable prior to Business Auxiliary Service.

Hence, The Insurance Agents, Clearing and Forwarding Agents will continue to be covered by Insurance service and Clearing and Forwarding Service respectively .

Illustration --26

8. Persons / agencies canvass advertisements for publishing, on commission basis. Such persons / agencies do not provide any other services like making, preparation, display or exhibition of advertisement. Whether merely canvassing advertisement for publishing on a commission basis by persons / agencies is classifiable as Advertising Agency service [section 65(105)(e)] or not?

Solution

Merely canvassing advertisements for publishing, on commission basis, is not classifiable under the taxable service falling under section 65(105) (e). Such services are liable to Service Tax under Business Auxiliary Service [section 65(105)(zzb)].

Illustration --27

9. Sham, a commission agent has raised the following bill. Calculate the service tax liability on the bill.

| | |
|----------------------------------|-----------|
| Polishing rice | Rs 70,000 |
| Procuring bags to store the rice | Rs 30,000 |
| Procuring glass bottles | Rs 10,000 |

Solution

- 2) No service tax would be payable on polishing rice since Sham's service is in relation to agriculture.
- 3) No service tax would be payable on procuring bags to store the rice as the activity is incidental or ancillary to agricultural produce.
- 4) Service tax liability would arise on procuring glass bottles @ 10.3% i.e. $Rs\ 10,000 \times 10.3\% = Rs\ 1,030$.

10. SELF EXAMINATION QUESTIONS

1. Are all the tax services of Chartered Accountant taxable? If not , explain what are the services that are taxable.
2. XYZ contractors get a contract to build an international port. The contract is worth Rs 50 crores. Would the same be liable to service tax? If yes, calculate the service tax liability.
3. What are the exclusions and exemptions from the mandap keeper's service?

4. Are the agents who sell mutual funds liable to service tax? Give reasons for your answer.
5. How is the taxable service valued in the case of renting of immovable property?
6. If a particular service provider has undertaken a works contract, what are the options available to him for payment of tax. Explain the advantages and disadvantages from both perspectives.
7. Would a commission agent be taxable to service tax? If yes, under which head would he be taxable? What are the types of commission agents which would be liable to service tax?
8. What is meant by business auxiliary service?
9. ABC & Co, Chartered Accountants have offices at Mumbai and in Bhutan. During the quarter ended March 31, 2011, the following sums of money were received:
 - 1) From audit office in Mumbai
 - a) For services provided in India Rs.10,00,000
 - b) For services provided in Britain Rs. 3,00,000
 - 2) From business auxiliary services (remittance) Rs. 4,00,000

These are exclusive of service tax. Calculate the service tax liability for ABC & Co.
10. Hockey Club intends to use the vacant ground of BCCI for a social function. CCI is required to pay the following charges:

| | |
|-------------------------------|-------------|
| a) For use of ground | Rs 7,00,000 |
| b) For electricity | Rs 1,50,000 |
| c) For furniture and fixtures | Rs 4,50,000 |
| d) VAT | Rs 72,000 |

Compute the service tax payable.

11. CC Classes received the following amounts for which service tax liability is to be calculated

| | |
|-------------------------------|-------------|
| a) Postal coaching | Rs 1,75,000 |
| b) Textbooks | Rs 75,000 |
| c) Guide for Exam Preparation | Rs 87,000 |

It also has school coaching classes for providing computer training to 300 students for which there is a certificate issued by the State Government. The charges are Rs 1,000 per student.

In light of the above, calculate the service tax liability of CC Classes.

12. Sham charges Rs 70,000 from Ram for polishing the rice grown on his farm. What would be the service tax liability of Sham?
13. Amit charges Rs 2,00,000 for polishing diamonds and further sub-contracts Akhil to do the job for Rs 1,25,000. Calculate the service tax liability of Akhil and Amit.
14. ONM, a public relations firm charged Rs 12,50,000 on March 1, 2011 to LNL, a publicity firm for publicity work in respect of the LOGO brand. LNL paid Rs 7,50,000 on March 30, 2010. Calculate the service tax liability of ONM and LNL.



REGISTRATION AND RETURNS

Synopsis

1. Introduction and Objectives: Requirement of registration
2. Persons liable for Registration
3. Procedure for Registration
- 4.. Filing of Returns
5. Payment of Service Tax
6. Self Examination Questions

1. INTRODUCTION AND OBJECTIVE : REQUIREMENT FOR REGISTRATION –S 69

Procedural law in relation to registration, filing of service tax returns and payment of the service tax is very important and taken up for detail discussion in this lesson.

2. PERSONS LIABLE FOR REGISTRATION

Following persons are liable to make application for Registration for service tax:

i. Service Provider:

Every service provider providing taxable services make an application for registration within 30 days of commencement of his business with the Service Tax Authorities.

ii. Input service distributor

Every input service distributor [as defined in clause (m) of rule 2 of the CENVAT Credit Rules, 2004 shall make an application for registration within a period of thirty days of the commencement of business.

iii. Small service provider having turnover of Rs. 9 lakhs:

Small service providers having turnover upto Rs. 10 lakhs are not liable for service tax but any provider of taxable service whose

aggregate value of taxable service in a financial year exceeds **nine lakhs rupees** shall make an application for registration within a period of thirty days of exceeding the aggregate value of taxable service of nine lakhs rupees.

“Aggregate value of taxable service” means the sum total of first consecutive payments received during a financial year towards the gross amount charged by the service provider towards taxable services but does not include payments received towards such gross amount which are exempt from the whole of service tax leviable thereon.

iv. An **unincorporated body of individuals** is a person liable for service tax in respect of taxable services rendered to members or others

v. Registration by a recipient of services

Ordinarily, liability for payment of service tax is that of the service provider. In some cases an exception is made and the liability is shifted to the recipient of the services. In such cases the recipient of the services is required to make an application for registration . some of such case are:

i. **Importer of services** from outside India is liable to pay in respect of the services imported by him in India.-S 66Ab. in case of services of a **goods transport**

ii. **agency**, the liability for the payment of service tax on freight paid to transporter is on the consignee , if the consignee is a factory, or a company or a statutory corporation, or a cooperative society or a dealer registered under the central excise or a body corporate or a registered partnership firm. For other consignees like individuals the transporter will continue to be liable for payment of service tax.

iii. The mutual fund or asset management company receiving business auxiliary service of distribution of mutual fund by distributors or agent is liable to pay service tax on the services received

iv. The body corporate or the firm receiving any sponsorship services is liable to pay service tax on the sponsorship services received by them e.g. IPL

Penalty :

Section 77 prescribes heavy penalty of Rs. 200 per day for every day of default or Rs, 5,000 , whichever higher. However, the penalty can be reduced under Section 80 on showing reasonable cause for default .

3. PROCEDURE FOR REGISTRATION

Registration is the starting point. It involves the following procedure:

1. Application for Registration is required to be filed within the prescribe time of 30 days of commencement of business on line by uploading Form ST-1 at **www.aces.gov.in**;
2. Within 15 days of uploading the application, *the applicant has to file the required documents with* the jurisdictional Superintendent of Central Excise. These documents are; Permanent Account Number (PAN) , proof of residence , constitution of firm , companies etc and a Power of Attorney in respect of authorized person(s).
3. Normally, the PAN based registration number is generated by system immediately. However, registration certificate is issued by Superintendent in form ST-2 after the documents are submitted.
4. Registration will be deemed to have been granted if not received within seven days of making the application. [Rule 4(5)] and the applicant can begin carrying on his activities..
5. If a person provides services from more than one places , following principles are followed :-

a) Ordinarily, Separate application is required to be made for each place of business if bills are raised separately.

b) If billing or accounting system is centralised in respect of all the places , and the bills are raised from a centralized place, premises or office , only one application needs to be made for such place from where the billing is done in respect of all types of services provides -[Rule 4(2)].

Illustration-1:

A mandap keeper has multiple offices in Mumbai, Delhi and Kanpur. He does his billing from Mumbai only. In that case he would require service tax registration in Mumbai only.

Illustration-2:

XYZ Coaching Classes have one regional and multiple branch offices but does billing from the regional office in respect of all the branches within that region the classes may be permitted to register his regional office only.

6. If a person provides multiple services from a single place, a common application needs to be made for all the services provided by the service provider from a single place. However, if multiple services are provided from multiple places and billing is done separately, separate application is required to be made for each such place needs.

7. Input Service Distributors (ISD) are required to make application for registration at the Head Office, branch or depot as ISD and distribute credit to centres which are providing taxable services.
8. When a registered assessee transfers his business to another person, the transferee should obtain a fresh certificate of registration.
9. When a registered assessee ceases to carry on the service activity for which he is registered, he should surrender his registration certificate immediately to the department.
10. Any change in the particulars of the certificate, shall be intimated to the Service Tax Officer in Form ST-1 with in thirty days of change taking place, who, will issue a fresh certificate after making the necessary change within 4 days. There is no penalty if change is not notified. but in that case liability to file return will continue even if the tax payable in nil

4. FILING OF RETURNS

- The service tax assessee shall furnish a return to the jurisdictional Superintendent of Central Excise in Form ST-3 of Form ST- 3A in triplicate on a half-yearly basis within 25 days after the close of the half year. in other words, the return for the half-years i.e. 'April-September', and 'October-March' of the year should be filed by 25th October, & 25th April of the year respectively.
- Input service distributors have to file return in form St3 on half yearly before the end on next month after the end of the half year
- The returns should include all copies of T-6 challans issued in the half year. Assessee filling the return for the first time should also furnish to the Department the list of all the accounts maintained by them, relating to the Service Tax.
- If the assessee has not provided any taxable services during the half year, he should submit a NIL return within the prescribed time.
- The records, including computerized data if any being maintained by an assessee as required under any other laws in force (Income tax, Sales) from time to time shall be acceptable to the Central Excise Department for the purpose of Service Tax. The assessee should also ensure that he keeps a separate register for the service tax credit as availed by him .

- A revised return can be filed within 90 days to correct any mistakes in the original return.
- Non filing of return on time attracts penalty of Rs 500 for delay of 15 days or less, and Rs. 1000 for delay of 15 days to 30 days.
- If delay is beyond 30 days from the due date penalty will be Rs. 1000 plus Rs, 100 per day for every day beyond 30 days subject to a maximum of Rs. 20000
- E-filing of service tax return is mandatory for assessee with liability of Rs 10 lakhs or more inclusive of CENVAT consumed. For others its optional. However, if an assessee does not succeed in filing of return electronically or is unable to generate acknowledgement number, he should file manual return to avoid penal provisions

5. PAYMENT OF SERVICE TAX

Following are some important points in relation to payment of service tax;

a. **Service tax payable on receipt or arrear basis**

Service tax is not payable on basis of amounts charged in the bills/invoice, but only on amounts actually received during the relevant period, except in case of associated enterprises. If partial amount is received, tax will be payable on pro rata basis. With effect 01-05-2011 service tax is payable on receipt, accrual or raising of the bill, whichever point is earlier in time. Except in case of some professional, GTA, Individual and partnership with turnover of Rs 50 lakh etc]

b. **Associated Enterprises**

In case of service provided to associated enterprises, service tax is payable as soon as book entry is made in the books of service provider (when he is liable) or service receiver (when he is liable to pay service tax under reverse charge method).

c. **Time for payment-Monthly /Quarterly :**

- The service tax on the value of taxable services received during any calendar month shall be paid to the credit of the Central Govt. by the 5th of the month immediately following the said calendar month.
- Where the assessee is an individual or proprietary firm or partnership firm, the service tax on the value of taxable services received during any quarter shall be paid to the credit of the

Central Government by the 5th of the month immediately following the said quarter.

Those with liability for payment of Rs 10 lakh or more have to make payment electronically. In that case the due date is extended by one day i.e. 6th of next month / quarter.

In the last month /quarter , tax has to be paid before 31 March.

d. Procedure –Challan and payment

- Tax is payable by GAR-7 challan using appropriate accounting code. (earlier TR-6 challan) . E-payment is compulsory to those who are paying service tax of more than Rs 10 lakhs per annum.
- For others, e-payment is optional. In such cases, tax can be deposited in any of the banks specified by the jurisdictional Commissionerate of Central Excise by the 25th of the following month or quarter as the case may be, in appropriate Form (yellow colour and in triplicate) which prescribes different heads of accounts for different taxable services.

e. Mandatory interest

If the payment is made after prescribed date, then assessee is liable to pay the interest at the simple rate of 1.5% per month or part of the month by which payment has been delayed under section 75.(1.25% for service providers upto turnover of Rs 60 lakhs.

f. Advance payment of service tax

A person liable to pay service tax can pay any amount in advance towards future service tax liability. After such payment he should inform Superintendent of Central Excise within 15 days [Rule 6(1A)]. When he adjusts the advance, he should indicate details in the subsequent return filed.

6. ILLUSTRATION

Show liability for registration if the value of taxable services provided by A for five years are Rs. 800,000, Rs. 9,00,000 , Rs. 15,00,000, Rs. 8,50,000 and Rs. 600,000 respectively. What will be his;

Solution

Year 1: there is no liability for payment of service tax and also for registration.

Year 2: Service tax is not payable but registration is necessary.

Year 3: After the basic threshold of Rs.10,00,000, service tax will be payable on Rs. 5,00,000 , which will Rs. 5,00,000*12.36/112.36 = Rs. 55,002 , Since liability for registration arose in year 2 , **no further registration is necessary.**

Year 4: tax is payable on Rs. 8,50,000 even if it is below Rs. 10,00,000 . Tax will be 8,50,000*12.36/112.36 - Rs 93,503 . This is because in the previous financial year his turnover was above Rs 10 lakhs

Year 5: A can apply for cancellation of registration and he has no liability to pay any service tax.

7. SELF EXAMINATION QUESTIONS

- 1) ABC Contractors receives Rs 5,00,000, Rs 8,47,000 and Rs 9,25,000 in 2009-2010 as charges for setting up mandaps and shamianas for social functions. Discuss the liability of ABC Contractors with respect to service tax registration and tax liability. [**Liabale for St on aggregate services**]
- 2) Which persons have to get themselves registered under the Service Tax Rules?
- 3) What is the procedure for filing of returns?
- 4) How is the payment of service tax made to the Government?
- 5) Elaborate on the process if registration under service tax rules.



CENVAT CREDIT

Synopsis

1. Introduction & Objectives
2. Definitions
3. Rules for Service Tax Credit
4. Procedural Matters with regard to Service Tax Credit
5. Matters with regard to Input Service Distributor
6. Self Examination Questions

1. INTRODUCTION & OBJECTIVES

In order to avoid cascading effect of tax on tax, the law grants credit for tax paid on inputs. CENVAT Credit Rules, 2004 provide a comprehensive code for input credit. The rules provide for the method and extent of credit in respect of service tax, excise duty and custom duty paid on capital goods or inputs at the earlier stage. The lesson deals with the concept of CENVAT credit and seeks to explain broad provisions.

To begin with the following basic principles should be kept in mind:

1. CENVAT credit is given in respect of **taxes or duty actually paid on input goods, input services and capital goods,**
2. Service provider can avail CENVAT credit of **service tax paid on input services and excise duty paid on inputs and capital goods.** Any service in relation to business is input service
3. CENVAT credit is granted to be **utilised toward payment of service tax** by a service provider on output services provided by him, [in case of a manufacturer , the credit can be utilised for payment of excise duty as well as service tax payable by him
4. Taxes paid include service tax including the Education Cess paid on inputs, and eligible capital goods used for providing output services. However credit in respect of Education Cess can be utilised only for payment of Education Cess relating to output service.

5. Credit can be availed on basis of proper and complete specified original duty paying documents.
6. CENVAT can **not be availed if the output service is exempt** from tax or does not fall under the purview of the service tax net but Cenvat credit available when taxable as well as exempted services provided on pro rata basis or 6% 'amount' is required to be paid on value of exempted services.

2. DEFINITIONS OF IMPORTANT TERMS

(a) Under Rule 2(a) "**capital goods**" means:-

(A) the following goods, namely:-

(i) all goods falling under

- Chapter 82 - tools, implements, spoons and forks of base metal and parts thereof of base metal
- Chapter 84- machinery and mechanical appliances and their parts
- Chapter 85 – electrical and electronic machinery and equipments
- Chapter 90 – optical, photographic and surgical equipments
- Heading No. 6805 – natural or artificial abrasive powder on a base of textile material
- Sub-heading No. 6804 – grinding wheels and the like

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof;

(vii) storage tank, and

(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis,

used in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or for providing output service;

(B) motor vehicle registered in the name of provider of output service for following taxable services viz. courier, tour operator, rent-a-cab operator, cargo handling, goods transport, outdoor caterer and pandal or shamiana

C) dumpers or tippers, falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986),

registered in the name of provider of output service for providing taxable services as specified in sub-clauses (zzza) and (zzzy) of clause (105) of section 65 of the said Finance Act;

(D) Components, spares and accessories of motor vehicles which are capital goods for the assessee;

(b) Under Rule 2(e) “**exempted services**” means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under section 66 of the Finance Act *and taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken. Explanation – For removal of doubts, it is hereby clarified that ‘exempted services’ includes trading* [Words in italics inserted w.e.f. 1-4-2011]

(c) “**input**” means-

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;

Explanation 1.- The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2.- Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer;

(d) Under Rule 2(n) “**input service**” means any service,-

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal, and includes services used in

relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto 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 and outward transportation upto the place of removal; but excludes services-

(A) specified in sub-clauses (p), (zn), (ztl), (ztlm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for-

(a) construction of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) specified in sub-clauses (o) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) specified in sub-clauses (d) and (zo) of clause (105) of section 65 of the Finance Act, except when used by —

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by him; or

(b) a provider of output service as specified in sub-clause (d) of clause (105) of section 65 of the Finance Act, in respect of a motor vehicle insured or reinsured by him; or

(e) Under Rule 2(m) “**input service distributor**” means 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;

(f) “**job work**” means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression “job worker” shall be construed accordingly;

(g) Under Rule 2(p) “**output service**” 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, and the expressions ‘provider’ and ‘provided’ shall be construed accordingly;

(h) under Rule 2(r) “ **provider of taxable service**” includes a person liable for paying service tax. “

Briefly peaking, **Services rendered are output services and service / material utilised for output services are inputs**

3. RULES FOR SERVICE TAX CREDIT

3.1 Restrictions on Credit Availment

CENVAT credit shall not be allowed on:

- (a) such quantity of inputs or input services which is used in the manufacture of exempted goods or exempted services except in the manner specified.
- (b) Capital goods, which are used exclusively in the manufacture of exempted goods or in providing exempted services, other than the finished products, which are exempt under SSI Exemption Scheme.
- (c) part of value of Capital goods which represents the amount of taxes and duty on such Capital goods which the manufacturer or Output Service Provider claims as Depreciation u/s. 32 of Income-tax Act, 1961.
- (d) Inputs /capital goods or Service Tax paid on Input Services used in providing a service in respect of which the service provider claims abatement or composition scheme under any notification (e.g. construction contract or works contract)

3.2 Availment of Credit :

(a) Credit on inputs on receipt thereof

CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of Output Service Provider

(b) Capital Goods – only 50% credit in the year of receipt

The CENVAT credit in respect of Capital Goods received in a factory or in the premises of the Output Service Provider at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent of the duty paid on such Capital Goods in the same financial year. *The balance 50% of CENVAT credit may be taken in any financial year subsequent to the financial year in which the Capital Goods were received in the factory of the manufacturer, or in the premises of Output Service Provider, if the Capital Goods are in the possession on the Manufacturer or Output Service Provider in such subsequent year.*

Illustration-1 :

An advertising agency renders taxable services of Rs 10 lakh. Before making the invoice it seeks your advice to the service tax liability , if it has paid duty of Rs 30,000 on a machinery used for rendering services also used materials of Rs 1 lakh , on which excise duty of Rs 12,500 was separately paid. In addition, it has availed service of other professionals and paid service charges of Rs 2 lakh to them . It has also purchased a machinery by paying duty of Rs 40,000.

Solution :

| | | |
|--|--------|-----------|
| | | Rs |
| Value of taxable service | | 10,00,000 |
| Add : Service Tax @ 12.36% | | 1,23,600 |
| Gross Value of service to be billed | | 11,23,600 |
| Computation of liability | | |
| Service Tax Payable | | 1,23,600 |
| Less CENVAT | Rs | |
| 50% of duty paid on machine purchased during this year | 15,000 | |
| Excise Duty paid on Inputs | 12,500 | |
| Service Tax paid – $2,00,000 \times 12.36 / 112.36$ | 22,001 | |
| 50% of duty paid on machine purchased during the previous year | 20,000 | 69,501 |

| | |
|---------------------|--------|
| Service Tax Payable | 54,099 |
|---------------------|--------|

1. CENVAT credit in respect of the Capital Goods shall be allowed to a manufacturer / Output Service Provider even if such Capital Goods are acquired by him **on lease, hire purchase** or loan agreement, from a financial company.
2. **CENVAT linked with payment for services – Rule 4(7)**

| | |
|--|--|
| CENVAT Credit in respect of an Invoice, Bill or Challan under Rule 9 | |
| Raised Before 01-04-2011 | Credit allowed on the date of payment of the value of inputs and service tax |
| Raised on or after 01-04-2011 | Credit will be allowed, but if payment is not made within three months, it will be reversed. Credit will be again readmitted when the payment is made |
| Reverse Charge in respect of input service u/s 68(2) | CENVAT credit shall be available only when payment is made of the value of input service . By the recipient. |

Illustration-2:

Calculate the service tax liability from the following;-

- 1 Gross value of taxable service rendered Rs 5 lakhs
2. Bills for Inputs outstanding since last year Rs 2,00,000.
3. A bill of Rs 1,50,000 outstanding for more than three years was paid during this period.

Calculate the service tax liability assuming that the current years' inputs amounted to Rs 3,00,000

Solution

| | | |
|---|----------|--------|
| | | Rs |
| Service tax on Gross value of taxable service Rs 5,00,000*12.36/112.36 | | 55,002 |
| Less CENVAT | Rs | |
| Current period Rs 3,00,000 *12.36/112.36 | 33,001 | |
| Reversal of outstanding belong three months Rs 2,00,000 *12.36/112.36 | (22,001) | |

| | | |
|--|--------|--------|
| Reclaim old CENVAT upon payment Rs 1,50,000 *12.36/112.36 | 16,501 | 27,501 |
| Service Tax payable | | 27,501 |

5.UTILISATION OF CREDIT

- a. The CENVAT credit may be utilized for payment of :
- i. Excise duty or an amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or an amount equal to the CENVAT credit taken on Capital Goods if such Capital Goods are removed as such; or an amount under sub-rule (2) of rule 16 of Central Excise Rules, 2002 (CER) (except in respect of exempted goods ; or
 - ii. **Service Tax on any Output Services**
CENVAT to be repaid if input or capital goods removed
- b. i) When inputs or Capital Goods on which CENVAT credit has been taken, are removed as such from the factory, or premises of Output Service Provider, the Manufacturer or Output Service Provider, shall pay an amount equal to the credit availed in respect of such inputs or Capital Goods and such removal shall be made under the cover of an invoice.
- ii) However, such payments shall not be required to be made where any inputs Capital Goods are removed outside the premises of the Output Service Provider for providing the Output Service.
- iii) If the Capital Goods on which CENVAT Credit has been taken are removed after being used, the Manufacturer or Output Service Provider shall pay an amount equal to the CENVAT Credit taken on the said Capital Goods reduced by 2.5% for each quarter of year or part thereof from the date of taking the CENVAT Credit or the transaction value , whichever is higher – Rule 6(3A) w.e.f 01-04-2012.

W.e.f. 27-2-2010 a higher rate of depreciation has been specified in case of removal of Computers & Computer peripherals.

Repayment of CENVAT if Inputs/ capital Goods w/off
iv) If the Value of inputs or Capital Goods (before put to use) on which CENVAT Credit has been taken is fully or partially written off (or such provision is made) in the books of

account, the Manufacturer or Output Service Provider shall pay an amount equal to CENVAT Credit in respect of said inputs/ Capital Goods.

- c. Credit of Education Cess on excisable goods/taxable services and the SHEC on excisable goods/taxable services can be utilized, either for payment of EC on excisable goods/SHEC on excisable goods or for payment of EC/SHEC on taxable services.

6. Where input services and output services fall in same category :

An output service provider shall be allowed to take credit of the service tax paid on input service where the input service falls in the same category of taxable service as that of output service, if the invoice/bill/challan is issued on or after August 16th, 2002;

Illustration-3:

ANB Associates is a firm of chartered accountants. ANB outsources audit work of a bank branch to XYZ & Co another firm of chartered accountants.

Here, Service is provided by

- XYZ & Co to ANB Associates and
- by ANB Associates to the bank,

Both the firms provided same category of service i.e. Chartered Accountancy service. Therefore, ANB Associates is entitled to take credit of service tax paid on services rendered by XYZ Associates

7. Where input services and output services fall in any other category

In any other case an output service provider shall be allowed to take credit of the service tax paid on input service where invoice/bill/challan of input service is issued on or after May 14th, 2003:

Illustration-4:

ABC coaching classes provide taxable service of coaching to students. They avail the services of XYZ & Co a chartered accountant firm.

ABC will be allowed to take credit of service tax paid to XYZ & Co although in this case input and output services are not in the same category.

8. No CENVAT tax can be availed if the output service is exempt from tax.

Under Rule 6[1] of CENVAT Credit Rules, CENVAT credit is not available on such quantity of input or input service which is used in manufacture of exempted goods or provision of exempted services.

It is because the rationale behind CENVAT credit is to **avoid multiple payment of tax**, hence taxes already paid are allowed to be adjusted against the subsequent liability for payment of tax/duty. If no duty is payable on final product or output services [because it is in the exempted category] it would mean refund of service tax paid.

In the amended section, with effect from 01-04-2011, Services on which no tax is payable are also 'exempt services' or leviable if a particular service is not taxable, will be 'exempted service' for purpose of rule 6. However, export of service will not be treated as exempted service vide - para 6 of CBE&C Circular No. 868/6/2008-CX dated 9-5-2008.

9. The service provider can take such credit only upon payment of the value of input services

Credit of input services can be availed only after the output service provider make payment of value of input service and service tax payable. In other words if the output service provider has not paid any service tax, there is no question of CENVAT credit.

10. If output services are partly taxable and partly tax-free separate records and inventory of consumption are maintained- :

Under Rule 6[2] of the CENVAT Credit Rules, where a service provider renders such output services which are partly chargeable and partly exempt or non-taxable, then the service provider must maintain separate accounts for receipt and consumption of input service meant for consumption in relation to taxable services and exempt and non-taxable services. The service provider can take **credit only on the portion of input service used for rendering taxable output services.**

11. If output services are partly taxable and partly tax-free separate records of consumption are not maintained :

In case, the service provider does not maintain separate accounts of input service in relation to output services which are partly chargeable and partly exempt or non-taxable following options are available:

- a. Credit in respect of inputs and input services attributable to the exempted output services must be calculated in the

prescribed manner reversed Rule 6(3)(iii) of Cenvat Credit Rules as inserted w.e.f. 1-4-2011. Or

- b. **Pay 6% amount of the value of exempted service** (if he is a service provider] or the value of exempted goods; [if he is 'manufacturer].– Rule 6(3)(i) [The 'amount' payable was 6% of value of exempted services during the period 7-9-2009 to 31-3-2011 and 8% prior to that].
- c. Pay an 'amount' equal to proportionate **CENVAT** credit attributable to **exempted** final product/ exempted output services, as provided in rule 6(3A) – (d) Maintain separate accounts for inputs and pay 'amount' as determined under rule 6(3A) in respect of input services – Rule 6(3)(iii) of CENVAT Credit Rules as inserted w.e.f. 1-3-2011.

Note : After the 2011 amendment even trading receipts will be considered as exempted service . Moreover, in respect of some services abatement is given, the net services will be treated as exempted services not liable to tax and these provisions will accordingly apply,

Illustration 5:

ABC coaching classes provide both tax-free of Rs. 5lakhs and taxable service Rs. 20 lakhs of coaching to students. They do not maintain separate records of input used ABC utilise taxable input services attributable to both type of services amounting to Rs. 6 lakhs, service tax paid on the input services is Rs. 61,800. Determine the service tax, CENVAT Credit and net tax payable.

Solution:

| Particulars | Rs. |
|---|----------|
| Taxable services[Rs. 20 lakhs x 10.3/110.3] | 1,86,763 |
| Tax -free services | NIL |
| Gross Service Tax payable | 1,86,763 |
| Less CENVAT credit 61,800- Rs. 40,000 [5% of tax-free services of Rs. 5 lakhs] | 25,000 |
| Net Service Tax payable | 1,61,763 |

This restriction will not apply in respect of certain services and credit for whole of the services will be available unless the input services are not meant for exempted goods or services. These services include:

| | | |
|---|--|---|
| Architects' Services | Erection Commissioning and Installation Services | Management Consultants' Services |
| Broking Services | Forex Services | Real Estate Agents' Services |
| Banking and Financial Services | Intellectual Property Services | Scientific Or Technical Services |
| Construction Services Maintenance and Repair Services | Interior Decorators' Services | Security Agency Services |
| Consulting Engineers Services | Insurance Auxiliary Services | Technical Inspection and Certification Services |

12. CENVAT on capital goods:

Credit is available on the service tax paid on **capital goods received** in a factory or premises of a service provider or an input service distributor at any time in a financial year. In other words such credit would be available even if the capital goods are received or used for only one day or not used within the premises of the output service provider. The credit is equal **50 % of duty paid** on such capital goods within the same financial year and the balance 50% in the subsequent financial year, although provision of output service is not commenced. The credit would not be available if depreciation is claimed on the excise portion of the capital goods in accordance with the provisions of the Income Tax Act, 1961.

No CENVAT will be available on capital goods used for exempted services. However, if the capital goods are used partly for taxable services and partly for tax free services, full normal CENVAT will be available as per the amendment with effect from 01/04/2011

13. CENVAT credit is allowed on basic & special excise duty, education cess on excise duty and service tax, CVD paid on imported goods and service tax

4. PROCEDURAL MATTERS WITH REGARD TO SERVICE TAX CREDIT

- (i) The service tax credit shall be utilized only to the extent of credit available on the last day of a month for payment of service tax relating to the month if the assessee is an individual or proprietary firm. (last day of the quarter if the assessee is a partnership firm)
- (ii) Refund of service tax credit availed on input service is not allowed unless if it pertains to export of services.
- (iii) The output service provider shall be allowed to transfer the service tax credit lying unutilized in his account to such transferred, sold, merged or amalgamated establishment in the case of change in ownership or on account of sale, merger, amalgamation, lease or transfer of establishment to a joint venture
- (iv) The invoice/bill/challan should include serial number, service tax paid/payable, service tax registration number and address of input service provider, date of issue, description and issue of input service.
- (v) The output service provider should maintain a register evidencing the serial number, date of document for which credit is availed; service tax registration number and name of the input service provider, description and value of service and service tax credit availed.
- (vi) The output service provider availing service tax credit shall submit Form ST-3 to the Superintendent of Central Excise on a half-yearly basis.
- (vii) Where the service tax credit has been wrongly availed or utilized, whatsoever, such credit along with interest shall be recoverable from the person availing such service tax credit.

5. MATTERS WITH REGARD TO INPUT SERVICE DISTRIBUTOR

In cases of assesseees having multiple offices, input credit can be distributed though bills of input service may be received at Head Office or a centralized office where no taxable service is rendered. The credit of different regions/branches can be accumulated at such centralized office and distributed region-wise/Branch-wise through invoices issued by such control office termed as "input service distributor".

The invoice should cover all the details as mentioned earlier. The credit distributed against a document referred to in Rule 9 can

not exceed the amount of service tax paid thereon. Credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed.

6. ILLUSTRATIONS

A coaching class uses the services of an independent teacher to give additional lectures on physics. There were 20 students and the service charges were Rs 2,500 per head. The same teacher also teaches computers to students for which they would be given a certificate degree by the State Government. There were 50 students with a fee of Rs 500 per head. The teacher used 50 hours and was paid at the rate of Rs 1,500 per hour.

- (a) Calculate the service tax liability 20 hours were used for the computer course.
- (b) Calculate the service tax liability assuming there is no available record of time used by the teacher for the computer degree course.

Note: above amounts do not include service tax.

Solution: - Case (a)

| Computation of Service Tax Liability | |
|--|------------|
| Particulars | Rs. |
| Taxable services –Computer hours [Rs 2,500 X 20] = Rs 50,000 x 10.3% | 5,150 |
| Gross Service Tax payable | 5,150 |
| Less CENVAT credit - Service tax in respect of taxable services 1,500 X 30 = Rs 45,000 X 10.3% Credit will be allowed only on taxable portion Out of Rs. 75,000 paid to teachers Rs 1,500 X 500 | 4,635 |
| Net Service Tax Liability | 515 |

Case (b)

| Computation of Service Tax Liability | |
|---|--------------|
| Particulars | Rs. |
| Taxable services –Computer hours [Rs 2,500 X 20) = Rs 50,000 x 10.3% | 5,150 |
| Tax free service 50 students @ Rs 500 = 25,000 | NIL |
| Gross Service Tax payable | 5,150 |

| | |
|---|----------|
| Less CENVAT credit Service tax on inputs i.e. Total Bill of the teacher = Rs 1,500 X 50 = Rs 75,000 x X 10.3% = Rs 7,725 Less 5% of the exempted service 25000x 5% = Rs. 1,250 Balance Rs 7725-1250= Rs. 6475 cannot exceed the service tax payable hence restricted to Rs. 5150 | 5150 |
| Net Service Tax Liability | 0 |

6. SELF EXAMINATION QUESTIONS

- 1) What do you mean by inputs?
- 2) What are the conditions for claiming input credit?
- 3) In the case of a manufacturing concern having multiple offices, how would you suggest they claim service tax credit?
- 4) What are the rules applicable to claim the service tax credit in respect fo capital goods?
- 5) A is a provider of both taxable and non-taxable services. He pays Rs. 50,000 as the gross service tax on both taxable and non-taxable services. How much CENVAT Credit is available to A?
- 6) What are the prime requirements for availing service tax credit?
- 7) ABC Mandap keepers ordered for a generator van on which Rs 10,000 was paid as excise on May 14, 2009. They want to claim the service tax credit. Please advise on how it can be done.



SECTION-II INDIRECT TAXES – MVAT

7

MAHARASHTRA VALUE ADDED TAX ACT, 2002 (MVAT)

Synopsis

1. Introduction and objectives of VAT
2. Definitions:
 - 2.1. Business
 - 2.2. Dealer
 - 2.2. Goods
 - 2.4. Importer
 - 2.5. Manufacturer
 - 2.6. Purchase Price
 - 2.7. Resale
 - 2.8. Sale
 - 2.9 Sale Price
 - 2.10 Service
 - 2.11 Turnover of Sales
3. Illustrations
4. Self Examination Questions

1. INTRODUCTION AND OBJECTIVES OF VAT

Value Added Tax [VAT] is a progressive form of tax. It is levied at every point of the value addition chain, wherever the goods travels – manufacturer, distributor, stockist, and wholesaler - until the goods reach the ultimate consumer. To avoid cascading effect or duplication of tax and consequent burden on the consumer, VAT laws have an inbuilt mechanism to allow input tax credit (ITC) on taxes already paid at prior stage. This credit can be appropriated against the VAT liability on subsequent sale. As a result, every taxpayer in the value addition chain will pay tax only on the value added at his level and no more. This concept is

borrowed from the central excise laws, where it is called as inputs-credit or CENVAT. Under the old sales tax laws also there was system of granting credit by way of set-off to manufacturers and importers in respect of taxes already paid by them.

Globally VAT is a popular form of taxation followed in as many as 160 countries world over.

Back home , most of the states have agreed to enact a uniform law for levying **VAT** having only 4 rates of tax; 0% (tax free goods), 5 % , 12.5% and 20%.

Maharashtra's version of VAT is called Maharashtra Value Added Tax Act, 2002[**MVAT**]. All the sections and provisions referred to will be the sections and provisions of MVAT, unless otherwise specifically stated

Under the VAT regime, due to multi-point levy on the price including value additions at each and every resale, the margins of either the re-seller or the manufacturer would be reduced unless the ultimate price is increased. Sum total of this is simplification of laws and converting the entire country into a bigger common market rather than having small segments of market all over the country. Stated objects of VAT are:

- Evolution of a set -off scheme on previous purchases,
- Abolition of multiple taxes like turnover tax, additional tax etc,
- Rationalization of overall burden,
- General fall in prices,
- Self-assessment by dealers,
- Increase in revenue, and
- Evolution of a transparent tax system.

Illustrations:

1. A dealer purchases inputs worth Rs. 2,00,000 on which tax was collected at 4%. These inputs were put in a manufacturing process and the output was sold for Rs. 5,00,000 with tax rate of 12%.What would be the tax liability under the VAT .

Solution:

The tax liability will be as follows:

| | |
|--|---------------|
| Tax on output 12% on 5,00,000 | 60,000 |
| Less-Tax paid on inputs 4% on 2,00,000 | <u>8,000</u> |
| VAT Payable | <u>52,000</u> |

2. DEFINITIONS UNDER THE MVAT

Section 2 of the MVAT, 2002 gives definitions of various terms used in the law. Some of these definitions are being taken up for detailed discussion and analysis below:

2.1. **Business**-Section 2(4) defines business in an inclusive definition: .

“Business” includes:

“(a) any service;

(b) any trade, commerce or manufacture;

(c) any adventure or concern in the nature of service, trade, commerce or manufacture;

whether or not the engagement in such service, trade, commerce, manufacture, adventure or concern is with a motive to make gain or profit and whether or not any gain or profit accrues from such service, trade, commerce, manufacture, adventure or concern.

Explanation. For the purpose of this clause,

(i) the activity of raising of man-made forest or rearing of seedlings or plants shall be deemed to be business;

(ii) any transaction of sale or purchase of capital assets pertaining to such service, trade, commerce, manufacture, adventure or concern shall be deemed to be a transaction comprised in business;

(iii) sale or purchase of any goods, the price of which would be credited or, as the case may be, debited to the profit and loss account of the business under the double entry system of accounting shall be deemed to be transactions comprised in business;

(iv) any transaction in connection with the commencement or closure of business shall be deemed to be a transaction comprised in business;”

In order to fix liability under MVAT, definition of business assumes significance. Since the definition is an inclusive one, it does not take away the normal meaning of business. A business remains business and is extended to other activities listed in the section namely:

1. Trade i.e. sale and purchase of goods
2. Commerce –Trade with other activities,
2. Manufacturing- production of articles
4. Services

- 5 Adventure in the nature of trade, commerce, manufacture and service implying that in order to constitute business, there need not by any regular or systematic activity. A single transaction may constitute business by nature.
6. The activity of raising of man-made forest or rearing of seedlings or plants
7. Sale or purchase of capital assets pertaining to such service, trade, commerce, manufacture, adventure or concern as a transaction comprised in the concerned business.
8. Incidental goods such as stationery articles debited or credited in Profit & Loss Account as a transaction comprised in the concerned business.
9. Any transaction in connection with the commencement or closure of business as a transaction comprised in the concerned business.

Further business, as it is commonly understood, means sale or purchase of goods for profit, but MVAT makes it clear that not only profit motive is not necessary but actual realisation of profit is also not material.

Illustrations:

2. A teacher imparting tuition to his students, learns that the students are badly in need of certain books for GMAT/GATE. The teacher procures the books and supplies the same to the students. Whether such activity would be termed as business?

Solution

Single transaction by its very nature constitutes business. Any adventure in the nature of trade, commerce, manufacture and service, whether regular or systematic, is termed to be “business”, Hence such activity would be termed to be as “business”.

2.2. Dealer:

As per Section 2(8), “dealer” means any person who for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of, his business buys or sells, goods in the State whether for commission, remuneration or otherwise and includes,-

- (a) a factor, broker, commission agent, *del-credre* agent or any other mercantile agent, by whatever name called, who for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of the business, buys or sells any goods on behalf of any principal or principals whether disclosed or not;
- (b) an auctioneer who sells or auctions goods whether acting as an agent or otherwise or, who organizes the sale of goods or

conducts the auction of goods whether or not he has the authority to sell the goods belonging to any principal whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal;

(c) a non resident dealer or as the case may be, an agent, residing in the State of a non-resident dealer, who buys or sells goods in the State for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of, the business.

(d) any society, club or other association of persons which buys goods from, or sells goods to, its members;

Explanation- For the purposes of this clause, each of the following persons, bodies and entities who sell any goods whether by auction or otherwise, directly or through an agent for cash, or for deferred payment, or for any other valuable consideration, shall, notwithstanding anything contained in clause (4) or any other provision of this Act, be deemed to be a dealer, namely:-

- (i) Customs Department of the Government of India administering the Customs Act, 1962;
- (ii) Departments of Union Government and any Department of any State Government;
- (iii) Incorporated or unincorporated societies, clubs or other associations of persons;
- (iv) Insurance and Financial Corporations, institutions or companies and Banks included in the Second Schedule to the Reserve Bank of India Act, 1934;
- (v) Local authorities
- (vi) Maharashtra State Road Transport Corporation constituted under the Road Transport Corporation Act, 1950;
- (vii) Port Trusts;
- (viii) Public Charitable Trusts registered under the Bombay Public Trusts Act, 1950;
- (ix) Railway Administration as defined under the Indian Railways Act, 1989 and Konkan Railway Corporation Limited;
- (x) Shipping and construction companies, air transport companies, airlines and advertising agencies;
- (xi) any other corporation, company, body or authority owned or constituted by, or subject to administrative control, of the Central Government, any State Government or any local authority;

Exception I: An agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally shall not be deemed to be a dealer within the meaning of this clause.

Exception II: An educational institution carrying on the activity of manufacturing or selling of goods in the performance of its functions for achieving its objects shall not be deemed to be a dealer within the meaning of this clause.

Exception III: A transporter holding permit for transport vehicles (including cranes) granted under the Motor Vehicles Act, 1988, which are used or adopted to be used for hire or reward shall not be deemed to be a dealer within the meaning of this clause in respect of sale or purchase of such transport vehicles or parts components or accessories thereof.

Unlike “business” the definition of dealer is a close ended one. The definition is very wide in nature and is more or less a repetition of the earlier definition of dealer given in the Bombay Sales Tax Act, 1959 with a significant change. Public charitable trusts have now been included in the definition of dealer.

Main feature of the definition are as follows;

1. A dealer is a person who is engaged in business of sales and purchase of goods in Maharashtra.
2. Such sale or purchase may be for remuneration or commission or otherwise.
3. Following are included in the definition:
 - clubs or societies serving their members,
 - agents of all types- factor, broker, mercantile agent etc,
 - auctioneers
 - agent of a person outside the state of Maharashtra
 - Customs Department of the Government of India administering the Customs Act, 1962;
 - Government Departments of – both Central & State
 - societies, clubs or other associations of persons;
 - insurance and Financial Corporations, institutions or companies and Banks;
 - local authorities;
 - Maharashtra State Road Transport Corporation
 - port Trusts;
 - public charitable Trusts
 - Railway Administration
 - Shipping and construction companies, air transport companies, airlines and advertising agencies;

- any other corporation, company, body or authority owned or constituted by, or subject to administrative control, of the Central Government, any State Government or any local authority

1.2. Goods:-

Section 2 (12) defines goods:

“goods means every kind of moveable property not being newspapers, actionable claims, money, stocks, shares, securities or lottery tickets and includes live stocks, growing crop, grass and trees and plants including the produce thereof including property in such goods attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale”;

The definition is similar to the definition as laid down in the Sale of Goods Act. It does not include the following items within the definition of goods:

- immovable properties
- newspapers,
- actionable claims,
- money,
- stocks, shares,& securities, or
- lottery tickets

However following items are regarded as goods:

- livestock,
- growing crops, grass and trees and plants
- produce of trees and plants
- property in such goods attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

Moreover, department has clarified that following items are also treated as goods:

- patents, trademarks, copyrights & registered designs,
- import licences , exim scrips, export permits, licence or quota,
- software packages,
- DEPB- (export credit),
- technical know-how,
- goodwill,
- SIM cards used in mobile phones.

Illustrations:

3. A farmer grows maize in his farm. Whether such crops would be goods and whether the farmer would be called a dealer as per the provisions of the MVAT Act, 2002.

Solution:

Any growing grass or crops are covered under the definition of goods. Hence the maize would be termed to be “goods”.

Since the farmer would be an agriculturalist selling exclusively agricultural produce grown on land cultivated by him personally, he is covered under the exclusions to the definition of “dealer”. Hence, though the crops will be covered under goods, the farmer will not be said to be a dealer.

2.4. Importer

Section 2(13) defines “importer”:

“Importer” means a dealer who brings any goods into the State or to whom any goods are dispatched from any place outside the State;

Importer means a person:

- a) who is a dealer and
- b) who brings any goods from outside the state of Maharashtra

Thus, if a person is not a dealer, he can not be an importer. For this reason, an educational institution can not be an importer because it is not a dealer even if it brings goods from outside the state of Maharashtra. Otherwise, all persons engaged in inter-state purchases will normally be importers.

2.5. Manufacture

Section 2(15) defines “manufacture” in an inclusive definition:

“manufacture”, with all its grammatical variations and cognate expressions includes producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods;

Since the definition of manufacture an inclusive one, it includes not only any process which amounts to manufacture in a normal commercial sense i.e. some process whereby a new substance, article or product is produced, but also additional activities listed in the definition viz.

- producing,
- making extracting,
- altering,
- ornamenting,
- finishing or otherwise processing,
- treating or adapting any goods;

2.6. Purchase Price

Section 2(20) defines:

“Purchase price”

“purchase price” as the amount of valuable consideration paid or payable by a person for any purchase made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged;

Explanation I. —The amount of duties levied or leviable on the goods under the Central Excise Act, 1944, or the Customs Act, 1962 or the Bombay Prohibition Act, 1949 shall be deemed to be part of the purchase price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person.

Explanation II. —Purchase price shall not include tax paid or payable by a person in respect of such purchase.

Explanation III. —Purchase price shall include the amount paid by the purchaser by way of deposit whether refundable or not which has been paid whether by way of a separate agreement or not, in connection with or incidental or ancillary to, the said purchase of goods;

Explanation IV deleted w.e.f 30.06.2007

Explanation V- Where the purchase is effected by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, purchase price shall be taken to mean, the total consideration for the works contract and for the purpose of levy of tax, purchase price shall be taken to mean, the price as may be determined in accordance with the rules, by making such deduction from the total consideration for the works contract as may be prescribed.”

Under the above definition, purchase price means valuable consideration or simply the price of goods paid by purchaser to seller, which includes the following items:

- i. Excise, customs and other duties
- ii. any sum charged by the seller-
 - a. for anything done by the seller
 - b. on or before the delivery of goods to the purchaser
- iii. any deposit paid by the purchaser to seller –refundable or non-refundable whether by separate agreement or otherwise

But the purchase price does not include the following ,if charged separately:

- i.VAT charged
- ii.cost of insurance and
- iii.cost of installation

Illustrations:

4. What is the purchase price of the goods if ABC buys goods worth Rs 10,400 from XYZ and which includes 4% VAT ?

Solution

Purchase value of goods inclusive of 4% tax is Rs. 10,400

Tax amount included in purchase price: $\text{Rs } 10,400 \times 4/104 = \text{Rs } 400$

Purchase price will be $\text{Rs } 10,400 - \text{Rs } 400 = \text{Rs } 10,000$

(As Purchase price does not include the taxes paid on the purchases)

2.7. Resale:

Section 2 (22) defines resale:

“resale means as a sale of purchased goods in the same form in which they were purchased, or without doing anything to them which amounts to, or results in a manufacture and the word “resell” shall be construed accordingly”;

Essential features of the definition are that:

- a. Goods must be purchased and
- b. The goods so purchased be sold in the same form, shape and design and character in which they were purchased.

Alteration in the shape, character or utility amounts to manufacture but Incidental activities like cutting cloth from a lump, or only melting of ornaments or cutting of steel circles from big sheet are held not to be manufacture as such process does not change their character or utility. Repacking the goods and putting brand name or trademark after purchasing the same is considered to be manufacture.

Illustrations:

5. ABC purchases sewing threads from a job worker, packages the same and sells them under their brand name. Will it amount to resale?

Solution

Since ABC packages the sewing threads and sells them under their brand name, it will be manufacture, and not resale.

2.8. Sale

Section 2 (22) defines sale:

“sale” means sale of goods made within the State for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge; and the words “sell”, “buy” and “purchase”, with all their grammatical variations and cognate expressions, shall be construed accordingly;

Explanation,-For the purposes of this clause,

(a) a sale within the State includes a sale determined to be inside the State in accordance with the principles formulated in section 4 of the Central Sales Tax Act, 1956;

(b) (i) the transfer of property in any goods, otherwise than in pursuance of a contract, for cash, deferred payment or other valuable consideration;

(ii) the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract including an agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property.

(iii) a delivery of goods on hire-purchase or any system of payment by instalments;

(iv) the transfer of the right to use any goods or any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) the supply of goods by any association or body of persons incorporated or not, to a member thereof or other valuable consideration;

(vi) the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is made or given for cash, deferred payment or other valuable consideration:

Thus, following are the essential components to constitute a sale within the meaning section 3(24).

1. There should be goods.
2. Property in goods must be transferred.

3. Transfer of property in goods may be through :
 - i) contract
 - ii) otherwise than under a contract
 - iii) under hire purchase or instalment sales
 - iv) under a work contract for repairs, improvement, fabrication, construction, installation of machinery, immovable or movable asset. etc
 - v) right to use the goods for a period whether specified or not
 - vi) by an association , club etc to its members and
 - vii) under a catering contract for food, drinks etc.
4. Goods must be sold for valuable consideration i.e. money or money's worth.
5. Goods must be sold within the state of Maharashtra.
6. Sale within Maharashtra means the sale should not be interstate sale within the meaning of Section 4 of the Central Tax Act, 1956. When the sale occasions movement of goods or transfer of documents from one state to another, it is inter-state sale. However, if the goods incidentally cross another state but origin and the destination for delivery of the goods is in Maharashtra, it will be a sale in Maharashtra.
7. The sale does not include mortgage, hypothecation, charge or pledge of goods.

Illustrations:

6. Whether the following transactions are sale under MVAT or not.
 - a) Goods delivered from Sholapur in Maharashtra to Wadi in Maharashtra pass through Gulbarga in Karnataka.
 - b) Goods produced in Talasari in Maharashtra are delivered to Mumbai from Umargaon Station in Gujarat.
 - c) Parts used in repairs of a watch.
 - d) Cement used in construction of a building.
 - e) Gold ring pledged with a credit society as security.
 - f) Goods given in charity to Indian Red Cross.
 - g) Sale of building.
 - h) Sales of The Times of India
 - i) Food and beverages supplied by Garware Club to its members.
 - j) Sales of surplus papers by the Mumbai University.
 - k) Sale of share at BSE
 - l) Material used in catering a marriage party
 - m) Goods sold to B in Ahmadabad

- n) Sale of import license
- o) Sale of wheat by farmer

Solution:

- a) Movement of goods is within the state of Maharashtra. Incidental passage through Karnataka in transit does not make the sale inter-state sale. Hence it is sale under MVAT
- b) In this case also, movement of goods is within the state of Maharashtra. Incidental passage through Gujarat in transit does not make the sale inter-state sale. Hence it is sale under MVAT
- c) Material supplied for repair work constitutes sale under MVAT.
- d) Material supplied for work contract constitutes sale under MVAT.
- e) Pledge of goods is specifically excluded from the definition of Sales.
- f) There is no valuable consideration for charity, hence not sales.
- g) Immovable property are not goods, hence not sale under MVAT
- h) Newspapers are not goods, hence no sale.
- i) Food supplied by the club to its members will be sales to the extent of goods used.
- j) Mumbai University is an educational institute, hence sale of paper is not sale under MVAT
- k) Shares and other securities are not goods, hence no sales
- l) Material supplied for marriage catering will constitute sale under MVAT
- m) Goods sent to Ahmadabad are in the course of inter-state sales hence not sale under MVAT.
- n) As clarified by the Department, import license would constitute goods under the MVAT Act. Hence the transaction would be treated as a sale.
- o) Though wheat is treated as goods, an agriculturist is an exception to the definition of dealer. Therefore the transaction will not be treated as a taxable sale.

Goods, valuable consideration, dealer and transfer within state are the four factors which are taken together to determine whether a transaction is sale under MVAT.

2.9. Sale price:

Section 2(25) defines “sale price”:

“Sale price” means the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged.

Explanation 1. —The amount of duties levied or leviable on goods under the Central Excise Act, 1944 or the Customs Act, 1962 or the Bombay Prohibition Act, 1949, shall be deemed to be part of the sale price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person.

Explanation II. — Sale price shall not include tax paid or payable to a seller in respect of such sale.

Explanation III. — Sale price shall include the amount received by the seller by way of deposit, whether refundable or not, which has been received whether by way of a separate agreement or not, in connection with or incidental or ancillary to, the said sale of goods;”

Explanation IV: deleted w.e.f. 30.06.2007.

In order to understand the true meanings of sales price , it must be borne into mind that:

- 1) The sales price is just **the converse of purchase price**. Therefore, if the purchase price means valuable consideration or simply the price of goods paid or payable by the purchaser to the seller, then the sales price is logically the valuable consideration received or receivable by a seller from the purchaser ,
- 2) The sale price will include the following:
 - (a) Excise, customs and other duties
 - (b) Any sum charged by the seller for anything done by the seller on or before the delivery of goods to the purchaser
 - (c) Any deposit paid by the purchaser to seller –refundable or non-refundable whether by separate agreement or otherwise
- 3) The sale price does not include the following, if charged separately:
 - (a) VAT charged
 - (b) cost of insurance and cost of installation .

2.10. Service :

Service is defined in Section 2[27]

“Service means any service notified by the state government in Official Gazette from time to time ‘

Ordinarily service is not the part of VAT, which is basically concerned with the goods. It appears that the definition is brought into the law as an enabling provision preceding proposed transition to goods and Service Tax- **GST**.

2.11. Turnover of Sales :

Section 2(33) defines “turnover of sales” :

“Turnover of sales” means the aggregate of the amounts of sale price received and receivable by a dealer in respect of any sale of goods made during a given period after deducting the amount of

(a) sale price, if any, refunded by the seller, to a purchaser, in respect of any goods purchased and returned by the purchaser within the prescribed period (currently 6 months from the date of transaction); and

(b) deposit, if any, refunded in the prescribed period, by the seller to a purchaser in respect of any goods sold by the dealer.

Explanation I. —In respect of goods delivered on hire-purchase or any system of payment by instalment or in respect of the transfer of the right to use any goods for any purpose (whether or not for a specified period) the amounts of sale price received or receivable during a given period shall mean the amounts received or as the case may be, due and payable during the said period;

Explanation II — deleted

Explanation III. —

Where the registration certificate is cancelled, the amounts of sale price in respect of sales made before the date of the cancellation order, received or receivable after such date, shall be included in the turnover of sales during a given period;”

On an analysis of the above definition following points emerge out:

- 1) Turnover is the sum total of all the sales effected by the seller.
- 2) From the total of all the sales following amounts refunded by the seller to the purchaser are reduced’
 - a. goods returned within prescribed period of 6 months and
 - b. Deposits refunded within the prescribed period of 6 months.

- 3) Turnover of sales, will however, include the following items by virtue of the two explanations to the section 2[33]:
- In respect of hire purchase and instalment agreements as well agreements under the Right to use any goods, only the amount accrued during the period shall be included.
 - In case of cancellation of Registration Certificate, sales proceeds of sales made before the cancellation order are received AFTER the cancellation order, will be included in the turnover of sales the given period.

4. ILLUSTRATIONS “

7. Explain with reasons whether the following are Sales as per the provisions of MVAT Act 2002.

| S.No. | Activity | Validity | Reason |
|-------|---|----------|--|
| a. | Free Sample | No | Transfer of Goods free of cost |
| b. | Pledge of Goods | No | Specifically Excluded |
| c. | Works Contract by a contractor | Yes | Works contract will be treated as sale of goods to the extent of material supplied by the contractor |
| d. | Canteen Sale of College | Yes | Transfer of Food for price |
| e. | Hypothecation of Stock | No | Specifically Excluded |
| f. | Transfer of Motor Cycle on installment system | Yes | Transfer of Motor Cycle for a Price |
| g. | Computer given on rent | Yes | Transfer of right to use for a Price |
| h. | Construction of a Bridge | Yes | Transfer of Property for a price. |
| i. | Interior decoration consultancy by architect | No | Only service rendered |

| | | | |
|----|---|-----|---|
| j. | Interior decoration by architect with supply of material | Yes | Transfer of property in goods involved in execution of the Contract. |
| k. | Transfer of goods from Head Office to OMS Branch | No | Transfer to own place |
| l. | Gift of goods to a Charitable Institution | No | Transfer of goods without price. |
| m | Fridge on hire purchase basis | Yes | Transfer of right to use goods |
| n | Fridge on installment basis returned back within 6 months | No | Goods returned back within 6 months |
| O | Selling textbooks by educational institutions | No | Educational Institution specifically excluded from the definition of dealer |
| p | Donating free samples to orphanages | No | Valuable consideration not received |
| q | Sale of vacant plot of land | No | Immovable property not considered as goods |
| r | Contract for arranging Khanna's daughter's wedding | Yes | The value of the goods shall be taxable under MVAT. |
| s | Operating a stock exchange bolt | No | Sale of shares is not treated as sale of goods |
| t | Sale of food and drinks by US Club to its members | Yes | Specific inclusion of the clause under the definition of dealer |

8. Explain with reasons whether the following are Goods as per the provisions of the MVAT Act, 2002?

| S.No. | Item | Validity | Reason |
|-------|------------------------------------|----------|--|
| 1 | Mango Trees | Yes | Specifically Included |
| 2 | Equity Shares of ABC Ltd. | No | Specifically Excluded |
| 3 | Residential Flat used for business | No | Immovable Property specifically excluded |
| 4 | Malai Kulfi | Yes | It is goods |
| 5 | Super Lotto Tickets | No | Lottery tickets specifically excluded |
| 6 | SIM cards for mobile phones | Yes | On basis of departmental clarification |
| 7 | Trademarks | Yes | On basis of departmental clarification |
| 8 | Newspapers | No | Specifically excluded |
| 9 | Sale of goodwill | Yes | On basis of departmental clarification |

9. Explain with reasons whether the following are Dealers as per the provisions of MVAT Act, 2002?

| Sr No. | Item | Validity | Reason |
|--------|--|----------|------------------------|
| a. | Sale of Confiscated car by IDBI Bank | Yes | It is a business |
| b. | Auctioneer | Yes | It is a business. |
| c. | Machinery Sold by State Government | Yes | It is a business |
| d. | Sales of Food at concessional rates by Club to its members | Yes | It is a business |
| e. | Jewellery sold by household person | No | It is not a business . |
| f. | Sale of packaged drinking water by airline companies | Yes | It is a business |

4. SELF ASSESSMENT QUESTIONS:

1. Define and explain as per the provisions of MVAT Act,2002
(a) Business (b) Dealer (c) goods
2. Can a Charitable Trust be a dealer under the MVAT Act, 2002?
Give reasons.
3. Profit motive is not necessary to attract the VAT. Explain
4. Define and explain the Sales Price under the provisions of
MVAT Act,2002
5. State the importance of VAT.
6. Comment on what is purchase price with regard to hire
purchase.
7. What is the definition of turnover of sales?
8. What are the inclusions for dealers?
9. What is the definition of a manufacturer?
10. What is meant by an importer of goods?



MVAT- INCIDENCE OF TAX AND REGISTRATION

Synopsis

1. Introduction and Objectives
2. Incidence of tax- Section 3
4. Special Cases for Registration
5. Practical Examples
6. Self Examination Questions

1. INTRODUCTION AND OBJECTIVES

Under MVAT Act, 2002, the tax is payable on sale of goods effected by any dealer in the state of Maharashtra. As a major departure from the old Bombay Sales Tax Act, 1959, tax is payable **only on sale of goods and not on purchase of goods**. In fact, there is no scheme for levy of purchase tax. As a result, purchase of goods from unregistered dealer will not attract purchase tax. The sale of goods includes sale of capital goods as well as sale of any goods credited in any head under profit and loss account like, sundry income etc. and also the deemed sale transactions of Works Contract and Lease. The definition of 'sale' covers such deemed transactions under the net of VAT.

The chapter recognises that the starting point for any tax law is its charging section. The chapter aims to explain the applicability of the tax. When and who shall or shall not pay tax and if not to whom. The chapter will also deal with the problems on registration of dealer etc.

2. INCIDENCE OF TAX - SECTION 3 :

2.1. Incidence of tax is determined as per Section 3, which reads as follows

“(1) Every dealer, who, immediately before the appointed day, holds a valid or effective certificate of registration or license under any of the earlier laws or, as the case may be, who is liable to pay

tax under any of the earlier laws, in the year ending immediately before the appointed day shall, if his turnover of sales or purchases has, in the said year under any of such earlier laws, exceeded rupees five lakh, or, as the case may be, if he is an importer in the said year and his turnover of sales or purchases in the said year had exceeded rupees one lakh, shall be liable to pay tax, with effect from the appointed day, in accordance with the provisions of this Act, till his certificate or licence is duly cancelled under this Act.

Explanation.—for the purposes of this sub-section, the expressions “turnover of sales”, “turnover of purchases” and “importer” shall have the respective meanings assigned to them under the relevant earlier laws /

(2) A dealer to whom sub-section (1) does not apply and whose turnover, of all sales made, during the year commencing on the appointed day or any year subsequent thereto, first exceeds the relevant limit, specified in sub-section (4), shall, until such liability ceases under sub-section (3), be liable to pay tax under this Act with effect from the 1st day of April of the said respective year:

Provided that, a dealer shall not be liable to pay tax in respect of such sales as take place during the period commencing on the 1st day of April of the said respective year upto the time when his turnover of sales, as computed from the 1st day of April of the said respective year, does not exceed the relevant limit applicable to him under sub-section (4).

(3) Every dealer who has become liable to pay tax under this Act, shall continue to be so liable until his registration is duly cancelled; and upon such cancellation his liability to pay tax, other than tax already levied or leviable, shall remain ceased until his turnover of sales again, first exceeds the relevant limit specified in sub-section (4) or, as the case may be, until he becomes liable to pay tax under sub-section (8) or (9).

(4) For the purposes of this section, the limits of turnover of sales shall be as follows

- (a) Limit of turnover of sales Rs. 1,00,000.— in the case of a dealer, who is an importer, and the value of taxable goods sold or purchased by him during the year is not less than Rs. 10,000/-.
- (b) Limit of turnover of sales Rs. 5,00,000.— in any other case, where the value of taxable goods sold or purchased by him during the year is not less than Rs. 10,000.

(5) For the purpose of calculating the limit of turnover for liability to tax,—

(a) Except as otherwise expressly provided, the turnover of all sales and purchases shall be taken, whether such sales or purchases are of taxable goods or not;

(b) the turnover of sales shall include all sales made by the dealer on his own account, and also on behalf of his principals whether disclosed or not;

(c) in the case of an auctioneer, in addition to the turnover, if any, referred to in clauses (a) and (b), the turnover shall also include the price of the goods auctioned by him for his principal, whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal, if the price of such goods is received by him on behalf of his principal;

(d) in the case of an agent of a non-resident dealer, in addition to the turnover, if any, referred to in clause (a), (b) or (c), the turnover shall also include the sales of the non-resident dealer effected in the State.

(6) Notwithstanding anything contained in any contract or any law for the time being in force, but subject to the provisions of this Act, any person covered by sub-clauses (a), (b), or (c) of clause (8) of section 2 shall be liable to pay tax under this Act, whether or not the principal is a dealer and whether or not such principal is liable to pay tax under this Act and whether or not the principals are disclosed.

(7) [deleted with effect from 20-08-2006]

(8) Where a dealer liable to pay tax under this Act is succeeded in the business by any person in the manner described in clause (a) of sub-section (1) or sub-section (4) of section 44, then such person shall, notwithstanding anything contained in this section, be liable to pay tax on the sales of goods effected by him on and after the date of such succession and accordingly nothing contained in the proviso to sub-section (2) shall apply to him in any year.

(9) Any person who is not liable to pay tax under the foregoing provisions of this section, but has been voluntarily registered under the provisions of this Act, shall be liable to pay tax from the date of effect of the certificate of registration duly granted to him and accordingly nothing contained in the proviso to sub-section (2) shall apply to him in any year.”

2.2. Following are the salient feature in relation to charging of MVAT u/s 3 :

2.2.1. Basic Turnover Limits:

A dealer is liable to pay tax if his turnover exceeds the limits prescribed in Section 3 of the Act. Therefore the starting time for commencement of liability is crossing the basic limit of turnover. These limits are different for different type of dealers. For these purpose, dealers are classified into two broad categories viz importers and others. The limit of turnover for different type dealers are as follows:

| . Basic Turnover Limits: | | |
|--|---|--|
| Category of dealer | Total SALES Turnover EXCEEDING Rs. | Turnover OF SALES OR PURCHASES OF TAXABLE goods NOT LESS THAN Rs. |
| 1. Importer | 1,00,000 | 10,000 |
| 2. Others (including Manufacturer, Reseller, Liquor dealer, Works Contractors, Lessors, etc.) | 5,00,000 | 10,000 |
| 3. Voluntary registration | NA | NA |

2.2.2. Scope of turnover:

- (i) Total turnover of Rs. 1,00,000 or Rs. 5,00,000 is computed with respect to **sales only. Turnover of purchase is not relevant.** The limit has to exceed the benchmark of Rs. 1,00,000 or Rs. 5,00,000. Therefore the limit for attracting of liability is Rs. 1,00,001 and above for an importer or Rs. 5,00,001 and above for others . **Total turnover limit is calculated in respect of all the goods - tax-free, taxable or outside the state.**
- (ii) **Taxable turnover in both the cases is with reference to Sales OR Purchase and NOT sales AND purchase.** In other words it is sufficient **EITHER sales OR purchase of taxable goods is Rs. 10,000 or more** . Turnover limit can not be calculated by aggregating Sales and Purchase both. **Further this limit is to be computed in respect of taxable goods only. Tax-free goods and outside Maharashtra turnover are not relevant.**

- (iii) It is enough that a dealer is an importer. The amount of goods imported is not relevant as there **is no specified limit of import turnover**. Even an import of Re. 1 is sufficient to treat the dealer as an importer and will be subject to turnover limit of Rs. 1,00,000
- (iv) Turnover includes all the sales made by the dealer whether by his own account or on behalf of his principal whether disclosed or not.
- (v) In case of an agent of a non – resident dealer the turnover will also include the sales of non – resident dealers effected in the state.
- (vi) The turnover limits have to be computed with reference to each financial year separately.

| SUMMARY OF LIMITS PRESCRIBED | | |
|-------------------------------------|-----------------------------|----------------------------------|
| Dealer | Turnover | Taxable Purchase OR Sales |
| Importer | Must Exceed 1,00,000 | Must Reach 10,000 |
| Other | Must Exceed 5,00,000 | Must Reach 10,000 |
| Both Limits Are Cumulative | | |

3. REGISTRATION IN SOME SPECIFIC CASES.

1) Liability for Registration:

A dealer has to apply for registration within 30 days from the date on which his turnover exceeds the relevant prescribed limits

2) Liability to continue till cancellation of registration

Every dealer who becomes liable under this Act to pay tax shall continue to be so liable until his registration is cancelled.

3) Agent and Non-resident dealers

Any agent, non-resident dealer is liable to pay tax if he is covered by the turnover limits prescribed under section 3. Actual status of principal is irrelevant i.e. principal may or may not be dealer or may or may not be disclosed.

4) Compulsory registration for CST dealers

It is mandatory for a person is registered under CST Act, to obtain registration under MVAT even if he may not be

reaching the turnover limits prescribed under section 3. In other words, persons engaged in inter-state trade have to register under MVAT also irrespective of the fact whether their turnover exceeds the limits of Rs. 1 lakh/ 5 lakh.

5) Successor or Transferee liable for Registration

Where a business of a dealer liable to pay tax under MVAT is transferred by sale or assignment, then the successor will be liable for compulsory registration irrespective of the fact whether their turnover exceeds the limits of Rs. 1 lakh/ 5 lakh and payment of tax after the date of succession.

5) Voluntary Registration

A person, if he so desires, can apply for voluntary registration even if he is not legally liable. He will be liable to pay tax after the date of effect of registration granted to him by paying a deposit of Rs 25,000.

4. PRACTICAL ILLUSTRATIONS:

1. Rajesh starts a business on 10/5/2010. He furnishes the following information regarding the turnover of purchases and sales transactions. He wants to find out whether he is liable for registration under the MVAT Act 2002. Advise him.

| MONTH | PURCHASES | | | SALES | |
|--------|----------------|-------------------|---------------|----------------|---------------|
| | WITHIN STATE | OUTSIDE THE STATE | | Tax Free Goods | Taxable Goods |
| | Tax Free Goods | Tax Free Goods | Taxable Goods | | |
| | Rs. | R s. | Rs. | Rs. | Rs. |
| May-10 | 90000 | 4000 | 5500 | 85000 | 4000 |
| Jun-10 | 102000 | 3500 | 3500 | 150000 | 3500 |
| Jul-10 | 150000 | 6000 | 2500 | 175000 | 1500 |
| Aug-10 | 110000 | 2500 | 4000 | 100000 | 3000 |
| Sep-10 | 175000 | 1500 | 3000 | 250000 | 3500 |

Solution:

The above data is reclassified as follows:

| MONTH | PURCHASES | | | SALES | | SALES TURNOVER | | Cum Taxable Sales Rs. | Cum taxable Purchase Rs. |
|--------|----------------|--------------------|-------------------|--------------------|-------------------|----------------------|--------------------|-----------------------|--------------------------|
| | WITHIN STATE | OUTSIDE THE STATE | | | | Total sales T.O. Rs. | Cum Total. T.O Rs. | | |
| | Tax Free Goods | Tax Free Goods Rs. | Taxable Goods Rs. | Tax Free Goods Rs. | Taxable Goods Rs. | | | | |
| | Rupees | | | | | | | | |
| May-10 | 90000 | 4000 | 5500 | 85000 | 4000 | 89000 | 89000 | 4000 | 5500 |
| Jun-10 | 102000 | 3500 | 3500 | 150000 | 3500 | 153500 | 242500 | 7500 | 9000 |
| Jul-10 | 150000 | 6000 | 2500 | 175000 | 1500 | 176500 | 419000 | 9000 | 11500 |
| Aug-10 | 110000 | 2500 | 4000 | 100000 | 3000 | 103000 | 522000 | 12000 | 15500 |
| Sep-10 | 175000 | 1500 | 3000 | 250000 | 3500 | 253500 | 773500 | 15500 | 18500 |

Since Rajesh is an Importer, the following turnover limits are applicable

- i) Taxable sales/purchases exceeds Rs. 10,000/-
- ii) Sales Turnover exceeds Rs. 1,00,000/-

Now, from the above table it is clear that Rajesh crosses the turnover limit of sales in the month of May, 2010, when his sale is Rs. 2,42,500 Purchase turnover exceeds Rs, 10,000 in July, 2010. In the moth of May ,Rajesh fulfils only the condition of total turnover. It is in the month of July that Rajesh also fulfils the second condition of taxable purchase. Hence, Rajesh **is liable for Registration in July 2010 that is the earliest date on which he fulfills both the conditions.** Thereafter sales also exceed Rs. 10,000 in August, 2010 is immaterial.

2. The following information regarding the turnover of purchases and sales transactions is submitted by Allen, who started Business on 1st March 2009. Find out whether as per the provision of the MVAT Act 2002, it is liable for registration and payment.

| MONTH | PURCHASES | | | SALES | |
|-----------|--------------------|--------------------|-------------------|--------------------|-------------------|
| | WITHIN STATE | OUTSIDE THE STATE | | Tax Free Goods Rs. | Taxable Goods Rs. |
| | Tax Free Goods Rs. | Tax Free Goods Rs. | Taxable Goods Rs. | | |
| March- 10 | 30000 | 2000 | 3500 | 40000 | 3500 |
| April- 10 | 20000 | 3000 | 2500 | 10000 | 3000 |
| May- 10 | 70000 | 4000 | 4500 | 80000 | 1500 |
| June- 10 | 40000 | 5000 | 6500 | 50000 | 3000 |
| July- 10 | 25000 | 6000 | 3000 | 20000 | 3500 |

Solution:

| MONTH | PURCHASES | | | SALES | | | | | Cum taxable Purchase Rs. |
|-------|--------------------|--------------------|-------------------|--------------------|-------------------|----------------------|---------------------|-----------------------|-----------------------------|
| | WITHIN STATE | OUTSIDE THE STATE | | Tax Free Goods Rs. | Taxable Goods Rs. | Total sales T.O. Rs. | Cum Total. T.O. Rs. | Cum Taxable Sales Rs. | |
| | Tax Free Goods Rs. | Tax Free Goods Rs. | Taxable Goods Rs. | | | | | | |
| March | 30000 | 2000 | 3500 | 40000 | 3500 | 43500 | 43500 | 3500 | 3500 |
| April | 20000 | 3000 | 2500 | 10000 | 3000 | 13000 | 13000 | 3000 | 2500 |
| May | 70000 | 4000 | 4500 | 80000 | 1500 | 81500 | 94500 | 4500 | 7000 |
| June | 40000 | 5000 | 6500 | 50000 | 3000 | 53000 | 147500 | 7500 | 13500 |
| July | 25000 | 6000 | 3000 | 20000 | 3500 | 23500 | 171000 | 11000 | 16500 |

(Note: Cumulative figures are computed from April onwards as March and April fall in different financial years. _

Allen is an Importer; the following turnover limits are applicable

- Taxable sales/purchases exceeds Rs. 10,000/-
- Sales Turnover exceeds Rs. 1,00,000/-

Since Allen has started business in the month of March, 2009, We shall examine both the conditions in both the financial years viz 2009-10 and 2010-11.

Financial year 2009-10:

Total turnover is Rs 43,500 , which is less than Rs 1,00,000 and taxable sales and purchase of Rs 3,500 each, which are less than Rs 5,000 . Since Allen does not fulfil any of the two conditions, **he is not liable** to registration during the year 2009-10.

Financial year 2010-11:

Allen crosses the turnover limit of total sales of Rs 1,00,000 in the month of June 2010, when his sales is Rs. 1,47,500 Since in June, 2010, the Purchase turnover is Rs 13,500 , which exceeds the basic limit of Rs, 10000 . Thus both the conditions are fulfilled in June,2010. Hence, Allen is liable for Registration in **July 2010** that is the earliest date on which he fulfills both the conditions. Thereafter sales also exceed Rs. 10000 in July, 2010 is immaterial.

3. From the following information regarding the turnover of purchases and sales transactions submitted by M/s Castalinos, who was not liable to be registered till 1st April, 2010, find out whether he is liable for registration as per the provisions of MVAT Act, 2002, Give reasons for your answer.

| MONTH | <u>PURCHASES</u> | <u>SALES</u> | |
|-------|-------------------|-------------------|--------------------|
| | Taxable Goods Rs. | Taxable Goods Rs. | Tax Free Goods Rs. |
| April | 1000 | 2000 | 200000 |
| May | 2500 | 3000 | 250000 |
| June | 3500 | 4000 | 300000 |
| July | 4500 | 5000 | 110000 |

Solution:

| Month | <i>Purchases</i> | <i>SALES</i> | | | | | Cum. Taxable Purchase |
|-------|-------------------|-------------------|--------------------|-----------------|-----------------|-----------------------|-----------------------|
| | Taxable Goods Rs. | Taxable Goods Rs. | Tax Free Goods Rs. | Total Sales Rs. | Cum. Sales Rs.. | Cum. Taxable Sale Rs. | |
| April | 1000 | 2000 | 200000 | 202000 | 202000 | 2000 | 1000 |
| May | 2500 | 3000 | 250000 | 253000 | 455000 | 5000 | 3500 |
| June | 3500 | 4000 | 300000 | 304000 | 759000 | 9000 | 7000 |

| | | | | | | | |
|------|------|------|--------|--------|--------|-------|-------|
| July | 4500 | 5000 | 110000 | 115000 | 874000 | 14000 | 11500 |
|------|------|------|--------|--------|--------|-------|-------|

Since, Castalinos is not an importer he has to satisfy two conditions:

- i. Taxable sales/purchases exceeds Rs. 10,000/-
- ii. Sales Turnover exceeds Rs. 5,00,000/-.

From the working tabulated above, we find that he has crossed the turnover limit of Rs. 5,00,000 in June,2010 , but the second condition was applicable in the month of July only. In July his turnover of purchase as well as sales exceeded the limit of Rs. 10,000

He will be liable to registration in July, 2010, when he fulfills both the conditions.

4. Track Builders submits the following detail in respect of their construction business commenced on 1st April, 2010. Find out whether as per the provisions of MVAT Act, 2002, they are liable for registration.

| MONTH | <u>PURCHASES</u> | <u>SALES</u> | |
|--------|-------------------|-------------------|--------------------|
| | Taxable Goods Rs. | Taxable Goods Rs. | Tax Free Goods Rs. |
| Apr-10 | 1500 | 3000 | 80000 |
| May-10 | 1000 | 5000 | 190000 |
| Jun-10 | 2500 | ---- | 175000 |
| Jul-10 | 3500 | 1500 | 95000 |

Solution:

| Month | Taxable Purchase of Goods Rs. | Sales | | | | | Cum. Taxable Purchase Rs |
|-------|-------------------------------|-------------------|--------------------|-----------------|----------------|-----------------------|--------------------------|
| | | Taxable Goods Rs. | Tax Free Goods Rs. | Total Sales Rs. | Cum. Sales Rs. | Cum. Taxable Sale Rs. | |
| April | 1500 | 3000 | 80000 | 83000 | 83000 | 3000 | 1500 |
| May | 1000 | 5000 | 190000 | 195000 | 278000 | 8000 | 2500 |
| June | 2500 | ---- | 175000 | 175000 | 453000 | 8000 | 5000 |
| July | 3500 | 1500 | 95000 | 96500 | 549500 | 9500 | 8500 |

Since Track Builders is not an importer, following conditions are applicable:

- i. Taxable sales/purchases exceeds Rs. 10,000/-
- ii. Sales Turnover exceeds Rs. 5, 00,000/-

On going through the data in respect of their purchase and sales, we find that Track Builders have crossed the limit for turnover of sales of Rs. 5,00,000 in July, 2010 but Neither Taxable purchases nor turnover of taxable sales exceeds the other limit of Rs 10,000 . In other words, it satisfies the they the first but not both the conditions, **therefore Track Builders is not liable for Registration in July 2010.**

5. A is an agent for B whose turnover is Rs. 40,000. He is also an auctioneer and he sells on behalf of the actual sellers of Rs. 1,00,000. Besides, A's own taxable turnover is Rs. 3,80,000. Please find out whether he is liable to registration under MVAT

Solution:

Total turnover of sales includes not only own turnover but also, the sale effected on behalf of the principles and as an auctioneer. Therefore his total turnover is Rs. 5,20,000 (i.e. 40,000+1,00,000+3,80,000) Since all the turnover is taxable, A satisfies both the conditions of total turnover of sales of Rs. 5,00,000 and taxable turnover of Rs. 10,000. A is therefore liable for registration.

5. SELF EXAMINATION QUESTIONS

1. Mr. Kaliya is a new dealer. From the following information find out on which day he will be liable to pay tax. Give reasons for your answer:

| DATE | PURCHASES | | SALES | |
|----------|-----------|----------|---------|----------|
| | Taxable | Tax Free | Taxable | Tax Free |
| 02/04/10 | 10000 | 15000 | ----- | ----- |
| 04/04/10 | ----- | ----- | 6000 | 14000 |
| 10/04/10 | 20000 | 40000 | 5000 | 10000 |
| 20/04/10 | ----- | ----- | 10000 | 40000 |
| 30/04/10 | 40000 | 60000 | ----- | ----- |
| 02/05/10 | ----- | ----- | 50000 | 15000 |
| 10/05/10 | 5000 | 20000 | 10000 | 30000 |
| 20/05/10 | 10000 | 10000 | 5000 | 15000 |
| 31/05/10 | ----- | ----- | 10000 | 10000 |
| 01/09/10 | 15000 | 315000 | 20000 | 320000 |
| 03/09/10 | 5000 | 10000 | 20000 | 30000 |

[Ans:01/09/2010]

2. Sajan is a new dealer. From out of which month he will be liable for registration as per the provisions of the MVAT Act, 2002. Give reasons.

| <u>Month/Year</u> 2010 | PURCHASES | | SALES | |
|----------------------------------|------------------|-----------------|----------------|-----------------|
| | <u>Taxable</u> | <u>Tax Free</u> | <u>Taxable</u> | <u>Tax Free</u> |
| April to June | 3500 | 13500 | 2500 | 14000 |
| July | 2500 | 24000 | 2000 | 26000 |
| August | 3500 | 52000 | 1000 | 65000 |
| September | 3000 | 25000 | 4000 | 28000 |
| October | 4500 | 72000 | 2500 | 75000 |
| November | 6000 | 225000 | 4500 | 326000 |
| December | 9000 | 75000 | 7000 | 84000 |

[Ans. Other: Nov 2010]

3. Mrs. Vidya commenced her business from 1st April 2009 from the following information furnished to you by her regarding purchases and sales transactions, find out from which month she will be liable for Registration and to pay tax as per the provisions of Maharashtra Value Added Tax Act, 2002. Give reasons for your answer:

| <u>Month -</u> <u>Year 2010</u> | PURCHASES | | SALES | |
|------------------------------------|------------------|----------------|-----------------|----------------|
| | <u>Tax Free</u> | <u>Taxable</u> | <u>Tax Free</u> | <u>Taxable</u> |
| April to July | 45000 | 9000 | 60000 | 8000 |
| August | 100000 | 20000 | 120000 | 25000 |
| September | 150000 | 40000 | 175000 | 50000 |
| October | 80000 | 50000 | 20000 | 15000 |
| November | 20000 | 10000 | 50000 | 20000 |
| December | 100000 | 25000 | 120000 | 40000 |

[Ans. Other: Nov 2010]

4. Explain when a dealer become liable to pay VAT under the MVAT Act.
5. Explain when an importer becomes liable to pay VAT under MVAT.
6. Explain 'incidence of tax' under the MVAT Act.
7. Which are the special cases under which registration is required?



MVAT- LEVY OF TAX-(Sec 4-8)

Synopsis

1. Introduction
2. Levy of Tax (Section 4)
3. No Tax on Schedule A Goods (Section 5)
4. Levy of Tax on Specified Goods (Section 6)
5. Schedules and Rates of Tax
6. Rate of Tax on Packing Materials (Section 7)
7. Exemptions on Certain Sales or Purchases not liable to Tax – Section 8
8. Exemption under Section 41
9. Exempted versus Tax-free Sales
10. Self Examination Questions

1. INTRODUCTION AND OBJECTIVE :

This lesson aims to discuss the machinery provision of MVAT including the incidence of tax. [Section 3], levy of tax, the methodology, exemption, classification and other incidental matters[Sections 4 to 8]. Following is the broad scheme of MVAT

- Section 3 deals with the incidence of tax and defines the persons liable to pay MVAT
- Section 4 is the charging provisions
- Section 5 specifies the exemption to Schedule –A goods
- Section 6 deals with tax on turnover of other scheduled goods
- Section 7 deals with f tax on packing materials
- Section 8 deals with the provisions relating to sales or purchase not liable to tax.

2. LEVY OF TAX – SECTION 4

Section 4 sets in motion the process of levy of taxes payable and observes that ‘Subject to the provisions of this Act and rules,

there shall be payable by every dealer or as the case may be every person, who is liable pay tax under this Act, the tax or taxes payable in accordance with the provisions of this Act and rules.

Under MVAT Act, 2002, sales tax is payable on all sale of goods effected from the state whether manufactured or resold or imported from out of the State of Maharashtra or purchased from unregistered dealer. There is no concept of resale or second sale under the MVAT Act, 2002. Further, the liability to pay is on a dealer or other person who is liable to pay tax. The tax liability depends upon the nature of the goods, location of the goods, tax rate prescribed etc.

However, the dealer is entitled to avail of the input tax credit at the time of payment of service tax liability. A dealer is liable to pay tax on the turnover of sales of goods, within the State, as per the rates specified in the schedules. The tax so payable for any tax period shall be reduced by the amount of input tax credit (set off) for which the dealer is eligible during the same tax period.

3. TAX NOT LEVIABLE ON CERTAIN GOODS (SCHEDULE A) – SECTION 5

As per Section 5, no tax is to be levied on sale of goods covered by Schedule A. Subject to the other provisions of this Act, and the conditions or exceptions, if any, set out against each of the goods specified in column (3) of Schedule A, no tax shall be payable on the sales of any goods specified in column (2) of that schedule. Thus, Schedule A lists out the goods such as milk, sugar etc , which are tax free under MVAT.

4. LEVY OF SALES TAX ON SPECIFIED GOODS (SCHEDULES) – SECTION 6

Section 6 provides for levy of tax on turnover of goods covered by schedule B, C, D, and E at the rates set out against each of them in column (3) of the respective Schedule.”These schedules give the detailed lists of products and the applicable tax rates on those goods.

5. SCHEDULES AND RATE OF TAX

From the above provisions it is clear the all the goods are classified under Schedule A to E

- Schedule A covers goods which are generally necessities of life. Goods covered by schedule A are free from tax. Some of the

items covered by Schedule A are agricultural implements, cattle feed, books, bread, fresh vegetables, milk, sugar, fabrics, water etc.

- Schedule B covers jewellery, diamonds and precious stones. Goods covered by Schedule B are subject to tax at 1%.
- Schedule C covers items of daily use or raw material items like drugs, readymade garments, edible oil, utensils, iron and steel goods, non ferrous metal, IT products, oil seeds, paper, ink, chemicals, sweetmeats, farsan etc. Goods covered by Schedule C are subject to tax at 5% w.e.f. 01/04/2010.
- Schedule D covers liquor which is subject to 20% tax. It also covers various types of motor spirits which are subject to tax from 24% to 31%.
- All items which are not covered in any of the above Schedules are automatically covered in residuary Schedule E. Goods covered by Schedule E are subject to tax at 12.5%.

Thus, there are four basic rates of VAT - 0%, 1%, 5%, and standard rate of 12.5%.

6. RATE OF TAX ON PACKING MATERIALS – SECTION 7

Section 7 provides that packing materials will be taxed at the same rate as is applicable to the good packed in such packing materials. Where any goods are sold and such goods are packed in any material, the tax on such sale of packing material shall be at the same rate of tax, if any, at which tax payable on the sale of the goods is so packed, whether the packing material is charged separately or not.

Thus rate of tax on packing material and the goods will be uniform. It is immaterial whether such materials are separately charged for or not. Thus, A sachet in which an article is sold on which VAT is 5%, will be taxed at 5% but another sachet, in which goods on which Vat is 12.5%, will be taxed at 12.5%;

7. EXEMPTIONS: CERTAIN SALES AND PURCHASES NOT TO BE LIABLE TO TAX – SECTION 8

Under Section 8, following sales transactions are exempt from payment of tax:

1. Transactions covered under Section 3,4 and 5 of the Central Sales Tax Act, 1956 viz. **[S.8(1)]**

- i. Sales or purchase of goods outside the state of Maharashtra
 - ii. Imports or Exports of goods
 - iii. Inter-state transactions
2. Sales of fuels and lubricants to foreign aircrafts registered in a foreign country subject to prescribed conditions. [**Section 8 (2)**]- This is done as part of the reciprocal international agreements.
 3. Sales made to any units or establishment in Special Economic Zones (SEZ), a developer of SEZ, 100% Export Oriented Unit (EOU), any unit in Software Technology Parks (STP) and any unit in Electronic Hardware Technology Parks Units (EHTP). [Section 8 (3)]
 4. Sales effected by manufacturing units holding certificate of entitlement in backward area under the package incentive scheme -S8 (4). The Form BC and Form 15EC have been deleted and such a units will have to purchase raw materials by paying tax and thereafter to claim refund.
 - Any class or classes of sales of goods made by any registered dealer to Subject to general or special order and prescribed conditions.
 - Any class of dealers specified in the Foreign Trade Policy notified from time to time, by the Government of India.8(3A)
 - Any registered dealer to the Canteen Stores Department or the Indian Naval Canteen Services,
 - Canteen Stores Department or the Indian Naval Canteen Services to the unit run by canteens or members of the armed forces, –S 8(3B)
 - Unit run canteens to the members of the armed forces. –S 8(3B) w.e.f. 5th Aug 2006
 - any sales or classes of sales of goods made by any registered dealer to,—(S8(5) w.e.f. Aug 2006)
 - (a) the State Government,
 - (b) the Central Government,
 - (c) a electricity generating company,
 - (d) a registered dealer, holding a licence for transmission under the Electricity Act, 2003, for use in transmission of electricity,
 - (e) a registered dealer, holding a licence for distribution of electricity under the Electricity Act, 2003, for use in distribution of electricity,
 - (f) Mahanagar Telephone Nigam Limited,

- (g) Bharat Sanchar Nigam Limited,
- (h) any telephone service provider, holding a licence granted under the Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1933, to establish, maintain and operate telephone services upto subscribers terminal connection.”

8. EXEMPTION U/S 41

The State Government may issue the notification to grant refund of any tax levied and collected from any class or classes of dealers or persons or as the case may be, charged on the purchases or sales made by any class or classes of dealers or persons- **(Section 41)**.

9. EXEMPTED V/S TAX FREE SALES

Tax on goods mentioned in Schedule A is NIL. These goods are called Tax-free goods but goods covered in the transactions mentioned in Section 8 are not Tax-free but tax on such goods is ZERO. These goods are taxable goods having Zero tax. This distinction is useful to determine the turnover limits u/s 3 for registration and also for Set off purposes.

10. SELF –EXAMINATION QUESTIONS

1. List out the schedules Under MVAT dealing with levy of tax.
2. Discuss the provisions of MVAT relating to export incentives.
3. What the difference is between Schedules A goods and exempted goods U/s 8?
4. Discuss the sales and purchases outside the ambit of MVAT Act.
5. What are the VAT rates?
6. List out the exemptions as available to goods under Schedule A.



VAT COMPOSITION OF TAX –S.42

Synopsis

1. Introduction and Objectives
2. Composition Scheme
3. Meaning and Legal Provisions
4. Applicability
5. Dealers not Eligible
6. General Conditions
7. Amount of Tax
8. Composition Schemes for Retailers
9. Composition Schemes for Restaurants
10. Composition Schemes for Bakeries
11. Composition Schemes for Dealers in Second hand Vehicles
12. Composition Scheme for Builders and Developers
- 14., Composition Scheme for Mandapkeepers etc
15. Self examination Questions

1. INTRODUCTION AND OBJECTIVES :

To allay fears of those opposed to implement the VAT feared that multi-point taxation , red-tapism and excessive paperwork would defeat three basic principles of taxation equity, convenience and simplicity and to streamline the procedures , Section 42 of the MVAT introduced a Composition Scheme for the small dealers. The Scheme purports to achieve simplicity in tax administration and to encourage taxpayers to pay taxes in a hassle-free environment The scheme makes a provision for a simpler method of accounting calculating VAT liability to relieve small sealers from keeping detailed records.

This lesson aims at taking up the key provisions like composition, which along with other procedural provisions provides completeness to the study in MVAT.

2. COMPOSITION SCHEME – SECTION 42

Section 42 of the MVAT Act empowers State Government to issue notification to provide for a scheme of Composition. Accordingly, State Government has issued Notification No.VAT-1505/CR-105/Taxation-1 dated 1st June, 2005, which provides for Composition to different types of dealers and subject to various conditions. Various aspects of the scheme are discussed in the following paragraphs. The section has been amended drastically from time to time.

In order to reduce the burden of maintaining detailed records by dealers as well as restrict the number of dealers under VAT system of taxation, the MVATA 2002 provides for a simplified system of accounting for VAT. This is called the Composition Scheme.

3. MEANING AND LEGAL PROVISIONS

The composition scheme is an optional scheme for specified dealers to make a lump- sum payment in lieu of tax payable. The scheme is statutorily supported by MVATAct.2002. Section 42 as it stands now, deals with the composition and reads as follows:

“(1) (a) The State Government may, by a notification in the *Official Gazette*, provide for a scheme of composition, subject to such of tax, conditions and restrictions as may be provided therein, of tax payable by the dealers who are engaged in the business, as prescribed, of reselling at retail, any goods or merchandise and different types of schemes may be notified for different classes of retailers.

(b) For the purpose of this sub-section, a dealer shall be considered to be engaged in the business of selling at retail if 9/10th of his turnover of sales consists of sales made to persons who are not dealers and if any question arises as to whether any particular dealer is a retailer, then the question shall be referred to the Joint Commissioner, who shall after hearing the dealer, if necessary, decide the question. The order made by the Joint Commissioner shall be final.

(c) Nothing in this sub-section shall apply to a dealer who is a manufacturer or who is an importer or who purchases any goods from a registered dealer whose sales of the said goods are not liable to tax by virtue of the provisions contained in sub-section (1) of section 8 or who sells at retail liquor including liquor imported from out of India, Indian Made Foreign Liquor or Country Liquor except as provided in sub-section (2).

(2) The State Government may, by a notification in the *Official Gazette*, provide for a scheme of composition, subject to such conditions and restrictions as may be provided therein, of tax payable by dealers who are running any eating house, restaurant, hotel, refreshment room or boarding establishment (...) and the tax payable by dealers who are caterers and serve food and non-alcoholic drinks or tax payable by dealer running bakeries or dealers of second-hand motor vehicles whose principal business is buying or selling motor vehicles or vendors selling Indian Made Foreign Liquor or Country Liquor at retail and holding licence in Form FL II appended to the Bombay Foreign Liquor Rules, 1953 or in Form CL III or in Form CL/FL/TOD/III appended to the Maharashtra Country Liquor Rules, 1973, framed under the Bombay Prohibition Act, 1949.

(3) Where a dealer is liable to pay tax on the sales effected by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, he may subject to such restrictions and conditions as may be prescribed, in lieu of the amount of tax payable by him under this Act, whether in respect of the entire turnover of sales effected by way of works contract or in respect of any portion of the turnover corresponding to individual works contract, pay lump-sum by way of composition,—

(a) equal to five per cent of the total contract value of the works contract in the case of a construction contract, and

(b) eight per cent of the total contract value of the works contract in any other case, after deducting from the total contract value of the works contract, the amount payable towards sub-contract involving goods to a registered sub-contractor. *Explanation.*—For the purposes of this sub-section,—

(i) “construction contract” shall mean construction contract as may be notified by the State Government in the *Official Gazette*, from time to time, and

(ii) “the amount payable towards sub-contract involving goods” means the aggregate value of the goods on which tax is paid and the quantum of said tax paid by the sub-contractor or the sub-contract value on which tax by way of composition is paid by the sub-contractor, as the case may be.

(4) Where a dealer is liable to pay tax on sales effected by way of the transfer of the right to use *Mandap* or tarpaulin (whether or not for a specified period), then he may, subject to such conditions and restrictions, as may be prescribed, pay in lieu of the amount of tax payable by him a sum equal to one and half per cent. of the turnover of sales effected by him.

Explanation.—For the purposes of this sub-section, the transfer of the right to use *Mandap* includes the transfer of the right to use *Mandap, pandal, shamiana* or the decoration of such *Mandap, pandal* or *shamiana* and the transfer of the right to use furniture, fixtures, lights and light fittings, floor coverings, utensils and other articles ordinarily used alongwith a *Mandap, pandal* or *shamiana*.”.

4. APPLICABILITY:

The composition scheme is available to the following:

1. Retailers: -S42(1)/rule 85
2. Restaurants, eating house, refreshment room, boarding establishment, factory canteen, clubs, hotels or caterers. Who serve non-alcoholic-drinks and food
This category upto four star hotels.
3. Bakeries
4. Dealers having principal business of Second-hand passenger motor vehicles
5. Dealers engaged in work-contracts.
6. *Decorators hiring Mandap* or tarpaulin

5. DEALERS NOT ELIGIBLE:

The Scheme is not available to the following::

- a) A Manufacturer or
- b) An importer or
- c) A reseller who purchases any goods from a registered dealer exempted u/s 8(1) (High seas basis)
- d) A dealer retail liquor including imported liquor or, Indian Made Foreign Liquor or Country Liquor
- e) Dealer engaged in inter state purchases and stock transfers
- f) Dealers selling retail drugs as per entry C-29 (valued at MRP)
- g) Dealers selling notified motor spirit

6. GENERAL CONDITIONS:

General features of the composition scheme are:

- 1) The Scheme will be available on making application in prescribed form. New dealers should apply for composition at the time of registration.

- 2) Dealer opting for composition is not eligible for any set-off or refund except dealer in second hand motor vehicle..
- 3) The dealers cannot issue 'tax Invoice'. The claimant dealers shall not be eligible to recover composition amount from any customer separately. It can issue bill or cash memo, wherein tax cannot be separately collected.
- 4) If the option to join the composition scheme is exercised, in any year then it can be changed only at the beginning of the next financial year
- 5) Dealer to opt for payment under composition, if he so desires
- 6) Existing dealers opting for composition to send intimation in the relevant prescribed form appended to the Notification
- 7) No separate R.C. Number required for composition dealers.
- 8) Amount of composition payable cannot be recovered separately. Accordingly, composition dealers cannot issue tax invoice.
- 9) Single dealer eligible to claim composition under more than one scheme or for a particular activity of the business
- 10) Composition dealers are not eligible for set-off on certain class of purchases which are specifically excluded.

There are two additional conditions:

1. Turnover of sales of goods **shall not exceed Rs.50 lakhs** in previous year for which the composition is availed of and if the dealer was not liable for registration under B.S.T Act or as the case may be under MVAT Act in the immediately preceding year, then he shall be entitled to claim the benefit of the scheme in respect of the first fifty lakh rupees of the total turnover of sales in the current year.
2. The taxable goods resold must be **purchased from registered dealers**. However, purchase of tax free goods can be from registered dealers as well as unregistered dealers. Any other purchases from unregistered dealers must be of packing materials only.

7. AMOUNT OF TAX:

Forms and tax payable are prescribed by the rules. However, Decorators are required to pay tax @ 1.5% as per Section 42. Similarly, works contract attract 8% tax on total value of contract Tax as reduced by the value of sub-contract given. The tax rate is 5% in respect of works contract for construction. For retailers the tax rate is 5% for others the tax rate is 8% and for Second Hand Motor Car dealer the rate is 15% (these rates are as

per rules and subject to many conditions not in syllabus hence not discussed in detail. Hotels, restaurants and four star hotels tax rate is reduced from 8% to 5%

8. COMPOSITION SCHEME FOR RETAILERS

- a) "Retailers" means the dealers engaged in prescribed business of reselling at retail, any goods or merchandise. A dealer is deemed to be engaged in the business of retailers if 90% of his sales are to persons who are not dealers. In simple words scheme is applicable to retailers or the dealers catering to the ultimate consumers. In case of any dispute, the matter may be referred to the joint commissioner, whose decision, after hearing the concerned party shall be final.
- b) The scheme is not available to :
- a manufacturer or
 - an importer or
 - or to a dealer who effects inter-State sales or purchases or receives goods from outside the State on stock transfer basis
- c) Following Class of goods excluded from the scheme and Turnover of sales / purchases is not to be considered for calculation of composition
- a) Foreign liquor, Country liquor and liquor imported in India
 - b) Drugs covered by Entry C 29
 - c) Notified motor spirits viz. High Speed Diesel, Petrol, Aviation Turbine Fuel and Aviation Gasoline
- d) Turnover liable to composition
- Turnover of sales including turnover of tax free goods **as reduced by**
 - Turnover of purchases including turnover of tax free goods and tax paid on purchases
 - Calculation of turnover to be made at half yearly intervals..
- e) Composition amount
- 5% for retailers whose aggregate of the turnover of sales of goods covered by Schedule A and goods taxable at 5% is more than 50% of the total turnover of sales (earlier it was 4%]
 - 8% in other cases

f) Conditions:

- i. Dealers covered under the composite scheme can not collect tax separately
- ii. Such dealers are not entitled to claim set-off in respect of the purchases corresponding to any goods which are sold or resold or used in packing of goods
- iii. Turnover of the dealer should not exceed Rs.50 lakhs and in case of new dealers – Composition applicable for first Rs.50 lakhs only
- iv. The turnover of purchases is reduced by the amount of every credit of any type received from the vendor
- v. Taxable goods resold are purchased from registered dealer
- vi. Purchases of tax free goods may be from registered dealer or unregistered dealers Any other purchases from unregistered dealers are meant only for packing of goods resold

9. COMPOSITION SCHEME FOR RESTAURANTS. , CATERERS

The composition scheme is available to following class of dealers:

- Restaurants,
- Refreshment rooms,
- Factory canteen, Clubs,
- Caterers
- Class of sales covered
 - Food and non-alcoholic drinks
 - served for consumption in any restaurant etc
 - served for consumption in the immediate vicinity of any restaurant etc
 - Supplied by way of counter sale
 - Served for consumption at any other place other than restaurant etc. or by a caterer
- Eating house,
- Boarding establishment,
- Hotels upto four star
- Composition payable at 8% (10% in the case of an unregistered dealer) of the turnover of sales (Now reduced to 5% .]
- Where the dealer is also serving alcoholic drinks, tax payable on sales of alcoholic drinks will not be considered for composition

- **Conditions:**
 - dealer can not collect tax separately
 - dealer not entitled to claim set-off in respect of the purchases corresponding to any goods which are sold or resold or used in packing of goods
 - Dealer can not to issue tax invoice

10. COMPOSITION SCHEME FOR BAKERS

- Applicable to sales by manufacturer of bakery products
- Composition payable at 4% (6% in the case of an unregistered dealer) of first thirty lakh rupees of total turnover of sales of goods including bread in loaf, rolls, or in slices, toasted or otherwise, whether manufactured by the baker himself or imported in the State
- **Conditions:**
 - The claimant dealer should be certified by the Joint Commissioner
 - The claimant dealer not entitle to claim set-off in respect of purchases corresponding to any goods which are sold or resold or used in packing of goods
 - Eligibility - for an existing registered dealers – turnover of bakery products including bread not to exceed Rs. 30 lakhs in the previous year now increased to Rs 50 lakhs
 - Eligibility - for a newly registered dealers - concession available for first Rs.50 lakhs
 - Turnover in excess of first thirty lakhs rupees taxable at the applicable rate
 - Such dealer can not issue tax invoice

11. COMPOSITION SCHEME FOR DEALERS OF SECOND HAND MOTOR VEHICLES

- The dealer should be a registered dealer whose principal business is of buying or selling of motor vehicles
- Available to sales of second-hand passenger motor vehicles whether or not sold after reconditioning or refurbishing
- Composition at 12.5% on 15% of the sale price of the vehicle

- **Conditions:**

- The claimant dealer should be certified by the Joint Commissioner
- The selling dealer to prove that entry tax, if payable, has been paid on the said vehicle or the vehicle is registered in the State of Maharashtra
- The claimant dealer shall not be eligible for set-off of tax paid or payable or entry tax paid or payable, on purchases of second-hand motor vehicles

12. COMPOSITION SCHEME FOR WORKS CONTRACTORS, BUILDERS AND DEVELOPERS

U/s 42, composition schemes are available to work contracts . Under the statutory scheme , a dealer involved in the execution of a works contract, may subject to prescribed restrictions and conditions , pay lump-sum by way of composition,—

(a) 5% of the total contract value of a construction contract, or

(b) 8% in any other case,

after deducting from the total contract value of the works contract, the amount payable towards sub-contract involving goods to a registered sub-contractor.

- The scheme is available to a registered dealer who undertakes the construction of flats, dwellings or buildings or premises and transfers them in *pursuance of an agreement* along with land or interest underlying the land.
- *Rate of MVAT payable : 1% of the following*
 - aggregate amount specified in the agreement or
 - value specified for the purpose of stamp duty in respect of agreement under Bombay Stamp Act, 1958,

whichever is *higher*
- **Conditions.**
 - The Scheme covers all agreements registered *from* 1st April, 2010 and thereafter. Agreements entered before 1st April, 2010 but registered on or after 1st April, 2010 will also be eligible but unregistered agreements will not be eligible for composition.

- The claimant dealer should :
 - include the agreement value in turnover of sale in the period in which agreement is registered;
 - make e-payment of MVAT payable against such agreements for the purpose of filing return;
 - not claim any set-off of taxes paid in respect of purchases of goods used against opted works contract;
 - not use any goods or *property in goods* purchased from out of the state against C-Form for the purpose of contract for which composition of tax is opted. i.e. in relation to flat, dwelling, etc
 - not issue declaration in Form 409 to sub-contractor in respect of work contract for which composition is opted;
 - not issue Tax Invoice
- The claimant dealer shall not be entitled to change the method of computation of tax liability in respect of contract for which he has opted for this composition scheme;

14. COMPOSITION SCHEME FOR MANDAP KEEPERS ETC

U/S 42, a dealer engaged in providing the right to use Mandap or tarpaulin (whether or not for a specified period), then he may, subject to prescribed conditions and restrictions pay in lieu of the amount of tax payable by him a sum 1-1/2% of the turnover.

Right to use Mandap includes the right to use Mandap, pandal, shamiana or the decoration of such Mandap, pandal or shamiana , furniture, fixtures, lights and light fittings, floor coverings, utensils and other articles ordinarily used alongwith a Mandap, pandal or shamiana.”

15. SELF EXAMINATION QUESTIONS

1. What is meant by Composition Scheme? Mention the features of the Composition Scheme.
2. Which dealers are eligible to avail the Composition Scheme?
3. Which dealers are not eligible to avail the Composition Scheme?
4. A retailers' total turnover Rs. 40,00,000., out of which Rs. 12,00,000 are in respect of wholesale supply. Can he avail the composition Scheme..

5. Can a Hotel with four stars avail the Composite Scheme?
6. Explain who is an eligible retailer.
7. What is the amount of tax to be paid if Composition Scheme is availed of?
8. Explain the legal provisions governing the Composition Scheme.
9. Explain in detail the particulars in respect of the Composition Scheme if the same have to be availed of by a) Bakers b) Retailers c) Restaurants d) Second Hand Vehicle Dealers.



VAT: SET-OFF, REFUND ETC. (48 & 49 RULES 51-58)

Synopsis

1. Introduction and objectives
2. Legal Provisions
3. Scheme of set-off Retention in set off
4. Non-admissibility of set off
5. General Conditions
6. Typical Solved Illustration
7. Self Examination Questions

1. INTRODUCTION AND OBJECTIVES:

VAT is a multi-point tax levied at each level of distribution channel through which the goods pass. This may result in cascading effect of tax and there may be tax on tax. To avoid this, the law provides for grant of credit in respect of the taxes already paid. This results effectively in a tax on the value-addition only at every layer of distribution. This system of allowing credit for VAT already paid is called the set off.

Therefore, set off is a credit allowed in respect of VAT already paid on the inputs to avoid double taxation and cascading effect of the taxes on taxes. This can be illustrated by way of an illustration.

A product when it leaves the factory costs Rs. 100; sales tax rate is 10%. Supposing there are three layers of distribution channels viz distributor, wholesaler and retailer before it reaches the consumer. Each one of them earns 10% profit on his cost. Other expenses are assumed to be 10% on his cost.

Thus a product costing Rs. 100 at its origin costs Rs. 259, whereas if set off to the consumer and this has the tax element of nearly Rs. 41 (10+13.31+17.73) which works out to almost 18% of the final price. To avoid this A will be given a set off or credit of Rs. 10 paid by A. Thus the net tax payable by him will only be Rs. 2.10

instead of Rs. 12.1. Therefore transfer price will also be reduced by Rs. 10 and become Rs. 123.10. & Value addition at this stage will be Rs. 12.31 and the total cost will be 136.41. Ultimate consumer price will be reduced to Rs. 207.84

| | Without Set-off | After Set-off |
|---------------------------|-----------------|--------------------------|
| Cost to Manufacturer | 100 | 100 |
| Add Sales Tax -10% | 10 | 10 |
| Cost to Stockist | 110 | 110 |
| Value addition -10% | 11 | 11 |
| Total Cost | 121 | 121 |
| Profit 10% | 12.1 | 12.1 |
| Price to be charged | 133.1 | 133.1 |
| ST-10% | 13.31 | 3.31(13.31-10) |
| Cost to Wholesaler | 146.41 | 136.41 |
| Value addition -10% | 14.64 | 13.64 |
| Total Cost | 161.05 | 150.05 |
| Profit 10% | 16.11 | 15.01 |
| Price to be charged | 177.16 | 165.06 |
| ST-10% | 17.72 | 4.41(17.72-13.31) |
| Cost to Retailer | 194.88 | 169.47 |
| Value addition -10% | 19.49 | 16.95 |
| Total Cost | 214.37 | 186.42 |
| Profit 10% | 21.44 | 18.64 |
| Price to be charged | 235.81 | 205.06 |
| St-10% | 23.58 | 2.78 (20.5-17.72) |
| Cost to consumer | 259.39 | 207.84 |

The lesson discusses the concept of input credits, to whom and what circumstances it is to be allowed or not to be allowed with reference to the provisions of S. 48 & 49 and Rules 52, 53 & 54. MVAT Rules.

2. LEGAL PROVISIONS FRAMEWORK (SECTION 48)

Section 48 of the Act provides for grant of input tax credit to any registered dealer in respect of any sales tax paid on his purchase subject to conditions provided in the rules made in this behalf by the State Government. The provisions for grant of set off are contained in Rules 51 to 58 of the VAT Rules, 2005.

- Section 48 deals with Input tax credit to any registered dealer
- Section 49 provides for Refund of tax on declared goods sold in the course of inter-state trade or commerce

- Rule 51 deals with set off on opening stock , as on 01/04/2005 when MVAT came in force [now not relevant]
- Rule 52 lays down the framework for Set-off on transactions after 01/04/2005
- Rule 53 provides for Retention in set off
- Rule 54 gives the negative list when the set off is not allowed

3. SCHEME OF SET-OFF CLAIM

The legal provision relating to set- off claim are summarised below:

i. What is set-off?

Set-off is the amount of tax credit which can be claimed in the VAT return. It is the tax that has been charged on goods at the prior stage. This credit can be adjusted against the VAT payable on the sales and the balance of VAT has to be paid to the Government.

ii. Who can claim set-off?

Under Rule 5, any registered dealer who has not opted to pay tax by way of composition as a retailer, owner of a restaurant / hotel or a bakery owner can claim set-off on purchases affected on or after 1.4.2005.

In other words, set-off can not be claimed by a dealer opting for **composition scheme** except in the case of works contracts and dealers in second hand motor vehicles where special provisions apply.

iii. Taxes available for set-off?

Following taxes paid are eligible for set-off under Rule 52 for taxes paid under:

- Maharashtra Value Added Act 2002, i.e VAT
- Entry for Motor Vehicles into Local Areas Act, 1987, i.e Entry Tax
- Entry of Goods into Local Areas Act, 2003, i.e Entry Tax

iv. Taxes not available for set-off?

Set off can not be claimed for:

- tax paid under the Central Sales Tax Act, 1956 or
- centrally collected taxes,
- taxes paid in another state or
- taxes paid to a municipal or other local self government.

v. Eligible goods :

Under Rule 52 Set off can be claimed on the full amount of tax paid on total purchases of the business effected from registered dealers . This includes

- capital assets,
- goods the purchases of which are debited to profit and loss account,
- trading goods,
- raw materials, parts, components and spares,
- packing materials and fuel.

vi. Purchases not qualified for set-off :

- motor vehicles (other than goods vehicles) and parts, components and accessories thereof treated as capital assets unless the dealer is in the business of transferring the right to use such vehicles.
- motor spirits, unless sold or resold in the course of inter-state trade, or exported outside India or are sent outside the state on consignment or as a branch transfer, or where the dealer is a commission agent sending the goods to the place of business of his principal.
- crude oil used for refining.
- consumables or capital assets where the dealer is principally involved in doing job-work or labour work.
- raw materials purchased by a dealer with an Entitlement Certificate.
- goods of an intangible character other than those specifically excluded.
- goods purchased by a shipping company
- purchase effected by way of works contract where the contract is for erection of immovable property.
- building materials which are not resold but are used in the activity of construction.
- office equipment, furniture, fixtures and electrical installations which are meant for own consumption.
- purchase effected by a wholesaler or retailer of drugs and medicines covered by Entry 29 of schedule C.

vii. Conditions related to claiming set-off:

Under Rule 52, following conditions apply for claiming set-off:

- a) To be eligible for set off, a Dealer must be registered for VAT at the time of purchase of goods.
- b) Set off can not be claimed by a dealer paying tax by way of composition as a retailer, hotel / restaurant business or bakery.

- c) Set off must be supported by valid tax invoice for the goods purchased and the amount VAT must be shown separately in the invoice ,
- d) The dealer must maintain an account of all purchases in chronological order in respect of which setoff is being claimed

viii. Restrictions/ Reduction /retention on the set-off allowable

Reduction in set-off is made in certain circumstances from the set-off amount in the event of the contingency specified and to the extent specified in Rule 53. The circumstances and the extent of reduction is as below:

- a) Reduction to the extent of 3% of the purchase price will be made from the amount of set-off otherwise allowable if the taxable goods purchased the claimant dealer have been :
 - used as **fuel**,
 - used for the manufacture of any tax-free goods (other than sugar and fabrics) ,
 - used for **packing** of any **tax-free** goods and
 - taxable goods despatched to a place **outside the state** otherwise than by sale i.e. transfer of taxable goods to branch in other State or to agent in other State,(4% with effect from 01-04-2012 , 1% of the Purchase Price of Schedule B goods,),
- b) Reduction to the extent of 64% or 9/25, if the dealer has opted for composition scheme @ 8% of the value of works contract, tax will be 9/25 or 36% .
- c) Reduction to the extent 4 % of the purchase price, If the dealer has opted for composition scheme @ 5% of the value of works contract.
- d) In the event of business being discontinued or not continued by successor, set off on closing stock (other than capital assets) on the date of such event and set off already received has to be repaid .
- e) If the receipts from sale of goods is less than 50% of the gross receipts of the business, set off is available only on those goods which are sold or consigned or used in manufacturing or packing of the goods sold or consigned.
- f) If retailer of liquor holding specific liquor license, effect sale of liquor at the price lower than MRP. Set off available will be on pro rata basis =

$$\text{Set off} = \frac{\text{Set off X selling price allowable on purchase}}{\text{MRP value of the liquor sold.}}$$

- g) 3% set off can be claimed on office equipment furniture and fixtures by dealers not in the business of leasing of office equipment, furniture and fixtures.

ix. Deficiency in tax to be paid The Claimant dealer shall deduct the amount required to be reduced under this rule from the amount of set-off available in respect of the period in which the contingency specified in this rule occurs and claim only the balance amount as set-off and when the amount so required to be deducted exceeds the said amount of set off available in respect of that period, he shall pay an amount equal to the excess at the time when he is required to pay the tax in respect of the said period. [Rule 53(8)].

4. NON ADMISSIBILITY OF SET OFF – NEGATIVE LIST (RULE 54)

Under Rule 54, a negative list is given i.e the purchases of goods are not eligible for set off : The list is as follows:

- 1).Motor **vehicles**, (except goods vehicle), if treated as capital assets and their parts components and accessories. However, a dealer dealing in sale of motor vehicles or leasing of motor vehicles is entitled to set off.
- 2).Motor **spirits**, as notified u/s 41(4) unless it is resold or transferred to branch or agent outside the State.
- 3).**Crude oil** described in Section 14 of the C.S.T Act, if it is used by refinery for refining.
- 4).If a dealer is engaged in **pure job work** or labour work and where only waste/scrap is sold then no set off will be granted on consumables and capital assets.
- 5).Unit covered by package scheme of incentive under exemption scheme or deferment scheme is not entitled for set off of tax paid on "raw materials" as defined in Rule 80. However, it can claim refund of tax paid on such purchases, which will be equal to set off.
- 6).Incorporeal or intangible goods like trademark, patents, copyrights and SIM cards are not eligible for set off. Import licenses, exim scrips, export permits license/ Quota and DEPB are eligible for set off. Software packages are eligible for set off only if resold (traded).
- 7) Purchases effected by way of works contract where the contract results in immovable property other than plant and machinery.
- 8).Purchase of building materials, if the same are not resold but are used in construction activity.
- 9) Purchase of Indian Made Foreign Liquor or country liquor by a dealer who has opted for composition scheme.

10) Purchase of mandap, tarpaulin, shamiana, pandal, lights, etc. for use in a mandap by a mandap keeper if he has opted for composition scheme.

11) Purchases of capital goods by hotels not connected with provision of food or beverages

5. GENERAL CONDITIONS FOR SET-OFF REFUNDS AND DRAWBACKS – RULE 54

Set- off or refund will be allowed only if the following conditions are satisfied

- i. In the year in which a dealer is registered under VAT and has purchased goods from outside Maharashtra , unless the dealer was registered at time of purchased or the goods have been used in a capital asset and the asset has not been sold before the date of registration
- ii. Set off is allowable as and when purchase is made, irrespective of its disposal. However, it is subject to the restrictions specified in Rule 53 and negative list contained in Rule 54.
- iii. The dealer keeps a chronological record of purchase in respect of which set- off is claimed including name of the dealer, amount, tax collected etc
- iv. Set off is allowed against tax- invoice only and invoice has to be produced on demand.
- v. Amount of Set off can be adjusted against VAT dues in the VAT return
- vi. If the set-off exceeds the tax due, It can be adjusted as follows:
 - to reduce the amount of CST payable
 - carry forward the balance to your next VAT return
 - claim a refund if you are eligible to claim a refund
- vii. Commissioner can recover sales tax arrears against the set-off amount under a demand notice and only the balance will be refunded. But once such demand is notice is issued , dealer can not adjust set-off against tax of that period.
- viii. Where items of purchase can not be individually identified FIFO method will be used.
- ix. Entry tax on vehicles is eligible for set off .

- x. In case of succession of a business due to death of a dealer or transfer or disposal of business, the set-off credit can be taken by the successor.
- xi. Miscellaneous :
- Set-off is normally not to be refunded – except in case of a dealer who is eligible under the package scheme for exemption of tax
 - Set off is by way of adjustment in tax liability.
 - When goods are sent outside the state of Maharashtra in the course of inter-state sale, tax paid locally may be refunded.
 - If the set off amount exceeds the tax liability, the excess can be:
 - claimed as refund or
 - adjusted against CST or
 - Carried forward to next period and adjusted against the VAT payable.
- xii. CST paid on interstate purchase is not eligible for set off.-S 49. However, if it can be shown that in an earlier transaction VAT was paid on such goods, set-off may be allowed to that extent.

6. TYPICAL SOLVED ILLUSTRATIONS

A). A dealer purchases the following goods in Maharashtra during December 2010

:

| PARTICULARS | TOTAL | INPUT TAX | NET PURCHASES |
|--------------------|--------------|------------------|----------------------|
| 4 % VAT Goods | 7,80,000 | 30,000 | 7,50,000 |
| 12.5% VAT Goods | 15,75,000 | 1,75,000 | 14,00,000 |
| VAT Exempt Goods | 1,50,000 | NIL | 1,50,000 |

Additional Information:

1. VAT payable on sales made during the month is Rs. 5,27,500/-
2. During December 2010 the dealer utilised 4% VAT Goods costing Rs. 1,50,000/- as input for manufacturing Exempted Goods.
3. On 1st December 2010 there was an opening balance of Rs. 10,000/- in VAT Credit Receivable/Set off Account.
4. The dealer has received a refund of Rs. 2,500/- out of VAT Credit Receivable Account.

Prepare a statement of computation of Tax to be paid under the provisions of Maharashtra Value Added Tax Act 2002.

Solution :

| | | |
|--------------------------|------------|-----------------|
| Tax Payable | Rs. | 5,27,500 |
| Less: Tax Credit | | |
| 4% VAT Goods Rs | 30,000 | |
| 7,50,000 | | |
| 12.5% VAT Goods | 1,75,000 | |
| | 2,05,000 | |
| Less: 3% on 1,50,000- | 4,500 | |
| exempted goods | 2,00,500 | |
| (Reduction under Rule 53 | | |
| Add: Opening Balance | 10,000 | |
| | 2,10,500 | |
| Less: Refund Received | 2,500 | 2,08,000 |
| VAT PAYABLE | | 3.19,500 |

Q 2. Prepare a statement of computation of Tax for the month of May 2009 to be paid under the provision of Maharashtra Value Added Tax Act 2002.

| <u>PARTICULARS</u> | <u>TOTAL</u> | <u>INPUT TAX</u> | <u>NOT PURCHASES</u> |
|--------------------|--------------|------------------|----------------------|
| Schedule C Goods | 5,20,000 | 20,000 | 5,00,000 |
| Schedule E Goods | 11,25,000 | 1,25,000 | 10,00,000 |
| Schedule A Goods | 4,50,000 | NIL | 4,50,000 |

Additional Information:

- VAT collected on sales made during the month is Rs. 2,25,000/-
- During the month the dealer utilised Schedule C Goods costing Rs. 2,00,000 as fuel.
- There is brought forward of set off of Rs. 22,500/- from the last month.
- Amount debited to P & L Account for material is Rs. 10,000/- on which tax paid is Rs. 400/- @ 4%.

5. Purchases of Schedule E Goods from Registered Dealer on which tax is not separately charged is Rs. 20,500/-

Solution;

| | | |
|--|----------|---------------|
| Tax Payable | Rs. | 2,25,000 |
| Less: Tax Credit | | |
| 4% VAT Goods Rs | 20,400 | |
| 12.5% VAT Goods | 1,25,000 | |
| | 1,45,400 | |
| <u>Less: 3% on 2,00,000- fuel</u> (Reduction under Rule 53) | 6,000 | |
| | 1,39,400 | |
| Add: Opening Balance | 22,500 | 1,61,900 |
| VAT PAYABLE | | 63,100 |

Q 7. Compute tax liability of M/s Sudha Enterprises for the month of December 2010 under the provision of MVAT Act, 2002

| Particulars | Total | Input Tax | Net Purchases |
|------------------|----------|-----------|---------------|
| Schedule C Goods | 20,800 | 800 | 20,000 |
| Schedule E Goods | 3,60,000 | 40,000 | 3,20,000 |
| Schedule A Goods | 1,25,000 | NIL | 1,25,000 |

Additional Information:

- VAT collected @ 4% on Sales during the month is Rs. 1,20,000/-
- The dealer has purchased Office Equipment costing Rs. 40,000/- tax paid is Rs. 5,000/- @ 12.5%.
- The dealer has made Branch Transfer of Schedule E goods purchased in the last month costing Rs. 1,00,000/- (excluding tax)
- There was an opening balance of Rs. 10,500/- in VAT Credit Receivable Account.
- OMS Purchases was Rs. 30,000/- on which tax paid is Rs. 1,200/- @ 4%.

Solution;

| | | |
|--------------------------------------|------------|---------------|
| Tax Payable | <i>Rs.</i> | 1,20,000 |
| Less: Tax Credit | | |
| 4% VAT Goods Rs | 800 | |
| 12.5% VAT Goods | 45,000 | |
| | 45,800 | |
| Less: Reduction under Rule 54 | | |
| on Branch Transfer 3% of Rs. | | |
| 1,00,000- Sch. E goods | 3,000 | |
| Reduction on Capital Asset -3% | | |
| on Rs 40,000 | 1,200 | 4,200 |
| | | 41,600 |
| Add: Opening Balance | | 10,500 |
| VAT PAYABLE | | 67,900 |

6. SELF- EXAMINATION QUESTIONS

1. What is set off? What are the conditions for set off?
2. In what circumstances tax paid can be refunded?
3. When the set off can be reduced?
4. Set off achieves the uniformity of tax rates and avoids double taxation, Comment.
5. What are the rules for a hotel to claim set off?



University Papers= March,2010 (Adapted)
SECTION –I

Q No I is compulsory (16 Marks) Any Two from the Rest (12X 3 Marks)

1. Mr Shivaji Raje, proprietor of SR and Co. furnishes you the following information for the year ended March 31, 2011.

Profit & Loss Account for the year ended March 31, 2011

| Expenses | Rs | Income | Rs |
|-------------------------------------|----------|--------------------------------------|----------|
| To Salaries | 80,000 | By Gross Profit | 4,10,000 |
| To Fire Insurance Premium | 12,000 | By Interest on FD with Bank of India | 8,000 |
| To Staff Welfare Expenses | 20,000 | By Interest on PPF | 15,000 |
| To Interest on Proprietor's Capital | 5,000 | | |
| To Salary to Proprietor | 12,000 | | |
| To General Expenses | 22,000 | | |
| To Advertisement | 15,000 | | |
| To Provision for bad debts | 7,000 | | |
| To Travelling Expenses | 40,000 | | |
| To Repairs & Maintenance | 5,000 | | |
| To Investment in PPF | 70,000 | | |
| To Advance Income Tax | 8,000 | | |
| To Audit Fees | 15,000 | | |
| To Depreciation | 13,000 | | |
| To Net Profit | 1,09,000 | | |
| Total | 4,33,000 | Total | 4,33,000 |

Additional Information:

1. Depreciation as per Income Tax Rules Rs 16,000.
2. Advertisement includes advertisement of Rs 10,000 in a souvenir published by a political party.
3. Repairs and maintenance expenses are fully incurred for residential house of proprietor.
4. He paid mediclaim insurance of Rs 18,000 by cheque for himself.

You are required to compute his total taxable income for the AY 2011-12

2. [a] Rewrite the following sentences by selecting the correct option:
 1. Rented house is sublet for a rent of Rs 10,000 p.m.. The income from such rent shall be taxable under the head-
 - Income from house property
 - Income from business
 - Income from other sources
 2. If gross total income is Rs 90,000 and life insurance premium paid is Rs 95,000, the net taxable income would be-
 - Rs 90,000
 - Nil
 - Loss of Rs 5,000
 3. Mr. Suhas, a practising Chartered Accountant is a full time lecturer in S. N. College. He was appointed as internal auditor of Students' Council of S. N. College and was paid audit fees of Rs 5,000. These fees are taxable under the head-
 - Income from business and profession
 - Income from other sources
 - Income from salaries
 4. Remuneration received by a working partner of a firm is taxed under-
 - Income from salaries
 - Income from other sources
 - Income from business and profession

5. There is a short term capital gain if equity shares sold were held for-
- Not more than 36 months
 - Not more than 12 months
 - Not more than 10 months
6. Voluntary retirement compensation received by retiring employee is exempt u/s 10(10C) to the maximum extent of-
- Rs 3,50,000
 - Rs 5,00,000
 - Rs 1,00,000

2[b] Match the following columns and rewrite the sentences

| | Column A | | Column B |
|---|--|---|---------------------------------------|
| 1 | Equity shares of Indian company held for 18 months | a | Ordinarily resident |
| 2 | An Indian company | b | Non resident |
| 3 | Dividend from Indian company | c | 30% |
| 4 | Shivaji University | d | 33.33% or Rs 15,000 whichever is less |
| 5 | Maximum deduction under Chapter VI A | e | Gross total income |
| 6 | Standard deduction on family pension | f | Rs 1,00,000 |
| | | g | Short term capital asset |
| | | h | Long term capital asset |
| | | i | Artificial juridical person |
| | | j | Local authority |
| | | k | Taxable |
| | | l | Exempt u/s 10 |

3. Dr Milind Deshmukh is employed with BKC College, Pune. He gives you the following information for the year ended March 31, 2011.

| | |
|--|------------------|
| Basic salary | Rs 4,00,000 p.a. |
| Dearness Allowance | Rs 2,00,000 p.a. |
| Perquisite value of rent free house | Rs 12,000 p.a. |
| Arrears of salary (not taxed earlier) | Rs 1,80,000 |
| SY BCom Examination remuneration received from college | Rs 10,500 |
| Profession tax deducted from salary | Rs 2,500 |
| Remuneration received from Pune University for Ph.D. guide | Rs 10,000 |

1. He spent Rs 6,000 on purchase of books useful for the purpose of his employment.
2. He received Best Teacher Award of Rs 11,000 from Government of Maharashtra.
3. He received gift from his father of Rs 75,000.
4. He paid LIC premium for his son Rs 60,000 by cash.
5. He had taken a loan from SBI for higher education of his son pursuing Mumbai University's Engineering degree course for which he paid interest of Rs 50,000 during the year.

Compute his taxable income for the AY 2009-10.

4. Mr Dharma Bhatkar gives you the following information regarding house property owned by him, for PY 2010-11.

| Particulars | House I (Self Occupied) Rs | House II (Deemed to be let out)Rs |
|------------------------------|----------------------------------|---|
| Rent p.m. | 10,000 | 8,000 |
| Municipal Valuation p.m. | 15,000 | 10,000 |
| Municipal taxes paid | 12,000 | 10,000 |
| Municipal taxes outstanding | 6,000 | Nil |
| Repairs | 12,000 | 8,000 |
| Interest on borrowed capital | 40,000 | 28,000 |

| | | |
|-------------------------------|--|--|
| (loan taken on April 1, 2004) | | |
|-------------------------------|--|--|

Other information:

1. Rent received from sub-letting tenancy premises
Rs 90,000
2. Rent paid to landlord on above tenancy premises
Rs 12,000
3. Mediclaim insurance paid by cheque for his minor son
Rs 17,000

Compute his taxable income for the AY 2011-12

5. (a) Mr Bret Lee, an Australian citizen came to India for the first time on April 1, 2005 and started a business in Mumbai. He went out of India on April 1, 2009 and came back to India on January 1, 2010 and was in India thereafter. Find out his residential status for AY 2011-12.

(b) Mr Vinod Mohite purchased a residential house on June 1, 1979 for Rs 1,00,000. He incurred expenses of Rs 50,000 towards cost of improvement on July 2, 1983 on this house. The fair market value of the house on April 1, 1981 was Rs 1,50,000. He sold the house on October 10, 2010 for Rs 40,00,000. He purchased a new residential house for Rs 20,00,000 on March 15, 2011. The Cost inflation index for FY 1981-82 is 100, FY 1983-84 is 116 and for FY 2011 is 712. You are required to compute his income from capital gain for AY 2011-12.

SECTION II -40 Marks –4X10 Marks**All four questions compulsory with internal choice**

6. State with reasons whether the following activities would form part of taxable service or not, under the respective services-
 - a. Renting of immovable property by a religious body
 - b. Commercial training centre imparting skill or knowledge or lessons to students
 - c. Service of production or processing of goods in relation to manufacture of cut and polished diamonds
 - d. Royalty received by a Chartered Accountant on a book in accountancy
 - e. Shooting of a TV serial in a rented studio premises

OR

Choose the correct option and rewrite the statement-

- a) Service tax is applicable to-
 - Whole of India
 - Whole of India except Jammu and Kashmir
 - Jammu and Kashmir only
- b) Where any taxable service is provided by a non-resident, service tax-
 - Is not payable
 - Is not payable by the service recipient
 - Is payable by service provider
- c) Return of service tax has to be held-
 - Monthly
 - Half yearly
 - Yearly
- d) Due date of payment of service tax, either than for the month of March in case of a company is-
 - 5th day of the month immediately following the calendar month
 - 5th day of the month immediately following each quarter
 - Last day of the month
- e) Renting of immovable property includes-
 - Letting
 - Leasing
 - Letting and leasing both
- f) Business auxiliary service became taxable w.e.f.
 - 1-7-2003
 - 1-7-1997
 - 1-8-1997
- g) If the charges for the taxable services have been received in advance before rendering of the services-
 - No, service tax is payable on receipt of advance.
 - The service tax is payable on rendering of service.
 - The service tax is payable on receipt of advance.
- h) The certificate of registration under service tax is in-
 - Form ST-1
 - Form ST-2
 - Form ST-3
- i) Service tax law is governed by-
 - Income tax act
 - Service tax act
 - Chapter V of the Finance Act, 1994
- j) The credit of the service tax paid on the input service is governed by-

- Service tax act
 - CENVAT credit rules, 2004
 - Finance Act, 1994
7. Mr Ramesh Joglekar is classified as a mandap keeper and liable to service tax. You are required to find out the Amount of service tax which Mr Ramesh Joglekar should collect and pay to the Government, for the marriage function of his client.

| | |
|---|-------------|
| Receipts from wedding ceremony | Rs 4,00,000 |
| Receipts from conference hall (for reception) | Rs 2,50,000 |
| Receipts from catering services including alcohol Rs 1,00,000 | Rs 3,00,000 |
| Receipts from rental of furniture | Rs 1,00,000 |
| Receipts from charges for decoration for stage | Rs 1,00,000 |
| VAT and expenditure tax on above | Rs 50,000 |

OR

Mr Chintan Chitale runs a commercial coaching institute. He has received the following amounts during the period 1-4-10 to 30-9-10 for various services-

| | |
|---|-------------|
| Classroom coaching | Rs 5,00,000 |
| Postal coaching | Rs 3,00,000 |
| Test series | Rs 1,00,000 |
| Receipt from providing textbooks prescribed by the University at MRP less 10% | Rs 1,50,000 |
| Fees from RBI for coaching their staff members | Rs 50,000 |
| He has a school division for Class IX. Fees received for the same | Rs 2,50,000 |
| Fees received by running oral coaching centre for ICSI | Rs 25,000 |

Compute the service tax payable.

8. Explain with reasons whether the following activities are manufacturing activities or not as per the provisions of the Maharashtra Value Added Tax Act, 2002.

- a. Retreading of old tyres
- b. Cutting wooden sheets into smaller ones
- c. Baking of pizza in a large oven
- d. Repairing of a mobile phone
- e. Assembling computer for the customer's household use

OR

Choose the correct option and rewrite the statement-

- a) Sale price as defined under MVAT Act, 2002 includes-
 - Cost of insurance in transit
 - Deposit in connection with sale of goods
 - Cost of installation
- b) Export sales are-
 - Sale of tax free goods
 - Exempt sales
 - Sale of goods specified in Schedule A
- c) Taxable sales for the purpose of registration exclude-
 - Sales under Schedule A
 - Sales under Schedule B
 - Exports
- d) As per Composition Scheme for retailers, 8% tax is payable on-
 - Sales – Purchases
 - Sales – (Purchases + Opening Stock – Closing Stock)
 - Sales – (Purchases + Opening Stock)
- e) Composition scheme under Section 42 can be availed by-
 - Wholesaler
 - Importer
 - Retailer
- f) M/s Kedar Associates purchases goods for Rs 40,000 and sells them for Rs 50,000 (both excluding tax), the goods being classified under Schedule E, the net tax payable will be-
 - Rs 1,250
 - Rs 6,250
 - Rs 5,000
- g) Aniket of Nashik purchased goods for Rs 12,240 (inclusive of CST Rs 240) from Sanket of Satna (M. P.). He sold these

goods to Milind of Mumbai for Rs 15,750 (inclusive of 12.5% VAT). The VAT payable is-

- Rs 1,750
- Rs 1,510
- Rs 240

h) The set off can be adjusted to-

- Against the VAT payable as per the return
- Against the CST payable for that period
- Against VAT payable as per the return & CST payable for that period

i) VAT at 12.5% is under-

- Schedule B
- Schedule D
- Schedule E

j) The percentage of turnover the retailer is required to sell, under section 42 of MVAT Act, 2002, to a non dealer is

- 90% of sales
- 60% of sales
- 80% of sales



Revised Course (New Pattern)

- N.B. :** 1. The **Revised Course (New Pattern)** is applicable to the **Regular Students** enrolled during academic year **2011-12**.
2. **All** questions are **compulsory**.
3. **Figures** to the **right** indicate **full** marks.

1. Mr. Vijay Proprietor of V and Co furnishes you the following information for the year ended 31-03-2011. **(15)**

Profit and Loss Account for the year ended 31st March 2011

| Debit | ₹ | Credit | ₹ |
|-----------------------|-----------------|---------------------|-----------------|
| To Salaries | 1,80,000 | By Gross Profit | 8,90,000 |
| To Conveyance | 30,000 | By Dividend from | |
| To Interest on Loan | 11,000 | Indian Companies | 9,000 |
| To Interest on | | By Gift from Father | 51,000 |
| Proprietor's Capital | 19,000 | By Dividend from | |
| To Repairs and | | Co-operative Bank | 10,000 |
| Maintenance | 18,000 | | |
| To Wealth Tax | 12,000 | | |
| To Interest & Penalty | | | |
| on Wealth Tax | 3,000 | | |
| To Travelling Expense | 27,000 | | |
| To Depreciation | 35,000 | | |
| To Life Insurance | | | |
| Premium | 55,000 | | |
| To Staff Welfare | 40,000 | | |
| To Advertisement | 10,000 | | |
| To Net Profit | 5,20,000 | | |
| | 9,60,000 | | 9,60,000 |

Additional Information :

- a) Depreciation as per Income Tax Rules ₹40,000/-.
- b) Travelling Expenses include expenses for visiting his native place ₹8,000/-.
- c) Medclaim insurance premium for his wife paid by cheque ₹15,000/-.

You are required to compute his taxable income for assessment year 2011-2012.

OR

1. Mr. Ojas Kothare is a physically disabled person (90% disability). He is employed with Mumbai Printers. He gives you following information for the year ended 31st March, 2011. (15)

| Particulars | Amount (₹) |
|---|---------------|
| Basic Salary | 6,00,000 p.a. |
| Bonus | 2,50,000 p.a. |
| Entertainment Allowance | 48,000 p.a. |
| House Rent Allowance (Exempt House Rent Allowance ₹17,900) | 1,20,000 p.a. |
| Conveyance Allowance (Amount spent on official conveyance ₹21,600) | 24,000 p.a. |
| Perquisite Value of Subsidised meal at workplace | 24,000 p.a. |
| Profession Tax Deducted | 2,500 |
| Particulars of Owned House | |
| Let Out | |
| Municipal Valuation (per month) | 75,000 |
| Rent Received (per month) | 60,000 |
| Municipal Taxes paid during the year | |
| a) For Previous Year 2010-11 | 24,000 |
| b) For Previous Year 2009-10 | 12,000 |
| Interest paid on Borrowed Capital for construction of House | 1,70,000 |

Other Information :

He completed his graduation in engineering in 2008.

For this he had taken an educational loan from Corporation Bank in 2006. During the year he paid ₹80,000/- as interest on this loan.

Compute his taxable income for Assessment Year 2011-12.

2. (a) Sony Electronics provides you the following information. You are required to compute their tax liability under the provisions of Maharashtra Value Added Tax Act, 2002 for the month of January, 2012. (8)

- | | |
|---|-----------|
| i) Sales within Maharashtra | |
| • Schedule E Goods | 30,00,000 |
| • Schedule C Goods | 10,00,000 |
| ii) Purchases within Maharashtra (excluding VAT) | |
| • Schedule C Goods – Raw Materials | 8,00,000 |
| • Schedule E Goods – Components | 2,00,000 |
| • Schedule E Goods – Stationery | 50,000 |
| • Schedule E Goods – Machinery | 2,50,000 |
| iii) Balance in VAT Receivable / Set off account brought forward from earlier month | 50,000 |
| iv) Tax rate for Schedule C Goods is 4% and for Schedule E goods is 12.50%. | |

- (b) M/s. Tajaj Capital Services provides various services to its clients and has received a total amount of ₹60 Lakhs for such services as follows : **(7)**

| | ₹ (Lakhs) |
|---|--------------|
| i) Promotion of an IPO (Initial Public Offering) and related activity | 10 |
| ii) Commission on canvassing advertisements for publishing | 25 |
| iii) Commission received on giving leads to banks for Loan proposals | 5 |
| iv) Commission on distribution of Mutual Fund Units | 10 |
| v) Brokerage received on soliciting Fixed Deposits for Companies | 10 |

Compute the value of taxable service under 'Business Deposits Auxilliary Service' and the Service Tax payable by M/s. Tajaj Capital Services.

OR

2. (p) State with reasons whether the following are 'Manufacturing Activities' as per the provisions of Maharashtra Value Added Tax Act, 2002 **(Any Four)** **(8)**

- i) Polishing of Silver Utensils
- ii) assembly of computer from various parts
- iii) Sewing of cloth into Garments

- iv) Coating of fragrance on agarbattis
- v) Cutting of paper from rolls into reams

(q) M/s. Agashe's Commercial Institute, a registered service provider, provides you the following information. **(7)**

₹

- i) Classroom coaching for T.Y.B.Com students 4,50,000
- ii) Fees received for 'Practical Accounting Certificate' an Unrecognised Course 2,50,000
- iii) Value of Free coaching to needy students 50,000
- iv) Fees received from M/s. T and L Ltd. for imparting training to its employees 5,00,000
- v) Classroom coaching for Std. IX students 1,00,000

Compute the value of taxable service provided and the Service Tax payable by M/s. Agashe's Commercial Institute.

3. (a) Kamu Traders, dealing in garments, commenced their business on 28th March, 2011. From the following particulars regarding purchases and sales transactions. You are required to find out the date from which they will be liable for Registration and to pay tax as per the provisions of Maharashtra Value Added Tax Act, 2002. Give reasons. **(7)**

| Date | Taxable Purchases within State (₹) | Taxable Purchases Outside State (₹) | Taxable Sales within State (₹) |
|------------|------------------------------------|-------------------------------------|--------------------------------|
| 02-04-2011 | 84,000 | 2,000 | 60,000 |
| 05-04-2011 | 20,000 | - | 35,000 |
| 10-04-2011 | 56,000 | 12,000 | 50,000 |
| 20-04-2011 | 3,26,000 | 15,000 | 3,20,000 |
| 25-04-2011 | 36,000 | 10,000 | 80,000 |

(b) State with reasons whether the following activities would form a part of Taxable Service or not. **(Any Four) (8)**

- i) Mr. Palshetkar provided coaching to IPCC students at his own residence.
- ii) Mr. Dhaigude, requisitioned the services of a Chartered Accountant, based in London, for his personal purpose.
- iii) Renting of Land for educational purpose.

- iv) M/s. Fire control Enterprises providing services for fire proofing.
- v) Hiring out space/stall at India Travel Exhibition.

OR

3. (p) Answer in brief the following as per the provisions of Maharashtra Value Added Tax Act, 2002.
- i) Explain provisions of set off in respect of purchase of office equipment and furniture. **(4)**
 - ii) Explain the term 'goods'. **(3)**
- (q) Write short notes on **(Any Two)** **(8)**
- i) Exemptions / Exclusions from service tax in respect of Business Auxiliary Service.
 - ii) Filing of Service Tax Return
 - iii) Service Recipient
 - iv) Payment of Service Tax
4. (a) Rewrite the following sentences by selecting the correct option. **(5)**
- i) A new business was set up on 01-10-2010. It's first previous year will end on –
 - 31-03-2011
 - 30-09-2011
 - 31-12-2010
 - ii) Pune University is assessed to Income Tax as –
 - As Individual
 - An artificial Juridical Person
 - A Local Authority
 - iii) Income earned and received outside India is taxable in the case of –
 - Non Resident
 - Resident and Ordinary Resident
 - None of the assesseees
 - iv) Dividend received is exempt if it is received from –
 - An Indian Company
 - A Co-operative Bank
 - Any Company
 - v) Capital Gain arises out of transfer of –
 - Capital Asset
 - Any Asset
 - Any Liability

(b) Choose the correct option and rewrite the statement as per the provisions of Service Tax. (5)

- i) Service Tax is Governed by –
- The Income Tax Act
 - The Service Tax Act
 - The Excise Act
 - Chap V of the Finance Act, 1994
- ii) Service is taxable if it is provided by –
- A Chartered Accountant
 - An Accountant
 - A Practising Chartered Accountant
 - An IPCC Passed Accountant
- iii) An Assessee may submit a revised return within –
- 30 Days
 - 60 Days
 - 90 Days
 - 180 Days
- iv) Fees received by Water Department of Government of Maharashtra is –
- Not Taxable
 - Taxable
 - Taxable Upto 50%
 - None of these
- v) Jagruk classes have billed their students for ₹39,708 (Inclusive of service tax and cess) the amount of service tax payable would be –
- ₹3,708
 - ₹4,090
 - ₹4,368
 - ₹4,908

(c) Rewrite the following sentences by selecting the correct option under the provisions of Maharashtra Value Added Tax Act, 2002.

- i) The term 'Goods' includes –
- ★ Immovable Property
 - ★ Growing Crops
 - ★ Equity Shares

- ii) P and Co. of Pune purchased goods for ₹10,200 (inclusive of CST ₹200) from S and Co. of Surat. They sold these goods to T and Co. of Thane for ₹22,500 (inclusive of VAT at 12.50%). The VAT payable is –
- ★ ₹200
 - ★ ₹2,300
 - ★ ₹2,500
- iii) The term 'Importer' means a dealer who brings goods into the state from –
- ★ Outside the State
 - ★ Outside the City
 - ★ Outside the Country
- iv) Under a Composition scheme under section 42, the tax rate for works contract other than construction contract is
- ★ 4%
 - ★ 5%
 - ★ 8%
- v) R and Co. purchases goods from a registered dealer for ₹1,00,000 and sells them for ₹1,50,000 (both excluding VAT), the goods being classified under schedule C (tax rate 4%). The net tax payable will be –
- ★ ₹2,000
 - ★ ₹4,000
 - ★ ₹6,000

OR

4. (p) Rewrite the following sentences by selecting the correct option.
- i) Gift received from brother ₹1,00,000 is –
- Taxable
 - Exempt
 - Exempt upto ₹50,000
- ii) Rajiv has let out his residential house for commercial purpose. Rent received from such house is –
- Income from Business
 - Income from Other Sources
 - Income from House Property
- iii) Municipal Taxes paid by the owner is deducted from –
- Gross Annual Value
 - Net Annual Value
 - Net Income from House Property

- iv) Salary received by a working partner from the partnership firm is –
- Income from Salary
 - Income from Business
 - Income from Other Sources
- v) Family pension received is –
- Income from Salary
 - Income from Business
 - Income from Other Sources

(q) Match the columns.

(5)

| Column A | Column B |
|---|--|
| 1. Works Contact | • ST – 1 |
| 2. International Organisation or United Nations | • GAR – 7 |
| 3. Payment of Service Tax | • Exempt Partially |
| 4. Renting of Immovable Property for Commercial Training Centre | • Taxable Service |
| 5. Return filed after 18 days from due date | • Service became Taxable w.e.f. 01-06-2007 |
| | • Exempt from Service Tax |
| | • Penalty of ₹500/- |
| | • Penalty of ₹1,000/- |

(c) Rewrite the following sentences by selecting the correct option under the provisions of Maharashtra Value Added Tax Act, 2002.

- i) The sale price of a Product 'X' is ₹200/- per unit. The excise duty thereon is ₹20/- per unit and the packing charges is ₹30/- per unit. The sale price liable for MVAT is –
- ₹220
 - ₹250
 - ₹350
- ii) A second hand car dealer buys a vehicle for ₹2,00,000/- and sells the same for ₹3,00,000/-. The composition tax payable is –
- ₹12,500
 - ₹37,500
 - ₹5,625

- iii) A retailer has opted for composition scheme. his sales are ₹15,00,000/- and purchase from unregistered dealer is ₹2,00,000/- and from registered dealer is ₹10,00,000/-. The composition tax payable is –
- ₹40,000
 - ₹24,000
 - ₹1,04,000
- iv) A Tax invoice is issued by –
- An exporter
 - A Service Provider
 - A registered dealer
- v) Rate of tax for a unit located in a notified Special Economic Zone is –
- NIL
 - 2%
 - 12.50%

