

SYLLABUS
M.COM. PART –II
ACCOUNTANCY GROUP-PAPER-V
RELATED APPLIED COMPONENT
DIRECT AND INDIRECT TAXES

SECTION-II	INDIRECT TAXES	50 Marks
-------------------	-----------------------	-----------------

1. Service Tax (30 MARKS)

1. **Introduction to Service Tax :**
Basic Terms, CENVAT Credit related to Service tax
2. **Provisions related to following Taxable Services and Computation of Tax Liability :**
Courier, Clearing and Forwarding Agent, Construction Services, Event Management services, Advertising Services, Architect's Services,
3. **Payment of Service Tax & Filing of return**
4. **Interest & Penalty**

2. MVAT (20 MARKS)

1. **Introduction:**
Definitions: Sec 3, 4, 5,6,7,8 (Only Theory)
2. **Registration Procedure and Rules –S 16**
3. **Audit-Section 22 & 61**
4. **Penalty and interest**
5. **Set-Off, Refund- composition scheme**



Pattern of Question paper	
Section –II: – Indirect Taxes	50 Marks
No. of questions to be asked	5
No. of questions to be answered	5
Q. No 05 : Practical Question -Service Tax	10 Marks
Q. No 06 : Objective Questions- Service Tax based on all topic and include <i>inter alia</i> (a) Multiple Choice (b) Fill in the Blanks (c) Match the Columns (d) True or False	10 Marks
Q No. 7 :Practical Question -Service Tax	10 Marks
Q No. 8 :Practical Question –MVAT	
Q. No 09 : Objective Questions- MVAT	

Notes :
<ol style="list-style-type: none"> 1. Q No. 3 to Q No. 4, of which not more than one question may be theory including short questions/ problems 2. Objective Questions to be based on all topic and include <i>inter alia</i> (a) Multiple Choice (b) Fill in the Blanks (c) Match the Columns (d) True or False 3. Syllabus is restricted to study of specified sections , specifically mentioned rules and notifications only 4. All topics include computational problems/case study 5. The law in force on 1st April immediately preceding the commencement of Academic Year will be applicable for ensuing examinations



SECTION-II: INDIRECT TAXES - SERVICE TAX

1

INTRODUCTION TO SERVICE TAX

Synopsis

1. Introduction and objectives
2. Legal framework
3. Scheme of Service Tax Law
4. Valuation of Taxable Service
5. Point of taxation
6. Self Examination Questions

1. INTRODUCTION AND OBJECTIVES:

1.1 Origin-1994

Modern tax system was structured on the edifice of taxes on goods. While the goods were subjected to taxes like excise and sales tax, later substituted by Value Added Tax (VAT), services were by and large outside the tax net. This scenario, in the opinion of many was not justified. Accordingly, service tax was introduced in the year 1994 on the basis of the recommendations of Chelliah Committee on Tax Reforms. As a first step, three services, telephone, non-life insurance and stock brokers, were brought under the services tax with a moderate rate of 5% *ad valorem* from 01/07/1994. Subsequent Finance Acts went on adding more and more services to be brought under the service tax and also progressively widening the scope of taxable services. Now it covers as many as 119 services and millions of service provider across the country and has become a vital source of revenue for the Government.

1.2 CONSTITUTIONAL AUTHORITY:

Service tax is imposed by the Central Government in pursuance of the powers vested in it under Article 268A read with Entry 97 of List I of the Seventh Schedule to Constitution of India. Under Article 268A, the service tax is levied and administered by the Central Government but shared by the Central and the States. In any case, proposed Goods and Service Tax or GST is slated to

replace the service tax, excise and VAT. The lesson aims to deal with various aspect and the changes in the service tax regime.

2. LEGAL FRAMEWORK & ADMINISTRATION:

2.1 The Legal Provisions:

There is no separate statute for the levy of 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 (EC) @ 2% on the Service Tax and The Finance Act, 2007 – for levy of Secondary and Higher Education Cess (SHEC) of 1% on Service tax are also relevant statutes affecting the levy of service tax.

2.2 Statutory Network for Administration of Service Tax

The service tax regime is administered through a number of rules viz.:

- 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 Preparers Scheme, 2009
- Service Tax (Removal of Difficulty) Order, 2010 and
- The Point of Taxation Rules, 2011(Amended upto 2012)

2.3 In addition, 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), which has been assigned with the task of administration of Service Tax in India.

2.4 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 thereunder, apply to service tax as well.

3. SCHEME OF SERVICE TAX LAW:

3.1 Basic Statutory Scheme:

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

Sec	Subject matter
64	Extent, commencement & 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 sections are to the sections of Finance Act, 1994

3.2 Taxable Services

From the above, the law relating to levy of service tax emanates from the above statutory provisions. To begin section 66, which is the charging section states that “there shall be levied a service tax at 12% of the value of services prescribed in Section 65(105). Section 65(105) ‘defines taxable service’ as any service **provided or ‘to be provided’** in accordance with various sub - clauses of that section.

On a plain reading of these legal provisions, salient features of service tax emerge as follows:

- (a) **Rendering of service** is *sine qua non* (essential requirement) to attract the service tax liability, and to determine that a particular service is taxable or not on a particular date, and if it is taxable at what rate the services were rendered to a client or a customer;
- (b) The service so rendered must be **taxable** within the meaning of section 65(105);
- (c) The Service may be actual rendering of service **{‘provided’}** or services **to be provided** in future implying the existence of an agreement or understanding between the provider of the recipient of the service;
- (d) **Existence of the two parties**, one to render the services and another to receive the services is *sine qua non* * (essential) to levy of service tax as no person can render service to oneself;
- (e) The service provider and the service recipient should be two persons acting on **'principal-to-principal basis'**. Services, provided by an employee to his employer, will be outside the scope of the Service Tax;
- (f) Salary or Allowances or other **payments to employees** are not covered under the service tax;
- (g) *Service Tax is **not levied upon the services provided free of cost***, unless payment is received earlier for providing such service in future;
- (h) The services to be provided **in future** will be taxed only if payment for providing such service is received in advance.
- (i) Unless otherwise provided, the service tax does not recognise the **'principle of mutuality'**. Accordingly, taxable Services provided by an unincorporated association, body society or a clubs to its members will be taxable Explanation to Sec. 65 provides that 'Taxable service' includes any taxable service provided or to be provided, by any unincorporated association or body of persons, to a member thereof, for cash, deferred payment or any other valuable consideration;
- (j) Any **statutory activities or duties** performed by a sovereign / public authority, is not regarded as taxable service to a person and accordingly it will not be liable to service tax ;
- (k) To sum up, under the existing law a service has to be taxable u/s 65(105). Any service not so covered, will be *ipso facto deemed to be exempt*. However, Finance Act, 2012 provides for a paradigm shift in the present scheme to the effect that every

*service will be covered under the service tax unless it falls in the **negative list** for which exemption has been granted. The provision will be effective 01-07-2012.*

(However it will not be applicable in the current academic year)

3.3 Territorial Jurisdiction

- (a) Service Tax is destination based and service is taxable only if provided in India. Hence, in the following cases, there is no Service Tax liability-
- (i) Taxable Services provided outside India by a foreigner to an Indian is not taxable in India. However, taxable service provided by a foreigner shall be liable to service tax subject to Import of Service Rules 2005 discussed later
 - (ii) If Indian service provider provides services abroad.
 - (iii) Services consumed for the purpose of Export.
- (b) Services rendered in Jammu and Kashmir will not be liable to Service Tax but service rendered by a person established in Jammu and Kashmir, but rendered outside the state is liable to Service Tax.
- (c) Service provided in designated areas of Exclusive Economic Zone and Continental Shelf, which are located within 200 nautical miles inside the sea from the baseline of India are deemed to be the services rendered in extended territory of "India and accordingly are liable to service tax".
- (d) Under International law, a distance upto 12 nautical miles from the Indian land mass is deemed to be within the Indian territorial waters; hence service rendered in Indian territorial waters will be service provided in India and liable to service tax.

Illustration -1

M of Mumbai provides service to Jain of Jammu. In this case since, the service was provided and used in J & K, No service tax shall be payable

Illustration -2

Assuming the case is reverse and Jain of Jammu provides taxable service to M of Mumbai.

As per section 64 the provisions of service tax apply to whole of India, except Jammu and Kashmir. But service tax is a destination based consumption tax. It is not the domicile of the

service provider but the place where the service is provided, which will be the factor to determine whether a particular service would be taxable or not. Looked from this angle, service provider is situated in Jammu, which is not in the taxable territory but the service is provided and used in Mumbai, a taxable territory. J will be liable to pay service tax

3.4 Tax Rate- S-66:

Section 66 prescribes the rate of service tax, which is currently 12% *ad valorem* w.e.f. 1-4-2012. Effectively service tax rate will be 12.36% inclusive of 2% Education Cess and 1% Secondary and Higher Education Cess(SHEC) w.e.f. 1-4-2012 [increased from the previous rate 10% ad valorem effectively 10.3%) in force since 24/02/2009].

In some case , such as LIC, (1% of insurance Value) Air tickets(Rs 100 per ticket) etc different rates of service tax are applicable , since all services are not in syllabus they have not been taken up for detailed study.

As per rule 5B of STR, 1994, the rate of tax in case of services provided, or to be provided shall be the rate prevailing at the time when the services are deemed to have been provided under the rules made in this regard.

Past Rates:

Service tax was introduced from 01/07/1994 onwards with a modest rate of 5% on three services, subsequently increased to 8% from 14/05/2003, 10.2% from 10/09/2004 including 2% Education Cess and 12.24% from 18/04/2006.

With, the introduction of Secondary and Higher Education Cess SHEC of 1% the effective rate rose to 12.36% , which was brought down to 10.36% from 24-2-2009 onwards a part of the stimulus to Indian economy during the recession until the Finance bill 2012 restored the tax rate of 12.36% from 01/04/2012 onwards.

4. VALUATION OF TAXABLE SERVICE –SEC 67

4.1 Rate of service tax and valuation of service

Sec 66 provides the rate of service tax on the valuation of services made u/s 67 and u/s 67 the 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.

4.2 Gross Amount Charged:

With effect from 10.9.2004, 'gross amount charged' is equal to the 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-Sec 67(2)

Illustration -3

A Renders services valued at Rs 1,00,000. A will be liable to pay tax @ 12.36% , Gross amount of the bill will be Rs 1,12,360 comprising of Rs 1,00, 000 for the service and Rs 12,360 towards services tax'

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)

From the amount inclusive of service tax, the value of taxable service shall be arrived at as follows:

$$\begin{aligned} \text{Value of taxable services} &= \frac{\text{Gross amount charged (inclusive of service tax)} \times 100}{100 + \text{Rate of service tax}} \text{ i.e. } 112.36 \\ \text{OR} & \qquad \qquad \qquad \text{And} \\ \text{Service tax liability} &= \frac{\text{Gross amount charged (inclusive of service tax)} \times 12.36}{100 + \text{Rate of service tax}} \text{ i.e. } 112.36 \\ &= \frac{\text{Gross amount charged} \times 12.36}{112.36} \end{aligned}$$

Illustration -4:

A service provider raises a bill for service at a gross amount of Rs. 56,180 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.

1. Value of Service

$$= \frac{\text{Gross Amount Changed} \times 100}{112.36} = \frac{56,180 \times 100}{112.36} = 50,000$$

2. Value of Service Tax = $\frac{\text{Gross Amount Changed} \times 100}{112.36} = 6180$

Cross Verify:

	Rs.
Value of Service	50,000
Service Tax at 12.36%	<u>6,180</u>
Gross Amount Changed	56,180

4.3 Liability for payment on receipt basis

Since the taxable event is provision of service, liability for service tax arises only if a taxable service is provided and liability to pay the service tax arises (barring a few case like associate enterprises), only when the value of taxable service is received.

The Act refers to the word "Value" of service and not "amount" of service. Accordingly, services will be taxed only if there is a match between the amount and the value of service provided. It is for this reason that the advances were not taxed, as the services were not rendered.

With the amendments brought by The Finance Act, 2011 read with The Point of Taxation Rules, 2011(PTR) has, with effect from 01-05-2011 point of times for the service tax liability has been shifted from receipt to accrual , whichever is earlier, except in some cases.

Illustration –5

A Chartered Accountant provides audit services (taxable) for the year 2010-11 by September, 30, 2011 and immediately raises the bill for Rs 1,50,000 being the fees for the audit services rendered. The payment of audit fee is received on April 10, 2012. Determine the date on which liability for payment of service tax arises.

Solution :

If turnover of Gross Service is less than Rs.50 Lakhs and the firm opts for payment on receipt basis:

Financial Year 2010 – 11 :

During the year, neither Audit Service was rendered, nor consideration was received. Hence, there is no liability for Service Tax.

Financial Year 2011 – 12 :

Audit Service was rendered on 30-09-2011, the day on which audit was completed. However, no payment was received during the year. Hence, the liability for Service Tax arises on 30-09-2011. But Service tax will be payable only on 10-04-2012 when the payment was actually received.

Financial Year 2012 – 13 :

Liability for payment of Service Tax arises on 10-04-2012, when the consideration for the taxable service was actually received. Applicable rate of Service Tax is at the rate of 12.36%. Service tax payable will be as follows.

Gross Value of service charged u/s 67: Rs.1, 50,000

Rate of Service Tax 12.36%

Value of taxable service =

$$\frac{\text{Gross Value} \times 100}{112.36} = \frac{1,50,000 \times 100}{112.36} = \text{Rs.1,33,499}$$

Amount of Service Tax =

$$\frac{\text{Gross Value} \times 12.36}{112.36} = \frac{1,50,000 \times 12.36}{112.36} = \text{Rs.16,501}$$

(Cross Tally – 12.36% of Rs.1, 33,499 = Rs.16, 501)

Note : 1) Service tax rate on the date of rendering service 30-09-2011 was 10.3% will be ignored and rate of 12.36% prevalent on the date of receipt of payment will be considered.

2) If the firm has turnover exceeding Rs.50 Lakhs, service tax will be payable on 30-09-2011 @ 10.3% i.e. $\frac{1,50,000 \times 10.3}{110.3}$ OR Rs.14,007/-.

Corresponding there will be no liability during the financial years 2010 – 11 and 2012 – 13.

4.4 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. Now w.e.f 01-05-2011 advance payment is taxable in all cases.

Illustration –6:

In the above Illustration, if a sum of Rs. 50,000 is paid as advance towards audit fee on May 15, 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 15-05-2011.

$$\begin{aligned} \text{Value of Service} &= \frac{\text{Gross Amount} \times 100}{112.36} \\ &= \frac{50,000 \times 100}{112.36} \\ &= \text{Rs.44, 500} \end{aligned}$$

$$\text{Amount of Service Tax} = \frac{\text{Gross Amount}}{112.36} \times 12.36 = \text{Rs.5, 500}$$

This tax will be paid in the quarter ended 30-06-2011 by 05-07-2011. Credit will be given for the tax paid on advance money received.

Illustration –7:

A Chartered Accountant provides taxable services worth Rs 20 lakhs on which service tax liability was arrived at Rs 2,47,200 lakhs and immediately raises the bill for the taxable services 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 03-11-2011 and Rs 15 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 should be as under –

There will be no liability on 30-09-2011, the date on which the taxable event viz. completion of audit occurred as no fee was paid on that day.

- a) The service tax liability would arise on 31-05 2012 and would be payable in the quarter ending June 2011 by 05-07-2012. 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. $[20 \text{ lakhs} \times 12.36 / 112.36]$
- b) Service tax will arise when on Rs 5 lakhs is received as advance on 03-11-2011 and will be payable in the quarter ending December 2011 by 05-01-2012. Service tax payable will be Rs 55,002 i.e. $[\text{Rs } 5 \text{ lakhs} \times 12.36 / 112.36]$

The service tax liability on Rs 15 lakhs would arise on 31-05 2012 and would be payable in the quarter ending June 2012 by 05-07-2012. Service tax liability will be Rs.1,65,005 i.e. $[15,00,000 \times 12.36 / 112.36]$

- 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 by 05-01-2012. Service tax liability will be Rs.1,10,004 i.e. $[10,00,000 \times 12.36 / 112.36]$ No further tax liability would arise since the remaining amount was not received by the assessee.

4.5 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.

4.6 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 services tax on their Indian turnover of taxable services

4.7 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 –8:

A coaching class charges the normal tuition fees 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 freedom fighters and teachers. 20 students were admitted from each of the four categories. Find out the value of taxable services and amount of service tax payable.

Solution:**Value of Taxable Services**

General Students	Rs 2.00.000
Rural Students	Rs 1,00,000
Children of Freedom fighters #	Free
Children of teachers#	Free
Gross Amount	Rs 3,00,000
Tax payable u/s 67(2)	
$=3,00,000 \times \frac{12.36}{112.36}$	Rs.33,001
Value of Taxable Services	Rs.2,66,999

Any concessional tariff is not subjected to service tax.

4.8 Reimbursements not included in the value of taxable services.

Under rule 5(1), reimbursement of expenses incurred by a service provider such as travelling, boarding and lodging, etc. while providing a taxable service, popularly called 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.

Illustration – 9

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, Bangalore Audit will necessarily require travelling to that city. Hence the reimbursement of expenses of Rs. 9,800 will be liable to service tax.

Now, assuming that the Chartered Accountant has been summoned on behalf of the client by any authority like stock exchange to 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.

4.9 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 -

- Service provider has not availed credit under CENVAT Credit Rules, 2004 for such input or capital goods sold; or

- In case such credit is availed by service provider, the amount equal to such credit is paid before sale of such goods or materials.

5. POINT OF TAXATION FOR PAYMENT OF TAX

5.1 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 has been granted to assessee to continue payment on receipt basis upto 30-06-2011, if they so desire.

5.2 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.

5.3 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,

5.4 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	Pint 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 30/45 days	Time of Invoice
Proviso to 3(a) Completion of service	Invoice not issued within 30/45 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

Solution

A is liable to pay tax on accrual basis as he is not Chartered Accountant - Rule 7.

Further under S. 67 (Explan -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.

5.5 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

5.6 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.

5.7 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 (Irrespective of Turnover)
(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 professionals 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 (Optional) or accrual

After 01-04-2012 the position is that individuals and firms (including professional service mentioned above) having turnover of more than Rs.50 Lakh shall be liable to pay service tax on accrual or payment whichever is earlier.

But individuals and firms having turnover upto Rs.50 Lakh shall have the option to pay service tax either on accrual basis or on DOT basis.

5.8 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.

5.9 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.

6. 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 as an agent , part of services but if ads issued on behalf of X 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. *Ans (Depends if the service provider is a pure agent)*
- 8 What do you mean by point of taxation? How is it different from cash receipt method?



EXEMPTIONS FROM SERVICE TAX

Synopsis:

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

1. INTRODUCTION AND OBJECTIVES:

Section 93 empowers the Central Government to exempt any services from the payment of service tax by issuing an 'exemption notification'. Such exemption may be partial or total, conditional or unconditional. The conditions may be with respect to the persons receiving or providing services or place of service, or subject to fulfillment of certain conditions or in circumstances.

Moreover, a service is taxable only if it is covered in any of the clauses of Sec. 65(105) implying that other services not covered in that section are *ipso facto* exempt. After the "negative list" concept is put into operation from 01-07-2012, every service will be deemed to be taxable unless falling in the negative list or is otherwise exempt under the law, rules or notification.

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 u/s 66. Exemption may be granted in many ways:

- a. Specific exemption is provided in the definition of the taxable service itself or by way of notification. Postal services are exempt but speed post service is taxable.
- b. A part of the service is not as taxable (exempt) although the other part may be taxable. For instance lawyers' service is taxable if rendered by or to a business entity e.g. a firm of lawyers to a company; other services by the lawyer's service will be exempt.
- c. Some Services are not taxable if rendered to certain recipients e.g. UN and other International Organisation, SEZ, etc.
- d. Export of taxable service is exempt under Export of Services rules, 2005 subject to fulfillment of certain conditions.
- e. Small service providers are exempt from service tax upto a limit of Rs. 10 lakhs subject to certain conditions.

3. SMALL SERVICE PROVIDERS

3.1. Threshold limit:

Small Service Providers providing taxable services of aggregate value not exceeding Rs 10 lakh in any financial year are exempt from the whole of the service tax leviable thereon u/s 66.

Such a service provider is exempted from paying service tax till the taxable services provided or to be provided do not exceed Rs 10 lakh, but such service providers will be liable to get service tax registration once the value of taxable services provided exceeds Rs 9 lakh in any year.

"Aggregate value" means the sum of total of the first consecutive payments received during a financial year towards the gross amount as prescribed u/s 67 charged by the service provider towards taxable services till the aggregate amount of such payments is equal to Rs.10 lakhs. It does not include payments received towards such amount which are exempt from service tax u/s 66 of Finance Act or under any other notification.

*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 17-02-2012 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 under any other notification'.*

3.2. Exceptions:

The exemption is not available in the following cases:

- (a) If the taxable service is 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.
- (b) The exemption scheme is meant only for service providers. The exemption cannot be availed by service providers who are not liable to pay service tax on the services rendered by them.
- (c) Service receivers who avail the services but are person liable to pay the tax u/s 68(2) as a special case are not the service providers. These will include mutual fund distribution; services rendered from outside India, life insurance, general insurance auxiliary services mutual fund agents, Goods Transport Agency insurance agent, non- residents etc. These service receivers cannot claim the benefit of exemption scheme.
- (d) 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.
- (e) Services provided by RBI are exempt but service provided to RBI is not exempt.

3.3. Conditions for exemption

- (a) The exemption scheme is *optional* and a service provider has the *option not to avail* the exemption and pay service tax on the taxable services provided by him. But the option once exercised in a financial year, cannot be withdrawn during the remaining part of such financial year;
- (b) A service provider cannot take benefit of exemption and CENVAT both. Accordingly, if a service provider claims exemption, he shall not claim credit for under Rule 3 or Rule 13 of the CENVAT Credit Rules, 2004 in respect of the following viz :
 - (i) service tax on any input service used for providing such taxable service for which exemption is opted for ;
 - (ii) duty on capital goods received in his premises during period in which the service provider has availed the exemption;
- (c) 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;

- (d) When a service provider opts for exemption , there will be following consequences :
- (i) He will claim no CENVAT in respect of inputs or capital goods ,
 - (ii) He shall pay back the amount of CENVAT credit taken by him for inputs lying in stock or in process on the day on which he starts availing exemption and
 - (iii) Any 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 cannot be claimed.
- (e) If a person provides one or more taxable services from one or more premises, the aggregate value will be computed with reference to all such taxable services rendered from all such premises and **not** separately for each premises or from each service .
- (f) The aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed rupees 10 lakhs in the preceding financial year.

3.4. Determination of the threshold limit

Following principles are adopted in computing the threshold limit .

- (i) The aggregate value of threshold limit of Rs. 10 Lakhs means the sum total of first consecutive:
 - a. payments received in respect of taxable services in respect of 8 services excluded from POT and
 - b. Bills raised or to be raised in respect of taxable services in all the other cases.
- (ii) The limit is calculated with reference to the financial year.
- (iii) The limit is to be calculated only in respect of the taxable services and it will not include the value of tax- free services under the law or notifications.
- (iv) If the services are rendered from more than one premises, the limit will be computed with reference to the taxable services rendered at all such remises will be included.
- (v) If a service provider provides more than one taxable service, the limit will be computed by including all the taxable services rendered.

- (vi) 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 service is not chargeable to service tax. If any tax is paid on the service exported or paid on inputs services, whole of such tax and the education cess as well as SHEC is refundable by way of rebate or refund subject to compliance of certain procedural requirements. For this purpose, service has been categorized as follows: -

I. Specified services which are provided in relation to immovable properties situated outside India - Rule 3(1)(i)

II Specified services which are partly performed outside India- Rule 3(1) (ii)

III. (a) Services provided in relation to business or commerce, to a recipient located outside India or

(b) Services not in relation to business or commerce, the same should be provided to a recipient located outside India at the time of provision of such service. Rule 3(1)(iii)

Rule 3(2) (a) of the Export of Service Rules, 2005 defines “export of services” it states that a service can be exported outside India if:

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

Both the conditions are cumulative and must be satisfied together.

Under the notifications issued it is clarified that that service to Nepal and Bhutan and installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof will not be considered as export of service outside India.

Illustration -1:

Julia, a Hollywood star during her visit to India, avails beauty parlour service 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:

ABC conducts audit of the books of account of a concern in Hong Kong provided in India. Audit report is sent to Hong Kong. The fee is received in Chinese Yuan.

Solution:

This will be case of service exported “from’ India to be used outside India. It will qualify exemption as export of service.

Other Points:

The Refund of whole of the service tax, Educational Cess and SHEC will be granted 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.

Note : On reading of the rule, it appears that the service provider has to charge and pay the service tax CENVAT / Refund will be claimed by recipient only.

5. SERVICES PROVIDED TO UNITED NATIONS OR INTERNATIONAL ORGANISATIONS

Taxable services rendered to the United Nations and other International organisations like IMF, WHO, U/s 3 of the UN (Privileges & Immunity) Act, 1974 are exempt from service tax.

6. SERVICES PROVIDED TO DIPLOMATS & MISSIONS

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.

7. SERVICES PROVIDED TO SEZ DEVELOPERS OR SEZ UNITS

Taxable services of any description provided to a developer of NOTIFIED 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.

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.

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.

Other points:

- Usual place of residence, in relation to a body corporate, means the place where it is incorporated or legally constituted
- When taxable Service is received by an individual and the purpose of receiving such Service is otherwise than for use in business or commerce, the **recipient is not liable to pay Service Tax.**-1st Proviso to Section 66A(1),
- When provider of Service has his business establishment in country from where Services is provided and elsewhere, then the country having the establishment from where the provision of Service is directly concerned shall be treated as the country from Service is provided.- 2nd Proviso to Section 66A(1),

Illustration- 1

Infosys has office in Bengaluru, New York and Toronto. If Infosys New York provides a taxable service in India, U.S.A. will be treated as the country of import.

- Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons.

- **Illustration- 2**

In the above illustration Infosys is having one permanent establishment in India, which receives service from its other permanent establishments in Canada and U.S.A. Both the permanent establishments overseas shall be treated as separate entity Infosys Bengaluru will be liable to pay Service Tax as a recipient of Service.

- A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country. -Explanation 1 to Section 66A, Finance Act, 1994.]

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. 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.

Note : *In all the questions where 'Value of Service is given, service tax will be calculated by multiplying by 12.36%. But if the value of gross amount changed is given multiplier will be 12.36/112.36.*

9. ILLUSTRATIONS :

Illustration-3.

A service provider is having 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:

Total taxable services rendered at all the three offices amount to Rs 12,00,000 (Rs.8,50,000 +, Rs.1,50,000+ Rs.2,00,000) , which is above the threshold limit of Rs. 10 Lakhs. A cannot claim separate threshold limit for each of the three premises. Service tax liability will be Rs 12,00,000 X $\frac{12.36}{112.36}$ =Rs 1,32,004.

Illustration-4.

B, who registers turnover of taxable service of Rs. 8 Lakh by 30-09- 2012, exercises the option of exemption under the belief that his service tax liability works out to Rs. 98,880 @ 12.36 % of Rs. 8 Lakh against CENVAT credit would be available up to Rs 10,000.

Subsequently, it turned that the correct CENVAT credit was Rs 1,25,000 against the likely turnover of Rs 10,00,000 by 31-03-2013. Now, B wants to withdraw the option. Advise him.

Solution;

B cannot do so during the financial year 2012-13 as option of exemption, once exercised cannot be withdrawn in the remaining part of the same financial year in which it is exercised.

Illustrations-5:

A Coaching class imparts training for GMAT to a Nepali student. It will not be export of service since the service is not accruing out of India.

Illustration 6:

A Chartered Accountant audits the books of a Dubai based company in Mumbai. It is not export of service as the service has not accrued outside India.

Illustration 7:

If in the above case the foreign exchange is received in Dubai and books are brought in India in pursuance of such contract, it will be export of service since foreign exchange is being received into India from outside India.

Illustrations 8:

A Chartered Accountant audits the accounts of a multinational corporation also having some offices in India; it will be export of Service since the service accrues out of India and foreign exchange is received from abroad.

Illustration- 9:

A mandap keeper providing services in Macau for IIFA awards is deemed to have exported his services even though some of the service is performed in India since the services accrue outside India.

In all the questions where value of services is given, service tax will be calculated by multiplying by 12.36%. But if the value of gross amount charged is given multiplies will be 12.36/112.36.

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 of Jammu and Kashmir provided taxable service in Shimla I was amounts to 75,000. What should be the service tax to be collected?

(Hint: Service rendered in taxable destination taxable, tax u/s 67; $75,000 \times 12.36/112.36 = \text{Rs } 8,250$)

- 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: Service destination is tax –free, No service tax liability)

- 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. Introduction and Objectives
2. Taxable Services
3. Advertising Agency Service
4. Architect's Services
5. Commercial and Industrial Construction Service
6. Clearing & Forwarding Agent Service
7. Courier Service
8. Event Management Services
9. Miscellaneous
10. Self –Examination Question
11. APPENDIX – List of Taxable Services

1 INTRODUCTION AND OBJECTIVES

Service Tax was introduced for the first time in 1994. Sections 64 to 96 of the Finance Act, 1994 contained the provisions, 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 scope of some services was widened from time to time. A few services were deleted also.

The lesson deals with the broad scheme of the law relating to service tax, concept of "Taxable Service" and other relevant provisions. 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 SERVICES

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 services 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.* As of now, section 65 of the Finance Act, 1994 defines as many as 119 services, which are taxable u/s 65(105).

These services include the Advertising Agency Services, Architect's Services, Courier Services, Clearing & Forwarding Agent Services, Commercial or Industrial Construction Services and Event Management Services,

Amount of service Tax payable will be uniform at 12.36% % for all the services with effect from 01-04-2012 inclusive of, 12% Service Tax, 2% Education Cess and 3% Secondary and Higher Education Cess (SHEC) except under the composition scheme.

3 ADVERTISING AGENCY SERVICES

3.1 Taxable Service

Any service provided or to be provided to any person, by an advertising agency in relation to advertisement in any manner is liable to service tax u/s 65(105) (e) with effect from 01.11.1996.

3.2 "Advertising agency" means any person engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant [section 65(3)].

3.3 "Advertisement" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas [section 65(2)]

3.4. Scope of the Service:

On a cumulative reading of the three provisions, it follows that:

- (a) Advertisement service means any service connected with
 - the making, preparation, display or exhibition
 - of any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation
 - made by means of light, sound, smoke or gas
- (b) The service provider may be "any person" not necessarily an advertising agency.
- (c) The service may be provided to "any person" and that person need not be a commercial concern.
- (d) The service includes the service of an advertising consultant.

- (e) Audio –Visual representation will include :
- making of advertisement films or
 - Getting advertisements published in newspapers or TV or cinema theatres or by way of hoarding, neon signs etc.
- (f) Service does not include any goods or articles, hence cost of advertisement material, sign boards, hoardings will be excluded.
- (g) Similarly, sale of media rights, sponsorship will not amount to advertising agency service.
- (h) Mere canvassing for advertisement on commission basis also will not be covered under this head.

3.5 .Valuation of service and service tax payable

Amount of service Tax payable will be 12.36% with effect from 01.04.2012 inclusive of Education Cess on the gross amount charged from the clients as commission. Advertisement charges paid not on advertisement charges paid to media will not be part of the value of service. Tax is not payable on discount or incentives received from media

Illustration-1:

Mohan books a neon sign at Shivaji Park for Rs 10,000 in addition to Rs 2,000 for painting and Rs 2,000 paid as municipal tax for hoarding

Solution

Value of advertising service will be Rs 12,000 (If any material is provided for the neon sign by the client the cost has to be reduced), and the service tax of Rs 1,483 will be payable @ 12.36%.

4 ARCHITECT'S SERVICES

4.1 Taxable Service

Any service provided or to be provided to any person, by an architect in his professional capacity in any manner is liable to service tax u/s 65(105)(p) with effect from 16.10.1998 .

“Architect” means any person whose name is, for the time being, entered in the register of architects maintained under section 23 of the Architects Act, 1972 and also includes any commercial concern engaged in any manner, whether directly or

indirectly, in rendering services in the field of architecture-Section 65(6)

4.2 Scope of Services

- Designing or planning of construction of buildings, bridges, dams etc.
- Services concerning planning, design or beautification of spaces.
- Actual execution of work is not Architect's service

4.3 Valuation of service and service tax payable

Amount of service Tax payable will be 12.36% with effect from 01-04-2012 inclusive of Education Cess on the gross amount charged from the clients as the fees charged (excluding cost of material supplied) for rendering services in any capacity.

Illustration -2:

An architect is appointed by a builder at a fee @ 2% of contract price of a building constructed. The architect supplies some decorative pieces amounting to Rs 60,0000. Find out the value of the service and service tax payable if the contract price is Rs 1 crore.

Solution:

Gross fees payable to the architect is Rs 2,00,000 , which includes the cost of material worth Rs 60,000 supplied by the architect. Accordingly, the net value of service would be Rs 1,40,000 after deducting the cost of material .and the service tax liability will be Rs. 17,304

5 CLEARING & FORWARDING AGENT SERVICE

5.1. Taxable Service

Any service provided or to be provided by a person to a client in relation to *clearing and forwarding operations* in any manner is taxable service u/s 65(105) (j) with effect from 16.7.1997.

“Clearing and Forwarding Agent” means any person who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent – S 65(25);

5.2 Scope:

The service is for Clearing AND Forwarding NOT Clearing OR Forwarding. Hence the service must include both the operation clearing and forwarding. Only clearing or only forwarding service is not sufficient. These services may include -

- Receiving goods, warehousing or storage of goods, Packing or sub- packing in small lots if necessary and dispatching the goods to their destinations.
- Maintenance of records sometimes necessary for VAT
- Raising invoices if authorised.
- Providing marketing and product support services.
- Employ persons on behalf of the principal to receive goods on behalf of the principals and dispatch the same to the principal.

It is important that the service provider remains an agent and not a principal. In the latter case, he will be a dealer not and agent. Thus, a person who sells the goods in his behalf is not a C &F Agent. Similarly, a person engaged in buying and selling of goods will also not be a C & F agent.

5.3 Valuation of Taxable service & Service Tax Payable:

Amount of service Tax payable will be 12.36% with effect from 01.04.2012 inclusive of Education Cess on the gross amount charged from the clients for services in relation to clearing and forwarding operations in any manner whether called as commission, remuneration or by whatever other name paid by the client to the agent. Value of service will not include reimbursement of expenses like godown rent, loading/unloading, freight, telephone, rent, salary etc incurred on behalf of the principal. .

Illustration

A is C&F agent for B. A sends goods worth Rs. 53,000 for dispatch to C of Calcutta, D of Delhi and E of Erode after repacking the goods. B is also authorised to raise invoice at 10% above his normal costs. B clears the goods and spends Rs. 1,000 for clearing; He also spends Rs. 3,000 for repacking, Rs. 1,000 for Octroi & Rs. 2,000 for transportation. Determine B's liability for service tax.

Solution:

Total Value of the invoice will be Rs 60,000 i.e. cost Rs, 53000+ clearing Rs 1000+ Repacking Rs 3000+ Octroi Rs 1000+ and Transport Rs 2000. A's remuneration of Rs 6,000 at 10% of

the total invoice will be the Value of service a. A will be liable to pay service tax of Rs 742 on it at 12.36%.

6 COMMERCIAL, INDUSTRIAL OR RESIDENTIAL COMPLEX CONSTRUCTION SERVICES

6.1. Taxable Service:

U/s Section 65(105)(zzq) , any service provided or to be provided to any person, by any other person, in relation to commercial or industrial construction service is liable to service tax on **commercial or industrial construction** service taxable w.e.f. 10-9-2004 and in , in relation to construction of **residential complex** u/s section 65(105)(zzzh) w.e.f. 16-6-2005.

U/s 65 (25b) "**commercial or industrial construction**" means -(a) Construction of a *new building or a civil structure* or a part thereof; or (b) Construction of *pipeline or conduit*; or (c) completion and *finishing services* 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, in relation to building or civil structure; or (d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is (i) *used*, or to be used, primarily for; or (ii) *occupied*, or to be occupied, primarily with; or (iii) *engaged*, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of **roads, airports, railways, transport terminals, bridges, tunnels and dams**;

Similarly, u/s 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" 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.

The section further explains that (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- Section 65(91a).

6.2. Scope of the Service:

- (a) The opening words of the section refer to construction. Services are to be provided by *one person to the another*.
- (b) It also means that any such construction undertaken by a person in his own right will not be covered under this clause as no one can render service to himself. Section itself excludes 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. Personal use also includes letting out the premises*.
- (c) Following types of constructions *are covered* in this service :
 - i. Commercial or industrial construction
 - ii. Residential Complex having MORE THAN 12 residential units, tenements, flats or houses
 - iii. Repairs, alteration, renovation of existing building
 - iv. Post construction services relating to completion or finishing 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 etc
 - v. Sub-contractors providing the construction services (to main contractor or to any other person)
- (d) Other important points are
 - i. Approved plan and municipal regulations to determine whether building is for commerce or industry.

- ii. Residential units in a complex must be more than 12, such units must have a common area; and 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 under an approved plan .
- iii. Construction of a single building cannot be part of the “complex”
- iv. Construction carried out in respect of *roads, airports, railways, transport terminals, bridges, tunnels and dams is excluded from the service,*
- v. Construction of educational, religious, government buildings is also not included as such construction is neither commercial nor industrial nor residential complex.
- vi. Construction by builder or developer for personal use of customer even if it is in residential complex is also excluded .
- vii. Construction of one house in residential complex is not taxable if direct contract given by individual for residential purposes to builder or developer.
- viii. Construction and works contract services relating to port or other port are exempt. However, services of completion and finishing, repair, alteration, renovation, restoration, maintenance or repair provided in relation to existing port or other port are not exempt - Notification No. 25/2007-ST dated 22-5-2007

6.3. Valuation of Service and Service Tax Liability

Following Rules are applicable in regard to valuation of service and service tax liability.

- i. Claim abatement of 67% and pay service tax on the 33% of gross value of the service. This means an effective rate of 4.0788%
- ii. This option is not available if only completion and finishing services are provided , in which case gross value charged shall be the value of service
- iii. The partial exemption is available only if the gross amount charged includes value of goods and materials supplied or provided or used by provider of the commercial or industrial construction of service for providing such service (Explanation to Notification No. 1/2006-ST dated 1-3-2006).

However, value of land is not required to be added as it is neither goods nor material. This simple method is not applicable in case of This simple method is not available in case the service provider provides only completion and finishing services, as in such cases, material content will be much less

- iv. In the alternative, the service provider may take the gross amount billed as the value of the construction service and claim CENVAT.

Illustration-3

A contract for service of commercial and industrial construction is for RS 10,00,000 , out of which the cost of material is Rs 8,00,000 on which CENVAT is allowable to the extent of Rs 80,000. Determine the service tax liability.

Solution:

Option 1 : Service Tax Liability (Composition)

	Rs.
Gross value of Services	10,00,000
Less : abatement 67%	<u>6,70,000</u>
Balance (33%) value of taxable service	<u>3,33,000</u>
Service tax @ 12.36%	40,788
CENVAT will not be allowed.	

Option 2 : (Regular)

	Rs.
Gross value of service	<u>10,00,000</u>
Service tax @ 12.36%	1,23,600
Less : CENVAT	<u>80,000</u>
	53,600

Under option I, service tax liability is only Rs.40,788/- as against Rs.53,600/- under option II. It is advisable to go for composition and pay service tax on 33% only without CENVAT CREDIT.

7 COURIER SERVICE

7.1 Taxable Service

Any service provided or to be provided to any person, by a courier agency in relation to door-to-door transportation of time sensitive documents, goods or articles is taxable u/s 65(105)(f) with effect from 01.11.1996.

“Courier Agency” means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles; [Section 65(33)]

As per section 65(50) Goods’ has the same meaning as u/s 2(7) of Sale of Goods Act. Accordingly, “Goods” means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

7.2 Scope of the Service:

- (a) Door-to-door transportation of time sensitive documents, goods or articles. If the service is not door-to-door, service tax will not be leviable.
- (b) Basic postal services provided by Department of Post such as post card, inland letter, book post are not liable for Service Tax, but Speed Post service will be liable to service tax under this head.
- (c) Gratuitous or free services or services not rendered by a commercial concern are also not covered within the definition of taxable service rendered by a courier agency.
- (d) Services rendered by customary local couriers like Angadiyas, which are popular in some parts Gujarat and Maharashtra are, however, covered.
- (e) Services rendered to a co-loader or another courier would be covered by the service.
- (f) Service rendered to United Nations and other Diplomatic Missions are declared to be specifically exempt vide Notification No. 44/98-S-T dated 22-1-98 as amended by the Notification No. 47/98-S-T dated 1-4-98.
- (g) Transporters who are rendering “Express Cargo Service” for door delivery will be held as taxable since they deliver goods on ‘time sensitive’ basis on door to door basis.
- (h) Money transfer through courier will not be covered under this head.
- (i) Delivery of letter abroad will be liable to service tax as the fee will be received in Indian Currency.
- (j) It is also ‘import of service’ since partly performed in India.

7.3 Valuation of Taxable service and Service Tax Payable:

Amount of service Tax payable will be 12.36% with effect from 01.04.2012 inclusive of Education Cess on the gross amount charged from the customers for services in relation to door-to-door transportation of time-sensitive documents, goods and articles.

Illustration-4:

Calculate the service tax liability in each of the following cases:

- 1 Ramakrishna Mission undertakes door-to-door delivery of relief materials for tsunami victims at Rs. 50 per parcel.
- 2 RK Pharmaceuticals Ltd. Dispatches medicines to World Health Organisation (WHO) through an Angadia, who charges Rs. 500 as delivery charges.
- 3 Patel Angadia charges Rs. 2,000 for carrying diamonds to Surat.
- 4 Red – Dart Courier co-loads goods for Green – Dart couriers at a fee of Rs. 50,000.
- 5 A Transport company for carrying parcel to Delhi charges Rs. 200 as freight.
- 6 Air freight for sending goods to Chennai Rs. 3,000
- 7 Railways for carrying goods to Patna Rs. 600.
- 8 Coolie Charges paid to a porter Rs. 1,000 for carrying goods to shop.
- 9 A sends to B some diamonds through express cargo service for Rs 20,000

Solution:

1. Ramakrishna Mission is not a commercial concern, hence not liable for service tax.
2. Goods sent to WHO are specifically exempt under the notification.
3. Patel will have to pay service tax of Rs. 247 i.e. 12.36% of Rs. 2000.
4. Co- loader is liable to pay service tax Rs. 6,180 i.e. 12.36% of Rs. 50,000 (Notification granting exemption withdrawn).

5, Transport service is not a courier liable for door- to- door delivery, not liable for service tax under this clause (liable as a transporter under other clause).

6. Transport service is not a courier liable for door- to -door delivery, not liable for service tax under this clause (liable as a transporter under other clause)

7. Transport service is not a courier liable for door to door delivery, not liable for service tax under this clause (liable as a transporter under other clause)

8. Coolie's services are not time-sensitive. Besides, a coolie renders his services as an individual and not as a commercial concern. Coolie's services are therefore not liable to service tax.

9. Express cargo service liable to pay service tax of Rs 2,472 being 12.36% of Rs 20,000

8 EVENT MANAGEMENT SERVICES

8.1. Taxable service

U/s Section 65 (105) (zu), any service provided or to be provided to any person, by an event manager in relation to event management, is a 'taxable service' with effect from 16.08.2002

"Event Management" means any service provided in relation to planning, promotion, organizing or presentation of any arts, entertainment, business, sports, marriage or any other event and includes any consultation provided in this regard- {Section 65 (40) and "Event Manager" means any person who is engaged in providing any service in relation to event management in any manner;

8.2. Scope of Service

An event manger is a professional who is hired by a 'client' to hold events like conventions, fashion balls, award ceremonies, exhibitions, pageants, and product launch, exhibitions etc. Thus by definition an event manager is an outsider. Service of an in-house event manager from within the organisation will not be covered by this section

Sometimes, an event manager has to avail the services of other agencies such as security agency, pandal or shamiana provider, Mandapkeepers, photographers etc.

If the services of these agencies are charged to the client, then the value of these services will be included in the value of taxable services provided by the event manager. He will, however, be entitled to avail CENVAT credit in respect of service tax paid by the respective agencies. On the other hand, if event manager only mobilizes the services of these agencies and bills are raised directly to the client, in such case the taxable event management service will only include the consultancy fees that may be received by the event manager. But the service will not include proceeds on sale of tickets for the client's event. Also, proportionate value of goods and material provided by the Service Provider Out of total value of service provided will not be treated as the value of service.

Valuation of Taxable service and amount of Service Tax Payable:

Amount of service Tax payable will be 12.36% with effect from 01.04.2012 inclusive of Education Cess on the gross amount charged by a person to the clients for services provided or to be provided in relation to event management (except the service billed directly to the client) . Out of total value of service provided will not be treated as the value of service

Illustration-5:

Jerry organized a Cinema- award ceremony at MMRDA and paid Rs. 1,00,000 as the ground rent and Rs. 1,00,000 to the mandapkeeper directly. It also engaged the services of an event manager. The event manager availed the services of in-house photographer amounting to Rs. 60,000. This amount was deducted from the fees payable to the event manager. The event manager availed the services of several other agencies and paid Rs. 25,00,000 plus applicable service tax to them. He charged Rs. 30,00,000 to the company. Ascertain the service tax liability of the event manager.

Solution:

Service tax would be payable @ 12.36% on Rs. 29,40,000. (Rs.30,00,000 less 60,000 photography service availed from in-house photographer.) Thus the service tax liability works out to Rs. 2,99,880.

All the services taken by the event manager will qualify for CENVAT credit. The Bills directly raised to the company will be deemed to be the part of the in-house event management.

9 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 and commercial and industrial construction service, and construction of residential complexes, works contract service. These provisions have been dealt with at the appropriate place.

10. MISCELLANEOUS

10.1- Shifting of tax incidence:

Till now, the position was that no service was liable to service tax , unless such services was included in one or more clauses of Section 65(105).

The Finance Bill 2012 has introduced a paradigm change in the incidence of service tax liability. With effect from, 01-04-2012, the service tax liability will be decided on the basis of a “**negative list** “ that is every service will be liable to service tax unless it is shown that it falls in the negative list or it is otherwise exempt under the law or the notifications .

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.

10.2. Services falling under one or more heads:

Sometimes a service may be covered under more than one heads . . For example, decoration ,catering , booking of hotel are all part of the event management service, but each of the services is covered under different head. Similarly advertising service may include activity covered under renting of space or Construction

service may overlap with works contract . Service will be taxed under the head fitting the most logical description. Specific provisions shall override the general description.

10.3 Common Exemption

Some exemptions are available in respect of all the services such as services rendered to RBI, UN or in SEZ , or in case of small service providers having turnover of Rs 10,00,000 or less. These provisions will be discussed separately elsewhere.

10.4 Free service not taxable:

Services will be taxable only if they are *provided for a consideration*. Services provided free of cost are outside the scope of the term 'taxable services'.

10.5 Point of taxation

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 with the introduction of Point of Time Rules with effect from 01-04-2012 in respect of almost all the services with the exception of Chartered Accountants, Cost Accountants and Company Secretaries etc. The new provision provides that the service tax will be payable on accrual, receipt or raising of invoice, whichever is earlier.

10.6 List of omitted Services

Following services were omitted from the list of Taxable Services

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

Complete list of taxable services is given in the appendix

11 SELF EXAMINATION QUESTIONS:

1. Explain Event Management.
2. Explain with reason whether post office is a taxable service.
3. Discuss the scope of services recorded by a clearing & forwarding agency.
4. Explain Composition scheme for construction service providers

5. Will post office be liable to pay service tax? If yes , on what service and to what extent ?
6. Write a note on advertising services.

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	(zzl) Other Port
25	(za) Scientist or Technocrat	57	(zzm) Airport or a civil enclave
26	(zb) Photography	58	(zxn) Transport of Goods by Aircraft
27	(zc) Convention	59	(zzo) Business Exhibition
28	(zh) On-line Information & Data Base Access or retrieval	60	(zxp) Transport of goods by road
29	(zi) Video tape Production	61	(zxp) Commercial or Industrial Construction
30	(zj) Sound Recording	62	(zxr) Intellectual Property
31	(zk) Broadcasting agency	63	(zxs) Opinion Poll
32	(zl) Insurance auxiliary services concerning general insurance business	64	(zxt) Outdoor Caterer
		65	(zxu) Programme Producer
33	(zm) Banking or Financial institution	66	(zxy) 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	(zzzzc) Asset management
74	(zzzd) Cleaning Activity	100	(zzzzd) Design
75	(zzze) Club or Association	101	(zzzze) Information Technology Software
76	(zzzf) Packing Activity	102	(zzzzf)Management of Investment
77	(zzzg) Mailing List Compilation and Mailing	103	(zzzzg)Stock Exchange
78	(zzzh) Construction of Complex	104	(zzzzh) Commodity Exchange
79	(zzzi) Registrar to an issue	105	(zzzzi) Processing and Clearing House
80	(zzzj) Share Transfer Agent	106	(zzzzj) Supply of Tangible Goods
81	(zzzk) Automated teller machine operations, maintenance or magt.	107	(zzzzk) Cosmetic Surgery or Plastic Surgery
82	(zzzl) Recovery of any sums	108	(zzzzl) Transport of Coastal Goods; and Goods transported through Inland water Service
83	(zzzm) Sale of space or time for advertisement	109	(zzzzm) Legal Consultancy Service
84	(zzzn) Sponsorship	110	(zzzzn) 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	(zzzzp) Keeping or maintaining of medical records
87	(zzzq) Support services	113	(zzzzq)Promotion or marketing of a brand of goods, service, event or endorsement of name
88	(zzzr)Auction of property	114	(zzzzr) Commercial use or exploitation of any event
89	(zzzs) Public Relation	115	(zzzzs) Electricity exchange
90	(zzzt)Ship Management	116	(zzzzt)Copyright
91	(zzzu) Internet telecommunication	117	(zzzzu) Preferential Location
92	(zzzv) Transport of such person embarking from any port or other port in India, by a cruise ship.	118	(zzzzv)Restaurant
		119	(zzzzw) Hotel, inn, guest house, club or camp-site



CENVAT CREDIT RELATING TO SERVICE TAX

Synopsis

1. Introduction & Objectives
2. Basic Features
3. 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

To avoid cascading effect of tax on tax, CENVAT Credit Rules, 2004 were brought to 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 Rules apply to the whole of India except to the extent they relates to availment and utilization of credit to the State of Jammu & Kashmir.

The lesson deals with the concept of CENVAT credit and seeks to explain broad provisions.

2. BASIC FEATURES OF THE CENVAT CREDIT RULES

2.1 Eligible Beneficiaries:

- (a) A Manufacturer or Producer of Final Products (i.e., excisable goods manufactured or produced from input or using input service)
- (b) **A provider of taxable output service** excluding a Goods Transport Agency

2.2 Eligible Taxes Paid –Rule 3A

- 1 Excise Duty (Sch I & II Central Excise Tariff Act)

2. Additional Customs Duty CVD U/s 3 of Customs Tariff Act
- 3.. Service Tax
4. Education Cess (EC)
5. Secondary and Higher Education Cess SHEC

paid on any input or capital goods received at the premises of the Service Provider. However, w.e.f 01-04-2012, the condition of bringing machine at premises is removed . used in providing output service , it shall be legible for CENVAT>

CENVAT credit can be taken, equal to Central Excise duty paid on Capital goods at the time of debonding of a Unit.

2.3. Underlying Principles:

Cenvat scheme is introduced with the aim of avoiding duplication of payment of tax. Accordingly fundamental principle is that it is a credit in respect of taxes paid on the inputs against the taxes to be paid on the output. Accordingly, the following basic principles are important:

- (a) CENVAT credit is given in respect of taxes actually paid,
- (b) CENVAT credit is granted to be utilised toward payment of service tax by a service provider on taxable services provided by him, In fact, a manufacturer can utilize the credit for payment of excise duty as well as service tax payable by him
- (c) Taxes paid include Excise duty 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.
- (d) CENVAT cannot be availed if the output service is exempt from tax or does not fall under the purview of the service tax net.
- (e) Ordinarily, CENVAT amount is not given back by way of refund except in case of exports

3. DEFINITIONS OF IMPORTANT TERMS

3.1. Eligible Capital Goods – Rule 2(a)

Capital Goods means **(A)** the following goods, namely:-

- (i) all goods falling under Chapters 82,84, 85, & 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;

- (ii) pollution control equipment;
- (iii) components, spares and accessories of the goods specified at (i) and (ii);
- (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-

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

(1A) outside the factory of the manufacturer of the Final products for generation of electricity for captive use within the factory; or

(2) for providing output service;

(B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act;

(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;

3.2. Exempted Services - 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;

3.3 “Input” Rule -2(k) :

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;

3.4 “input service 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 upto 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), (zzl), (zzm), (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.

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

3.5 “input service distributor”- 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;

3.6 “job work”- Rule 2(n)

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;

3.7 “output service” - 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;

3.8 “provider of taxable service”- Rule 2(r)

“Provider of taxable service” includes a person liable for paying service tax.

Briefly speaking, Services rendered are output services and service / material utilised fro output services are inputs

4. RULES FOR CENVAT CREDIT

4.1 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)

4.2 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 as 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		<u>11,23,600</u>
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	<u>20,000</u>	69,501
Service Tax Payable		<u>54,099</u>

- (c) 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.

(d) **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

Service tax on Gross value of taxable service Rs 5,00,000*12.36/112.36		Rs 55,002
Less CENVAT	Rs	
Current period Rs 3,00,000 *12.36/112.36	33001	
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	<u>16,501</u>	27,501
Service Tax payable		<u>27,501</u>

4.3 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.

4.4 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:

XYZ gives a delivery to ABC, a courier firm, who outsources a partial delivery of a certain destination to another courier firm DEF . In this case In this case, DEF provide service to ABC and ABC provide in turn to XYZ.

Both the firms ABC and DEF provide same category of service i.e. courier service. Service tax will be primarily paid by ABC on services rendered by XYZ and to claim CENVAT credit in respect of service tax paid to DEF.

4.5 Input Services& Output Services fall in different 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 an advertising 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.

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

As stated elsewhere, CENVAT credit is not available if the output services are in the exempted category because CENVAT is granted to pay the liability for service tax on CENVAT. Because it would mean refund of service tax paid.

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

After 01-04- 2011 , 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.

4.8 if output services are partly taxable and partly tax-free separate records of consumption are maintained :

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.-Rule 6(2)

4.9 if output services are partly taxable and partly tax-free separate records of consumption are not maintained :

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

- (a) Pay an 'amount' equal to proportionate Cenvat credit attributable to exempted final product/ exempted output services, as provided in rule 6(3A) – Rule 6(3)(ii)
- (b) Pay amount equal to 6% of value of exempted goods (if he is 'manufacturer) and of value of exempted services (if he is service provider) – Rule 6(3)(i) .
- (c) 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. 1-4-2011.

Illustration 5:

ABC provides both tax-free service of Rs. 5 lakh and taxable service Rs. 20 lakh. They do not maintain separate records of input used ABC utilise taxable input services attributable to both type of services amounting to Rs. 6 lakh, 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 *12.36/112.36]	2,20,007
Tax -free services	NIL
Gross Service Tax payable	2,20,007
Less CENVAT credit 61,800- Rs. 30,000 [6% of tax-free services of Rs. 5lakhs]	31,800
Net Service Tax payable	1,88,207

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

4.10 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.

4.11 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

4.12 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 distribution is permitted subject to the following conditions:

- (a) The invoice should cover all the required details.
- (b) The credit distributed against a document referred to in Rule 9 does not exceed the amount of service tax paid thereon.
- (c) 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.

5. PROCEDURAL MATTERS WITH REGARD TO CENVAT 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 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. With effect from 01-04-2012, interest will not be levied if the CENVAT actually not utilised.

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 of 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, a commercial complex builder ordered for a generator van on which Rs 10,000 was paid as excise on May 14, 2012. They want to claim the service tax. Advise.



REGISTRATION, RETURNS, INTERST AND PENLTIES

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. Interest on delayed payments
7. Interest of delayed refunds
8. Penalties
9. Illustrations
10. Self Examination Questions

1 INTRODUCTION AND OBJECTIVE :

This lesson deals with important service tax procedure regarding Registration, filing the returns of service tax and payment of the service tax are very important procedure.

Registration is the starting point, because a registered service provider can charge service tax Rule 4(1). Failure in registration also attracts penal provisions.

2 PERSONS LIABLE FOR REGISTRATION - S-69 / R 4(1)

a. Commencement of business

Every service provider providing taxable services make an application for registration within 30 days of commencement of his business. Following persons are liable to get registration for service tax. Liability for registration arises on commencement of business. Actual provision of service is not necessary

Illustrations-1:

A is an existing provider of a service, which has become taxable from 01/07/2012. A will have to get service tax registration before 30/07/2012

Illustrations-2:

A provider of taxable services commences business on 01/04/2012 but Starts rendering services from 01/07/2012, the period of 30 days will be computed from 01/04/2012 (NOT 01/07/2012) being the date of commencement of business

b. Small service providers:

Small service providers having turnover upto Rs. 10 lakhs are not liable for service tax but every service provider in whose case, gross receipt exceeds Rs 9 lakhs shall apply for registration to the Service Tax Department within 30 days from the date of crossing the limit of Rs 9, lakhs, however, he will charge service tax after crossing the limit of Rs 10 lakhs

“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.

c. Voluntary registration

A person may apply for voluntary registration at any time and also a person may opt not to avail the general exemption of Rs. 10 lakhs

d. Input Service Distributor :

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

e. Unincorporated Body of Individuals:

An unincorporated body of individuals will be liable for service tax in respect of taxable services rendered to members or others

f. Registration by a Recipient Of Services :

Ordinarily liability for payment of service tax is 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 cases are:

- i. **Importer of services** from outside India is liable to pay in respect of the services imported by him in India.-S 66A
- ii. in case of services of a **goods transport 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 or a person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage; 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 it e.g. IPL
- v. In Relation to **Telecommunication Service** he Director General of Posts and Telegraphs, The Chairman-cum-Managing Director, MNTL, or any other person who has been granted a licence by the Central Government under The Indian Telegraphic Act
- vi. In Relation to **General Insurance business**, the insurer or re-insurer, providing such service
- vii. In Relation to **Insurance Auxiliary Service** by an insurance agent, any person carrying on the general insurance business or the life insurance business in India
- viii. The Central Government in Official Gazette may specify such other person or class of persons, even though not liable to pay service tax, but required to apply for registration.

3 PROCEDURE OF REGISTRATION- RULE- 4

3.1 Submission of Application:

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**;

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).

3.2. Single Registration:

An assessee may make single application in respect of all the taxable services being provided by him in the application for registration. Such assessee will be granted single registration. Rule 4 (4),

3.3 Multiple Premises

- If a person provides / receives taxable services from more than one premises or offices and has centralized billing or accounting at place, only at his option may make one application for such place from where the billing is done in respect of all types of services provided – Rule 4(2) .
- If bills are raised from different places, separate application is required to be made for each place of business, from where the bills are raised.
- Similarly a common application needs to be made for all the services provided by the service provider from a single place, unless multiple services are provided from multiple places and billing is done separately. in that case separate application for each place needs to be made.- Rule 4(3A)

Illustration 3:

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 4:

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

3.4 Certificate of Registration (ST-3) :

The Superintendent of Central Excise after verification of application of registration shall grant a Certificate of Registration in form no. ST-2 within 7 days from the date of receipt of application. If the registration certificate is not granted within the said period, the registration applied for shall be deemed to have been granted and assessee can carry on with his activities.-Rule 4(5)

The service provider shall be given a Registration Number by the Department which will be called STP code i.e. Service Tax Payer Code as a 15 digit PAN based number of which first 10 digit will be of PAN and remaining 5 digit shall be allotted by Service Tax Department e.g. AABPC2501C – ST-001 The last three digit shall indicate total number of registration for the same permanent Account Number.

In addition, a 'Premises Code' is also allotted to the assessee, which indicates the code of the jurisdictional Commissionerate, division, range and Sl. No. within the range. This number is issued for easy identification of location of registration of the service taxpayer.

3.5 Changes in Certificate of Registration:

Any change in the particulars of the certificate, shall be intimated to the Service Tax Officer in from ST-1 with in thirty days of change taking place, who will issue a fresh certificate after making the necessary change within 4 days. - Rule 4(5A).

He change may be of following nature:

1. Change in place of business
2. Change in the name of business
3. Change in services rendered i.e. there may be addition / deletion
4. Any other similar change

If the change is to the effect that an assessee ceases to provide some taxable services under a single registration, the registration certificate will be amended to have the necessary effect, but will not be cancelled.

3.6. Transfer of Business:

If Assessee transfers his business to another person, the transferee shall apply for a fresh registration certificate- Rule 4(6),

3.7. Surrender / Cancellation of Registration Certificate

When a registered assessee ceases to carry on the service activity for which he is registered or he dies, he (or his legal heirs) should surrender the registration certificate immediately to the department. There is no penalty if the certificate is not surrendered but liability to file return will continue even if the tax payable is nil - Rule 4(7), 4(8),

3.8 Penalty for Non- Registration- Section 77

If a fails to register in accordance with the Section 69, he shall be liable for penalty up to Rs 10,000 or (ii) Rs.200 for each day till such failure continues, whichever is higher from the due date, till the date of actual compliance.

Note : the syllabus does not refer to Registration specifically, but service tax machinery is activated only after registration including payment of tax, claiming input credit etc hence, the topic is taken for discussion.

4 FILING OF RETURNS – SEC 70

4.1 Liability for filing return

Following persons are liable to file Service tax Returns:

1. Every assessee, who has provided taxable services and is liable to pay service tax ;
2. Every assessee, who has not provided taxable services and is NOT liable to pay any service tax ;
3. Every Input Distributor;
4. A single service tax return should be filed for all the taxable services provided by the assessee.;
5. Revised Return can be filed in 90 days to correct any mistakes and thereafter for the purpose of recovery for short payment or excess refund the date of revised return will be considered – Rule 7B / Section 73

4.2 Periodicity Due Date for Filing of Service Tax Return:

The Returns are to be filed every half yearly before the due dates given in the following table :

Half Year ending	Due Date for Filing Returns	
	General assessee	Input distributor
April- September	25 October	25 October
October-March	25 April	25 April
Form @	ST-3 / ST -3A	ST -3

If the due date falls on a public holiday, the return can be filed on the next working day.

4.3 – Electronic Filing of Returns

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.

4.4 Documents to be filed with return

Return is to be filed in triplicate and should include all copies of GAR-7 or 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.

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.

4.5 Penalty for not filing or late filing of returns –Section 70(1)

Delay in submission of half-yearly Returns in forms ST-3/3A invites late fees depending upon the period of delay subject to a maximum of Rs. 20,000. (Rule 7C) The late fees are given in the following table :

Delay in filing return from the due date	Due Dates		Late Fee Rs
	April 25,	October 25,	
	Return Filing dates		
01-15 days ,	10 May	09 Nov	500
16 - 30 days.	25 May	24 Nov	1,000
31 days and more	26 May or after	25 Nov or after	1000 + Rs 200 per day

5. PAYMENT OF SERVICE TAX

5.1. Liability for payment

Service tax is payable by the service provide except in certain specific cases discussed earlier like import of service, sponsorship , goods transport agency ,where the tax is pay able by the recipient of the service.

5.2. Mode of Payment

The amount should be deposited in any of the banks specified by the jurisdictional Commissionerate of Central Excise GAR-7 (Earlier TR -6) by using appropriate accounting code. E-payment is compulsory to those who are paying service tax of Rs 10 lakhs per annum or more. For others, e-payment is optional.

5.3. Due dates for payment:- Rule 6

Type of Assessee	Period	Due date of Payment		
		Other than March		March
		Normal	E payment	
an individual or proprietary firm or partnership firm	Quarterly	5 days at the end of quarter	6 days at the end of quarter	31/03
Others Company ,HUF BOI,AOP etc	Monthly	5 days at the end of the month	6 days at the end of the month	31/03

5.4. Receipt Basis

Subject to point of taxation rules, Service tax payable on receipt 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. The position is drastically changed with the enactment of point of taxation rules, where service tax will be paid, on the date of invoice, date of rendering service or date of payment, whichever is earlier. These provisions are separately discussed elsewhere.

5.5. Associated Enterprise

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).

5.6. Advance payment of service tax

An assessee, has the option to pay any amount in advance towards future service tax liability and adjust the same in the subsequent provided he informs the Superintendent of Central Excise within 15 days of making such payment. [Rule 6(1A)]. When he adjusts the advance, he should indicate details in the subsequent return filed

6. INTEREST FOR LATE PAYMENT OF TAX -S 75/S 73B

1. W.e.f 01-04-2011 simple Interest is payable @ 18% per annum (15% for assesseees upto turnover of Rs 60 lakhs) from the due date of payment till the actual amount is paid.
2. No Interest of Service Tax is to be charged for the period if any competent authority has levied Stay on the proceedings.
3. Show Cause Notice must be issued u/s 73 of the Finance Act 1994 for demand of Service Tax and Interest.
4. Interest is mandatory and cannot be reduced or waived.
5. Date of payment is to be tank on the date of presenting the cheque subject to realisation of cheque- Rule6(2A) of the Service Tax Rules, 1994, (The rate upto 31/03/2011 was 13% per annum.

6. INTEREST ON DELAYED REFUND

In case of delay in refund of service tax by the Government to the assessee beyond 3 months from the date of receipt of refund application, assessee is entitled to receive Interest at a rate not below 5% but not exceeding 30% per annum u/s 11BB of Central Excise Act, 1944 presently simple interest @ 6% p.a. is granted on delayed refunds.

7. PENALTIES – SEC-76-80

Contravention of the provisions of the Act attracts, penalty which may be imposed on an assessee in addition to the Interest and Service Tax(given in the table below) . No penalty can be levied without an order in writing or if assessee proves there was a reasonable cause for failure in payment of service tax no penalty should be imposed on him S 80.

If assessee pays any sum of penalty less than Rs 1,000 within specified time granted, penalty will not be levied under executive instructions .

Sec	Default (Reason for Penalty)	Amount of penalty
76	Failure to Pay tax and interest	Rs 100 per day or 1% per month , whichever is more subject to maximum of 50% of service tax
77	Failure to pay service tax, or to take registration, u/s 69 or to Furnish information, Produce Documents, Appear before Central Excise officer	Rs 10,000 plus Rs 200 per day of default
77	Failure to keep, maintain or retain books of account and other documents , to make e payment , or Issuing incorrect or incomplete invoices or other contravention which no penalty is provided	Rs 10,000
78	Non-payment of service tax due to fraud, collusion, suppression of facts , to willfully evade tax , claim refund	Not less than 100%, Not More than 200% of tax evaded (but if tax paid within 30 days, Penalty only 25% of tax.

Notes :Penalty U/s 76 and 78 cannot be imposed simultaneously

- Penalty amount u/s 78 may increase or decrease as per the decision in appeal.
- For serious offences names of the offenders Tax liability of Rs 1 Crore or more can be published U/s73D ,
- Penalty of Rs 2,000 can be imposed under CENVAT Rules for input default.
- Penalty can be imposed only by jurisdictional officer.

8. ILLUSTRATIONS

Illustration –5

Value of taxable services provided by A for five years are Rs.9,00,000, 9,50,000, 15,00,000, 8,50,000, 6,00,000 respectively. What will be his liability for registration?

Solution

Year 1:

Since the value of taxable service rendered is less than Rs 10 lakhs , A is not liable for payment of service tax and since the value of taxable services does not exceed Rs 9 lakhs, NOT liable for Registration also

Year 2

Since the value of taxable services exceeds Rs 9 lakh , A shall apply for registration within 30 days of exceeding the limit of Rs 9 lakhs but there will be no liability for payment of service tax as the value of taxable service rendered is less than Rs 10 lakh

Year 3:

The value of taxable services exceeds the basic limit of Rs 10 lakh, A will not be liable to pay tax till he reaches the threshold limit of Rs 10 lakhs but once he crosses the limit, he will be liable to pay service tax on the gross value of services of Rs 5 lakh.

$$\text{Service tax payable} = 5,00,000 \times \frac{12.36}{112.36} = \text{Rs. } 55,002$$

Further, A is liable for registration in year 2, no further registration is necessary in this year.

Year 4:

Threshold limit of Rs 10 lakh is a onetime limit. Once the limit is crossed (in year 3 in this case), A is liable to pay service tax on entire amount Rs. 8,50,000.even if it is below Rs. 10 lakh i.e.

$$\text{Service tax payable} = 8,50,000 \times \frac{12.36}{112.36} = \text{Rs. } 93,503$$

Year 5:

During the previous financial (year 4), value of taxable services was less than Rs 10 lakhs hence A is not liable to pay any service tax. He can apply for cancellation of registration. But A can voluntarily decide to continue with the registration. Then he will be liable to pay tax and file returns and also claim input credit.

Illustration -6:

A Ltd makes the payment of service tax of Rs 40,000 for the month of April, on 30 May. Compute the interest payable if his turnover is 25,00,000 or (b) Rs 70,00,000

Solution

Due date is 6th May. Tax is paid on 30 May, hence there is a delay of 24 months; hence, interest payable will be:

- a. If turnover is Rs 25 lakhs – $15\% \times 40,000 \times 24 \text{ days} / 365 = \text{Rs. } 395$
- b. If turnover is Rs 70 lakhs – $18\% \times 40,000 \times 24 \text{ days} / 365 = \text{Rs } 473$

(Tax interest and penalty is to rounded off to nearest rupee)

1. SELF EXAMINATION QUESTIONS

- 1) Discuss the liability of A Contractor, who receives Rs 5 lakhs, Rs 8.47 lakhs and Rs 9.25 lakhs during the year 2011-12 as charges for setting up mandaps for social functions, with respect to service tax registration and tax liability. [*Liable for ST on aggregate services*]
- 2) Who is liable to be 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 of registration under service tax rules.
- 6) What are the penalties imposed for defaults under the law?



SECTION –II: INDIRECT TAXES-MVAT

6**MAHARASHTRA VALUE ADDED TAX
ACT, 2002 (MVAT):
BASIC CONCEPTS****SYNOPSIS**

1. Introduction and Objective:
2. Concept of VAT
3. Definitions:
 - 3.1. Business
 - 3.2. Dealer
 - 3.3. Goods
 - 3.4. Importer
 - 3.5. Manufacturer
 - 3.6. Purchase Price
 - 3.7. Resale
 - 3.8. Sale
 - 3.9 Sale Price
 - 3.10 Service
 - 3.11 Turnover of Sales
4. Illustrations
5. Self Examination Questions

1. INTRODUCTION & OBJECTIVE:

The lesson deals with the provisions of 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

The lesson aims to take up the basic concept of VAT, the process, and the administration of the MVAT regime.

2. CONCEPT OF VAT

The Maharashtra Value Added Tax Act, 2002 (MVAT) replaces Bombay Sales tax Act, 1959, which was enacted to collect tax on sales. MVAT contains the word "Value Added" in its title but it continues to levy tax on sales. It neither defines the value addition is nor VAT.

Under MVAT, the concept of collection of sales tax underwent a change. Now the sales tax is a multi-point tax collected at every point of the value addition chain, wherever the goods travels from manufacturer, distributor, stockist, and wholesaler till the goods reach the ultimate consumer unlike the old sales tax, which, was barring a few exceptions, a single point tax levied at the manufacturing stage.

Following the scheme adopted under the excise laws, most states have adopted a uniform VAT regime prescribing only 5 rates of tax; 0%(tax free goods), 1 %, 4% (5% in Maharashtra), 12.5% and 20%,(25% for liquor) and an inbuilt scheme for allowing set off for taxes already paid at the earlier stages to avoid duplication of tax or a tax on tax. 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 can be explained by the following illustration:

Illustration 1

A dealer has purchased 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%.

The tax liability will be as follows:

	Rs.
Tax on output 12% on Rs. 5,00,000	60,000
Less-Credit for Tax paid on inputs 4% on Rs. 2,00,000	8,000
Net Tax Liability	52,000

Due to uniformity in tax rates entire country is converted into a big common market with uniformity in prices. Other 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.

3.DEFINITIONS: SECTION 2

3.1. BUSINESS- (Section 2(4))

In this act unless the context otherwise requires-

“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,
3. 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 be 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.
10. Neither Profit motive nor actual realisation of profit is necessary to constitute any activity as business

Illustration 2:

A teacher conducts coaching for students appearing MPSC Examinations. He purchases the books necessary for the examination 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”.

3.2. DEALER- {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.

From the above definition of “dealer”, which is very comprehensive in nature and covers a large number of bodies in its scope including Public charitable trusts, following features emerge out :-

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:
 - i. Clubs or Societies serving their members,
 - ii. Agents of all types- Factor, Broker, Mercantile Agent etc,
 - iii. Auctioneers,
 - iv. Agent of a person outside the State Of Maharashtra
 - v. Customs Department of The Government of India administering The Customs Act, 1962;
 - vi. Government Departments -Central as well as State
 - vii. Societies, Clubs Or Other Associations of Persons;
 - viii. Insurance and Financial Corporations, Institutions or Companies and Banks;
 - ix. Local Authorities;
 - x. Maharashtra State Road Transport Corporation
 - xi. Port Trusts;
 - xii. Public Charitable Trusts
 - xiii. Railway Administration

- xiv. Shipping and Construction Companies, Air Transport Companies, Airlines and Advertising Agencies;
- xv. 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

3.3. GOODS- [Section 2(12)]:

“goods” means “very 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 akin to the definition as laid down in the Sale of Goods Act. Following are the important exclusions / inclusions in the definition.

ITEMS EXCLUDED	ITEMS INCLUDED	
	As per definition	As per departmental clarification
Newspapers, Actionable Claims, Money, Stocks, Shares and Securities, Lottery Tickets	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;	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.

Illustration 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”.

Farmer being an agriculturalist selling exclusively agricultural produce grown on land cultivated by him personally is covered by

the exclusions to the definition of “dealer”. Hence, the *crops are goods but the farmer is not a dealer*.

3.4. IMPORTER -Section 2(13):

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

From the above definition, it follows that an Importer is a person engaged in inter-state purchases. But a person will be an importer if such person:

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

Hence a person who is not a dealer will not be an importer even if he brings goods from outside the state of Maharashtra.

Illustration 4:

State with reason whether an educational institution, which purchases paper from Gujarat, will be an importer under MVAT

Solution;

No because an educational institution is not a dealer.

Illustration 5:

State with reason whether farmer who purchases seed from Goa for growing crops, will be an importer under MVAT

Solution;

No because a farmer (agriculturist) is not a dealer.

3.5. MANUFACTURE- Section 2(15)

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

The definition of manufacture being 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;

3.6. PURCHASE PRICE-Section 2(20)

“Purchase price” means 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.—The amount of valuable consideration paid or payable by a dealer for the purchase of drugs specified in entry 29 of Schedule C shall be the maximum retail price printed on the package containing the drugs.

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.”

Purchase price means valuable consideration or the price of goods paid by purchaser to seller. The price will include/ exclude the following:

PRICE INCLUDES	DOES NOT INCLUDE
<ul style="list-style-type: none"> ▪ Excise, customs and other duties ▪ Any sum charged by the seller <ul style="list-style-type: none"> -for anything done by the seller -on or before the delivery of goods to the purchaser ▪ Any deposit paid by the purchaser to seller <ul style="list-style-type: none"> -refundable or non-refundable -whether by separate agreement or otherwise 	<ul style="list-style-type: none"> ▪ VAT charged ▪ Cost of insurance and ▪ Cost of installation <p>IF CHARGED SEPARATELY</p>

Illustration 6:

ABC buys goods worth Rs 10,400 from XYZ of which 4% sales tax has been included. What is the purchase price of the goods?

Solution

Gross Purchase value inclusive of 4% tax is Rs. 10,400, which includes tax of Rs 400* (being Rs 10,400 X 4/104)

Since, Purchase price does not include the taxes paid on the purchases.

Purchase price = Rs 10,400 – Rs 400 = Rs 10,000

3.7. RESALE-[Section 2 (22)]:

“Resale” means “ a sale of purchased goods -

- i. in the same form in which they were purchased,
- ii. or without doing anything to them which amounts to, or results in a manufacture

and the word “resell” shall be construed accordingly;

Resale means to sell the goods in the same form, shape, design and character. **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. However, putting a brand name after purchasing the same is considered to be manufacture.

Illustration 7

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 is tantamount to manufacture, and not resale.

3.8. SALE – [Section 2 (24)]

“Sale” as a 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 namely, 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:

The definition of sale assumes the following essential components to constitute a sale within the meaning of S. 2(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 inter-state sale within the meaning of S. 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.

Illustration 8:

Whether the following transitions 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 constitute sale under MVAT.
- d) Material supplied for work contract constitute 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 no 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 in such goods.
- 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.

3.9. SALE PRICE -Section 2(25) :

“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: The amount of valuable consideration paid or payable of a dealer for the sale of Drugs specified in entry 29 in Schedule C shall be the maximum retail price printed on the package containing the Drug.

To understand the true meaning of sales price, it must be borne into mind that:

- a) 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 ,
- b) The sale price will include the following:
 - Excise, customs and other duties
 - Any sum charged by the seller for anything done by the seller on or before the delivery of goods to the purchaser
 - Any deposit paid by the purchaser to seller –refundable or non-refundable whether by separate agreement or otherwise
- c) The sale price does not include the following, if charged separately:
 - VAT charged
 - Cost of insurance and cost of installation.
- d) By a retrospective amendment, it is clarified the valuable consideration in case of Schedule C 29, drugs will be the MRP (maximum retail price)

3.10. SERVICE – [Section 2[27]]

“Service means any service notified by the state government in official gazette from time to time ‘

Ordinarily service should not be the part of VAT as VAT is basically concerned with the goods. However, in view of the recent developments like proposed transition to goods and Service Tax GST, it is thought necessary to keep an enabling definition of service for transition.

3.11. TURNOVER OF SALES-[Section 2[33]:]

“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. —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;

From the above definition following points emerge out:

1) Turnover is the sum total of all the sales effected by the seller. 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.

2]. Turnover of sales, will however, include the following items by virtue of the two explanations to the section 2[33]:

- a. 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.

- b. 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:

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

Activity	Validity	Reason
Free Sample	No	Transfer of Goods free of cost
Pledge of Goods	No	Specifically Excluded
Works Contract by a contractor	Yes	Works contract will be treated as sale of goods to the extent of material supplied by the contractor
Canteen Sale of College	Yes	Transfer of Food for price
Hypothecation of Stock	No	Specifically Excluded
Transfer of Motor Cycle on installment system	Yes	Transfer of Motor Cycle for a Price
Computer given on rent	Yes	Transfer of right to use for a Price
Construction of a Bridge	Yes	Transfer of Property for a price.
Interior decoration consultancy by architect	No	Only service rendered
Interior decoration by architect with supply of material	Yes	Transfer of property in goods involved in execution of the Contract.
Transfer of goods from Head Office to OMS Branch	No	Transfer to own place
Gift of goods to a Charitable Institution	No	Transfer of goods without price.
Fridge on hire purchase basis	Yes	Transfer of right to use goods

Fridge on instalment basis returned back within 6 months	No	Goods returned back within 6 months
Selling textbooks by educational institutions	No	Educational Institution specifically excluded from the definition of dealer
Donating free samples to orphanages	No	Valuable consideration not received
Sale of vacant plot of land	No	Immovable property not considered as goods
Contract for arranging Khanna's daughter's wedding	Yes	The value of the goods shall be taxable under MVAT.
Operating a stock exchange bolt	No	Sale of shares is not treated as sale of goods
Sale of food and drinks by US Club to its members	Yes	Specific inclusion of the clause under the definition of dealer

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

Item	Validity	Reason
Mango Trees	Yes	Specifically Included
Equity Shares of ABC Ltd.	No	Specifically Excluded
Residential Flat used for business	No	Immovable Property specifically excluded
Malai Kulfi	Yes	As per normal definition of goods
Super Lotto Tickets	No	Specifically excluded from the definition
SIM cards for mobile phones	Yes	On basis of departmental clarification
Trademarks	Yes	On basis of departmental clarification
Newspapers	No	Specifically excluded
Sale of goodwill	Yes	On basis of departmental clarification

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

Item	Validity	Reason
Sale of Confiscated car by IDBI Bank	Yes	In normal course of business
Auctioneer	Yes	Included in definition.
Machinery Sold by State Government	Yes	Included in definition.
Sales of Food at concessional rates by Club to its members	Yes	Included in definition.
Jewellery sold by household person	No	Not trading .
Sale of packaged drinking water by airline companies	Yes	Included in definition.

5. 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- REGISTRATION, INCIDENCE AND LEVY OF TAX: SEC- 3 -8

Synopsis

1. Introduction and Objectives
2. Incidence of tax- Section 3
3. Practical Examples on registration
4. Levy of Tax (Section 4)
5. No Tax on Schedule A Goods (Section 5)
6. Levy of Tax on Specified Goods (Section 6)
7. Schedules and Rates of Tax
8. Rate of Tax on Packing Materials (Section 7)
9. Exemptions on Certain Sales or Purchases not liable to Tax – Section 8
10. Exemption under Section 41
11. Exempted versus Tax-free Sales
12. Registration Procedure - Section 16, Rule 8
13. Self Examination Questions

1. INTRODUCTION AND OBJECTIVE :

This lesson aims to discuss the machinery provisions of MVAT including the incidence of tax. Levy of tax, the methodology, exemption, classification and other incidental matters. Following is the broad scheme of MVAT

Section 3 deals with the incidence of tax and defines the persons liable to pay MVAT and section 4 deals with the charging provisions. Sections 5, 6 and 7 deal with the exempted goods under Schedule A, taxable foods under other schedules and tax on packing materials respectively. Similarly, Section 8 deals with the provisions relating to sales or purchase not liable to tax.

2. INCIDENCE OF TAX - SECTION 3 :

Section 3 of MVAT defines the incidence of the tax. The main points of the provisions of section 3 are as follows:

2.1 Threshold (Basic) Turnover Limits:

A dealer will be liable to MVAT if his turnover exceeds the limits given in Section 3. The limits of turnover are of two types - first in respect of Total Turnover of Sales AND second in respect of Turnover of Sales OR Purchases of Taxable Goods. Then these limits are different for IMPORTERS and OTHER types of Dealers.

However, These limits are NOT Applicable to dealers opting for Voluntary Registration. These limits are given in the following table:

Category of Dealer	Total Sales Turnover		Turnover of Sales or Purchases of Taxable Goods
1. Importer	Total Sales Turnover of Rs 1,00,000	AND	Taxable Sales/Purchases not less than Rs 10,000
2. Others (including Manufacturer, Reseller, Liquor dealer, Works Contractors, Lessors, etc.)	Total Sales Turnover of Rs 5,00,000	AND	Taxable Sales/Purchases not less than Rs 10,000
3. Dealers opting for Voluntary registration	No Limit of Turnover		

2.2 Scope of Turnover:

Following point are important, while applying the above limits:

I. TOTAL TURNOVER LIMIT OF 1 LAKH/ 5 LAKHS

- (a) Total turnover limits INCLUDES turnover of SALES ONLY.
- (b) Turnover of PURCHASE IS NOT INCLUDED in total turnover limit.
- (c) Turnover of ALL types of goods - tax-free, taxable or outside the state is INCLUDED in total turnover limit.
- (d) Total turnover limit has to EXCEED the applicable benchmark limit of Rs. 1,00,000 for an importer or Rs. 5,00,000 for a dealer other than an importer. Effectively, the limit of Total turnover of sales for attracting of liability is *Rs. 1,00,001 and above for an importer and Rs. 5,00,001 and above for others .*

II TURNOVER LIMIT RS 10,000 TAXABLE SALES OR PURCHASE

- (a) The limit of taxable turnover of Rs 10,000 APPLIES TO ALL DEALERS whether importers or others
- (b) This limit INCLUDES EITHER turnover of TAXABLE SALES OR turnover of TAXABLE PURCHASE
- (c) The limit DOES NOT INCLUDE SALES AND PURCHASE BOTH aggregated together. It means that dealer should give either turnover of sales of taxable goods or he should have turnover of purchase of taxable goods of Rs. 10,000 or more.
- (d) ONLY turnover of taxable goods in Maharashtra only INCLUDED IN THE LIMIT. *Turnover of Tax-free goods or turnover outside Maharashtra is not relevant.*
- (e) What is important is that a dealer must reach the benchmark turnover limit of Rs 10,000. There is no requirement of crossing it. In effect, it means that the limit is more than Rs 9,999 in all case

III. Other Important points:

- (a) No turnover limit for import is specified for importer. 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
- (b) Turnover includes all the sales made by the dealer whether by his own account or on behalf of his principal whether disclosed or not.
- (c) 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.
- (d) The turnover limits have to be computed with reference to each financial year separately.

SUMMARY OF TURNOVER LIMITS PRESCRIBED		
DEALER	Total Turnover Of Sales	Turnover of Taxable Purchase or Sales
IMPORTER	Must exceed Rs 1,00,000	Must reach 10,000
OTHER	Must exceed Rs 5,00,000	Must reach 10,000
BOTH LIMITS ARE CUMUALTIVE		

2.3 Certain Important Points

(A) 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

(B) 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.

(C) 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.

(D) Compulsory registration for CST dealers

It is mandatory for a person 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 lakhs.

(E) Successor or Transferee

Where a business of a dealer is 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 lakhs and payment of tax after the date of succession.

(F) Voluntary Registration

Any person can apply for voluntary registration even if he is not legally liable for registration by paying a deposit of Rs 25,000 In such case, there is no requirement for any turnover limits given above but once the registration is granted to him , he will be liable to pay tax like normal dealers. .

3. ILLUSTRATIONS ON REGISTRATION:

Illustration1:

Rajesh starts a business on 10/5/2011. 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.	Rs.	Rs.	Rs.	Rs.
May-11	90000	4000	5500	85000	4000
Jun-11	102000	3500	3500	150000	3500
Jul-11	150000	6000	2500	175000	1500
Aug-11	110000	2500	4000	100000	3000
Sep-11	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		Tax Free Goods Rs.	Taxable Goods Rs.	Total sales T.O. Rs.	Cum Total. T.O. Rs.		
	Tax Free Goods	Tax Free Goods Rs.	Taxable Goods Rs.						
	Rupees								
May-11	90000	4000	5500	85000	4000	89000	89000	4000	5500
Jun-11	102000	3500	3500	150000	3500	153500	242500	7500	9000
Jul-11	150000	6000	2500	175000	1500	176500	419000	9000	11500
Aug-11	110000	2500	4000	100000	3000	103000	522000	12000	15500
Sep-11	175000	1500	3000	250000	3500	253500	773500	15500	18500

Since Rajesh is an Importer, following turnover limits are applicable

- a.) Turnover of sales of in excess of Rs. 1,00,000-
- b.) Taxable sales/purchases of Rs. 10,000 or more and

Rajesh crosses the turnover limit of sales in the month of May.2011, when the aggregate sales turnover is Rs. 2, 42,500. Purchase turnover exceeds Rs, 10,000 in July, 2011

Rajesh is liable for Registration in July 2011 that is the earliest date on which he fulfills both the conditions. Thereafter sales also exceed Rs. 10,000 in August, 2011 is immaterial.

Illustration 2:

The following information regarding the turnover of purchases and sales transactions is submitted by Allen, who started Business on 1st March 2011. 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- 11	30000	2000	3500	40000	3500
April- 11	20000	3000	2500	10000	3000
May- 11	70000	4000	4500	80000	1500
June- 11	40000	5000	6500	50000	3000
July- 11	25000	6000	3000	20000	3500

Solution:

Given data is for two financial years 2009-10 and 2010-11. Hence limits will have to be computed separately for both the years.

MONTH	PURCHASES			SALES				Cum Taxable Sales Rs.	Cum taxable Purchase Rs.
	WITHIN STATE	OUTSIDE STATE	THE	Tax Free Goods Rs.	Taxable Goods Rs.	Total sales T.O. Rs.	Cum Total. T.O. Rs.		
	Tax Free Goods Rs.	Tax Free Goods Rs.	Taxable Goods Rs.						
2009-10									
March	30000	2000	3500	40000	3500	43500	43500	3500	3500
2010-11									
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

Allen is an Importer covered by the following turnover limits

- i) Turnover of sales of in excess of Rs. 1,00,000 and
- ii) Taxable sales/purchases of Rs. 10,000 or more

During the financial year 2010-11, Allen starts his business in the month of March, 2011, during the year he has total turnover of sales of Rs 43,500 and also his turnover of taxable purchase as well as sales is Rs. 3,500 each. He does not satisfy both the limits; hence he is not liable to registration during the year 2010-11.

During the next financial year, 2011-12 it is clear from the information given, that Allen has crossed the turnover limit of sales in the month of June 2011, when his sales is Rs. 1,47,500 and his taxable Purchase turnover exceeds Rs, 10000 in June, 2011

Allen is liable for Registration in *July 2011* that is the earliest date on which he fulfills both the conditions.

Illustration -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, 2011, find out whether he is liable for registration as per the provisions of MVAT Act, 2002, Give reasons for your answer.

MONTH	PURCHASES	SALES	
	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	Purchases	SALES					Cum. Taxable Purchase
	Taxable Goods Rs.	Taxable Goods Rs.	Tax Free Goods Rs.	Total Sales Rs.	Cum. Sales Rs.	Cum. Taxable Sale	
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, following limits are applicable:

- (a) Total Turnover of sales exceeds Rs. 5,00,000.
- (b) Taxable sales/purchases are of Rs. 10,000 or more. .

From the above working it is clear that Castalinos crosses the turnover limit of Rs. 5, 00,000 in June, 2011, but his turnover of purchase as well as sales exceeded the limit of Rs. 10,000 only in the month of July, 2011.

He will be liable to registration in July, 2011, when he fulfills both the conditions.

Illustration -4

Track Builders submits the following detail in respect of their construction business commenced on 1st April, 2011. Find out whether as per the provisions of MVAT Act, 2002, they are liable for registration.

MONTH	PURCHASES		SALES	
	Taxable Goods Rs.	Free Goods	Taxable Goods Rs.	Tax Free Goods Rs.
Apr-11	1500		3000	80000
May-11	1000		5000	190000
Jun-11	2500		----	175000
Jul-11	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 are not importer, following turnover limits are applicable:

- (a) Total Turnover of sales exceeds Rs. 5,00,000. AND
- (b) Taxable sales/purchases are of Rs. 10,000 or more. .

From the above data , it appears that Track Builders crosses the limit for turnover of sales of Rs. 5,00,000 in July,2011 but Turnover Neither Taxable purchases nor turnover of taxable sales exceeds the limit of Rs 10,000 . In other words Track Builders do satisfy first condition does not satisfy the second condition.

Since BOTH the conditions are not satisfied, **Track Builders is not liable for Registration.**

Illustration - 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 principals 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.

4. LEVY OF TAX – SECTION 4

S .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 tax under this Act, the tax or taxes leviable in accordance with the provisions of this be paid by every dealer or, as the case may be, every person, who is liable to pay 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.

5. TAX FREE GOODS - (SECTION 5 & SCHEDULE A)

Section 5 provides that subject to the other provisions of this Act, and the conditions or exceptions, if any, no tax shall be payable on the sales of any goods specified in Schedule A . Schedule A covers tax- free goods which are generally necessities of life. Some of the items covered by the Schedule A are agricultural implements, cattle feed, books, bread, fresh vegetables, milk, sugar, fabrics, water etc.

6. TAX ON SPECIFIED GOODS-S.6-SCH- B,C,D& E 7.

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 the respective Schedule.” A brief description of goods covered in theses schedules is as follows:

- 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%. some items are taxed at 4%

- 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% and on liquor up to 50%
- 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%.

Original Scheme of having four basic rates of VAT - 0%, 1%, 4%, and standard rate of 12.5% has been changed on selective basis.

7. RATE OF TAX ON PACKING MATERIALS – SEC. 7

Under section 7, rate of tax on packing material will be the same rate applicable on the goods. The section provides that 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.

Illustration: 6

A plastic packing material normally liable to MVAT at 5% is used for packing of liquor liable to Vat @ 25%. In this case sachet will also be liable to VAT @ 25%.

Illustration 7

Assuming the above packing material is used for packing of Bullion liable to VAT @ 1%. In this case, packing material will be liable to VAT @ 1% only, even though the particular prescribed rate on such material is 5%

8. SALES/ PURCHASES NOT LIABLE TO TAX – SEC. 8

U/s 8, following sales transactions are exempt from payment of tax:

- (a) Inter-state transactions covered by the Central Sales Tax Act, 1956 viz. [S.8(1)]
- (b) Sales or purchase of goods taking place outside the state of Maharashtra as per Section 4 of the Central Sales Tax Act, 1956
- (c) Sales in the course of Imports or exports of goods-[Sec 8(1)]
- (d) Sales of fuels and lubricants to foreign aircrafts registered in a foreign country subject to prescribed conditions. [Section 8 (2)]

- (e) Inter se Sales between Special Economic Zones, developers of SEZ, 100% EOU, Software Technology Parks (STP) and Electronic Hardware Technology Parks Units (EHTP) subject to certain conditions. [Section 8 (3)]
- (f) Sales to any class of dealers specified in the Foreign Trade Policy notified from time to time, by the Government of India. [Section 8(3A)]
- (g) Sales to the Canteen Stores Department or the Indian Naval Canteen Services As per wholly or partly to the extent specified by the State Government by general or special order, [Section 8(3B),].
- (h) Sale by transfer of property in goods involved in the processing of textile covered in column 3 of the first schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 under the general or specific order of the State Government - [Section 8(3C)]
- (i) Sales effected by manufacturing units holding certificate of entitlement in backward area under the package incentive scheme -S8 (4). – To avail this exemption such units have to pay tax and then claim refund.
- (j) Any class or classes of sales of goods made by any registered dealer to the central government or state government or Licenced Company engaged in generation, transmission or distribution of electricity subject to general or special order and prescribed conditions. To the extent if full or partly exempted by, the State Government may, by general or special order. For instance, by Notification dated 19.4.2007 concessional rate of tax @ 4% is provided for sale to specified Electric Power Generating and Distribution Companies', MTNL, BSNL and other specified telephone service providers Section 8(5)].

9. 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). At present this notification is issued for grant of refund in case of Consulate and Diplomat authorities and sale of motor spirit at retail outlets is exempted from tax by a notification.

10. EXEMPTED V/S TAX FREE SALES

Tax on goods mentioned in Schedule A is NIL. These goods are called Tax-free goods. 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.

11. REGISTRATION PROCEDURE–Section 16-Rule 8

11.1. *Requirement and procedure for Registration is given in Section 16 and Rule 8:* Section 16 provides that every dealer liable to pay tax can carry on business only if he possesses a valid certificate of registration under the Act. Registration Certificate NO (RC No) is now referred to as Tax Payers' Identification Number or *VAT TIN*.

11.2. Time Limit for Application - Rule 8

Time limit for making Application for Registration is given below:

Reason for registration	Time limit
1 Voluntary	Not applicable
2 Change in constitution	30 days from the date of change
3 Transfer of business due to death of the dealer	60 days from the date of death
4 Part/full transfer of business not covered by serial no 3, above.	30 days from the date of transfer
5 Exceeded the TO limits	30 days from the date on which the turnover first exceed the limits

11.3. Effect of Delay;

If a dealer applies for registration within the prescribed time of 30 or 60 days,, registration certificate will be granted from the date of liability, otherwise from the date of application. If there is an interval between the date of making application and day original date of liability and the date of registration, there will following effect:

- (a) the dealer would be unregistered dealer liable for paying penalty for delay in registration a
- (b) Dealer cannot claim set off
- (c) subsequent dealers purchasing goods from him shall not be entitled to claim set off in respect of tax paid to such dealer

11.4. Procedure for Registration

Following procedure is to be adopted for Registration;

1. Application in Prescribed form

An application for registration (VAT TIN) is to be made in Form No.101 along with the required documents. An application incomplete in any respect shall not be considered to be an application and shall not be accepted. (Application will not be accepted by the system if all the fields are not filled up.) Now *all applications for registration have to make electronically*. Payment of fee has to be made electronically and deposit in case of Voluntary registration will be made through a Demand Draft. Otherwise the procedural requirements are same.

2. Common TIN number for all places

Where a dealer has more than one place of business, he shall make a single application in respect of all such places specifying one place as the principal place of business. The application shall be submitted to the registering authority having jurisdiction over the principal place of business. One TIN number will be issued for whole state of Maharashtra, covering all the places of business of the dealer. Subsequently, if there is a shifting of place of business from one place to another place, there is no need to cancel the existing number and apply for new number. The existing TIN will continue. However, the event of shifting should be intimated to the registration authority of the old place.

3. Fees and Deposit:

A dealer applying voluntarily for registration has to pay fees of Rs 5,000 in addition to a deposit Rs 25,000.

Other dealers have to pay a fee of Rs 500 and are not liable to make any deposit.

The fees are to be electronically paid in Challan no. 210, appended to the MVAT Rules. Deposit amount can be paid by a demand draft.

4. Submission of PAN

No application is accepted without PAN. If PAN is not there, proof of filing Income Tax Return is also accepted

5. Business name:

The business name on the application should be the same as on the PAN, except in case of a proprietary concern. In case of other constitutions, the business name on the application should match with the constitution related document such as the partnership deed, Certificate by the Registrar of Companies etc

6. Constitution:

The constitution related documents should be furnished, depending upon the constitution selected by the dealer. Such documents are:

Individual	No Documents
HUF,	No documents except PAN
Firm	Partnership Deed
Companies	Articles/memorandum and the certificate issued by Registrar of companies
Co-Operative Society	Bye laws ,Certificate issued by Registrar of Societies
Trust	Trust Deed ,Certificate issued by Competent Authority companies

7. Verification Name and Status of the signatory:

Application has to be signed and duly verified by the proper person given in the table below. The person so signing and verifying is required to state the capacity in which he is signing and verifying as also, where possible, the particulars of his authority to sign and verify -Rule 8(6)

Applicant	To be Signed by
Individual	Proprietor or an authorized person
Firm	Any partner of the firm but every partner of the firm is also required to furnish a declaration as provided in the form of application, to the registering authority.
HUF,	the karta or any adult member thereof
Companies and other bodies corporate	Any director, manager, secretary or the principal officer or authorized signatory
an association of individuals other than a firm, HUF or body corporate	the principal officer of, or person managing the business
Government Departments and other persons	Manager, Principal Officer or a duly authorized person.

8. Documents to be submitted

Following document are to be submitted for physical verification, when asked by the registering authority:

Reasons for registration	Document
Voluntary Registration	Business PAN, Introduction of the dealer by a Registered dealer for 5 years or by an agent or current account in a bank – Rule 8 (11)
Change in the constitution from partnership to proprietary	Dissolution Deed
Change in constitution from proprietary to partnership	Partnership Deed
Full/Part Transfer of business	Transfer deed duly signed by the transferor and the transferee.
Exceeding the prescribed limit	Sales/purchase statement supported by sales/purchase invoices, sales/purchase registers.

9. Passport Size Photo

Two passport size photographs of the proprietor or any one partner of the firm or any one director of private limited company are to be submitted. This is not required for Public Ltd. Companies public trusts, corporations or a local authority.

10. Proof of address

Proof of address of place of business and residence of applicant, partners, directors etc The proof can be in the form of any one of the documents viz copy of maintenance bill, electricity bill, property card, leave license agreement for place of business as well as for place of residence is required.

11. Proof of Identity

Proof of identity can be:

- (a) Copy of passport / /driving license / voter card of applicant / partners/ directors.(any one proof is required)
- (b) Copy of license or certificate issued under any other Act, if any.
- (c) Income Tax PAN of the applicant / company / firm / partners / HUF and Karta.
- (d) Profession tax number of the proprietor /Company /Partners / Directors.
- (e) Proof of bank account of the applicant, Firm or Company.

- (f) Copy of proof of filing of last return and assessment order, if any (applicable only in case of application for registration due to change in constitution or change in ownership of the concern).

12. Issue of certificate

After scrutiny of the application and after such inquiry as it deems fit, if the registering authority is satisfied that the application for registration is in order and the prescribed conditions, if any, are fulfilled, it shall register the applicant and issue to him a certificate of registration in the prescribed form.

Where the application is not complete or that the information or documents prescribed for grant of registration certificate have not been furnished, or, the prescribed conditions are not fulfilled, the registering authority may, after giving the applicant a reasonable opportunity of being heard, reject the application for reasons to be recorded in writing.

13. Amendment of certificate

The Commissioner may, after considering any information furnished under any of the provisions of this Act or otherwise received, amend from time to time, any certificate of registrations 16(4)

12 ILLUSTRATIONS ON REGISTRATION PROCEDURE

Illustration -6:

In a case the turnover of sales by a reseller, exceeds Rs. 5 Lakh on 1-5-2011 and he files the application on 30-5-2011, the MVAT TIN shall be effective from 1-5-2011.

Illustration -7:

AB son of A takes over as legal heir the business of his father, expired on 15-12-2011 the legal heir took over the business. AB must apply for registration within 60 days of the death i.e. on or before 12/02/2012. The limitation period in this case being 60 days. If the application is filed in time, the TIN shall be effective from 15-12-2011, the date of the death of the proprietor.

Illustration -8:

ABC was converted into a proprietary from partnership on 1-4-2011. B was the proprietor. B applies for registration on 1-6-2011. In this case the application is late hence the TIN will be effective from the date of application i.e. 1-6-2011. During the period from 1-4-2011 to 31-05-2011 B shall be treated as an unregistered dealer all the consequences for remaining URD shall follow. B cannot collect any tax during this period and shall also not be eligible to claim any set off for the purchases made during this period.

12. 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	
	<u>Taxable</u>	<u>Tax Free</u>	<u>Taxable</u>	<u>Tax Free</u>
02/04/11	10000	15000	-----	-----
04/04/11	-----	-----	6000	14000
11/04/11	20000	40000	5000	10000
20/04/11	-----	-----	10000	40000
30/04/11	40000	60000	-----	-----
02/05/11	-----	-----	50000	15000
11/05/11	5000	20000	10000	30000
20/05/11	10000	10000	5000	15000
31/05/11	-----	-----	10000	10000
01/09/11	15000	315000	20000	320000
03/09/11	5000	10000	20000	30000

[Ans: 01/09/2011]

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.

Month/Year 2011	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 2011]

3. Mrs. Vidya commences business from 1st April 2010. She furnishes the following information furnished and wants to 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.

<u>Month - Year 2011</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 2011]

4. Explain when a dealer becomes liable to pay MVAT.
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?
8. List out the schedules Under MVAT dealing with levy of tax.
9. Discuss the provisions of MVAT relating to export incentives.
10. What the difference is between Schedules A goods and exempted goods U/s 8?
11. Discuss the sales and purchases outside the ambit of MVAT Act.
12. What are the VAT rates?
13. List out the exemptions as available to goods under Schedule A.



SET-OFF, REFUNDS, COMPOSITION, PENALTIES & INTEREST, AUDIT

Synopsis

1. Introduction and objectives
2. Composition Scheme
3. Composition Scheme for different classes of dealers
4. Set off
5. Penalties
6. Interest payable
7. Business audit
8. Tax Audit
9. Solved illustrations
10. Self Assessment Questions

1. INTRODUCTION:

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 vide section 42 for a simplified system of accounting for small dealers . This is called the Composition Scheme.

Similarly Section 48 and 49 make detailed provision for credit of earlier taxes paid this credit is called as the set off of taxes already paid on the inputs to avoid double taxation and cascading effect of the taxes on taxes.

This lesson aims at taking up the key provisions like composition set- off and refunds under the MVAT and 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. COMPOSITION SCHEME – SECTION 42

2.1 Legal framework :

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 Section 42. In pursuance of the authority vested in it by Section 42, the 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.

2.2 Applicability :

Separate composition schemes are available for different classes of dealers viz :

- (a) Retailers: -S42(1)/Rule 85,
- (b) Restaurants, eating house, refreshment room, boarding establishment, factory canteen, clubs, hotels or caterers etc , up to four star hotels , who serve non-alcoholic-drinks and food;.
- (c) Bakeries;
- (d) Dealers having principal business of Second-hand passenger motor vehicles;
- (e) Dealers engaged in work-contracts; and
- (f) *Decorators hiring Mandap* or tarpaulin

2.3 Dealers not eligible :

The Scheme is not available to the following: classes of dealers:

- 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

2.4 General Conditions:

General features of the composition scheme are:

a) Application ;

The Scheme will be available on making application in prescribed form. New dealers should apply for composition at the time of registration.

b) Turnover Limit;

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 lakhs rupees of the total turnover of sales in the current year.

c) Taxable Purchase from Registered Dealers

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.

d) No Set-Off Available

Dealer opting for composition is not eligible for any set-off or refund except dealer in second hand motor vehicle.

e) Not to Issue Tax-Invoice :

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.

f) Option not to be changed :

Once, the option to join the composition scheme is exercised, in any year, it can be changed only at the beginning of the next financial year

g) Other Points

Following other points are also important:

- i. Dealer may opt for payment under composition, if he so desires
- ii. Existing dealers opting for composition to send intimation in the relevant prescribed form appended to the Notification
- iii. No separate R.C. Number for composition dealers.
- iv. Amount of composition payable cannot be recovered separately. Accordingly, composition dealers cannot issue tax invoice.
- v. Single dealer eligible to claim composition under more than one scheme or for a particular activity of the business
- vi. Composition dealers are not eligible for set-off on certain class of purchases which are specifically excluded.

2.5 Amount of Tax:

Different Forms, tax rates are prescribed by rules. For instance, 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 tax rate is 5% and 8% in some cases .for Second Hand Motor Car

dealer the rate is 15% , For Hotels, restaurants and four star hotels tax rate is 5% subject certain conditions .

3. COMPOSITION SCHEME FOR DEALERS

3.1 Retailers

Meaning of Retailer

“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. The scheme is not available to:

- a manufacturer or
- an importer or
- a dealer who effects inter-State sales or purchases or receives goods from outside the State on stock transfer basis

Eligible Turnover

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

Turnover liable to composition

- Turnover of sales including turnover of tax free goods as reduced by turnover of
- Turnover of purchases including turnover of tax free goods and tax paid on purchases
- Calculation of turnover to be made at half yearly intervals.

Composition amount

5% for retailers who's 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 and 8% in other cases

Conditions:

- i. Dealers covered under the composite scheme cannot 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

3.2. Restaurants and Caterers

The composition scheme is available to Restaurants, Eating house, Refreshment rooms, Boarding establishments, Factory canteen, Clubs, Hotels upto four star and Caterers in respect of the sales of Food and non-alcoholic drinks:

- served for consumption in any restaurant etc or 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

Where the dealer is also serving alcoholic drinks, tax payable on sales of alcoholic drinks will not be considered for composition. In other case Composition payable at 5 % (10% in the case of an unregistered dealer) of the turnover of sales

Other Conditions

- o dealer cannot collect tax separately
- o 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
- o Dealer can not to issue tax invoice

3.3 Bakers:

Composition scheme applicable to sales by manufacturer of bakery products, who are existing, registered dealers having turnover of bakery products including bread not to exceed Rs. 50

lakhs in the previous year. For a newly registered dealers - concession available for first Rs. 50 lakhs of turnover.

Rate of composition is 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
- Turnover in excess of first thirty lakhs rupees taxable at the applicable rate
- Such dealer cannot issue tax invoice

3.4. Dealers of Second Hand Motor Vehicles

The scheme is available to a registered dealer whose principal business is of buying or selling of second-hand passenger motor vehicles whether or not sold after reconditioning or refurbishing. Composition rate is 12.5% on 15% of the sale price of the vehicle – effectively 1.88%

- **Conditions:**

- The dealer should be certified by the Joint Commissioner
- The 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 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

3.5 Works Contractors, Builders and Developers

U/s 42 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.

In case of 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. The scheme covers all agreements registered *from 01/04/2010* onwards including agreements entered before 01/04/2010. Unregistered agreements will not be eligible for composition.

Rate of MVAT payable is 1% of the 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 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
- No change the method of computation of tax liability in respect of contract for which he has opted for this scheme;

3.6. Mandap -Keepers

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.”

4. INPUT CREDIT – SET OFF- S.48/ RULES 51-58

4.1. Section 48 and 49 deal with input tax credit to any registered dealer in respect of any sales tax paid on his purchase and Refund of tax on declared goods sold in the course of inter-state trade or commerce respectively. Rules 51 to 58 of the VAT Rules, 2005. Prescribe the modalities for set- off and refund.

4.2. Concept of 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.

4.3. Eligibility :

Under Rule 52 .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.

4.4. Taxes available

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

However the following taxes are not available for set-off :

- 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.

4.5. Eligible goods :

Under Rule 52 Set off can be claimed on the full amount of tax paid on total purchases of the business affected 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.

But following 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.

4.6. Conditions related to claiming set-off – Rule 52 :

A dealer must be registered for VAT at the time of purchase of goods.

- a) Dealer should not be paying tax by way of composition as a retailer, hotel / restaurant business or bakery.
- b) Set off must be supported by valid tax invoice for the goods purchased and the amount VAT must be shown separately in the invoice ,
- c) The dealer must maintain an account of all purchases in chronological order in respect of which setoff is being claimed

4.7. Restrictions/ Reduction /retention on the set-off allowable – Rule 53

Rule 53 provides for reduction of set-off amount in certain circumstances. The circumstances and the extent of reduction are given below:

- i. *Reduction of 3% of Purchase Price* If taxable goods purchased are used
 - As **fuel**, or
 - For manufacture of any tax-free goods (other than sugar and fabrics) , or
 - for **packing** of any **tax-free** goods and or
 - If 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, (only 1% of the Purchase Price of Schedule B goods, 3% reduction applicable on goods other than capital assets and fuel),
- ii. *Reduction of 64% of the Purchase Price* to dealers opting for composition scheme @ 8% of the value of works contract, reduction will be 16/25 or 64% of the tax and ser-off will be 9/25 or 36%.
- iii. Reduction to of 4 % of the purchase price, if the dealer has opted for composition scheme @ 5% of the value of works contract.
- iv. 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
- v. 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.
- vi. 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 =

$$\text{Set off X } \frac{\text{selling price allowable on purchase}}{\text{MRP value of the liquor sold.}}$$

- vii. 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.
- viii. Deficiency in tax to be paid

The 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)].

5. NEGATIVE LIST -RULE 54

Under Rule 54, gives a negative list in respect of the purchases of goods 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 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

6. GENERAL CONDITIONS FOR REFUND ETC – R-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 purchase 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 to reduce the amount of CST payable or can be carried forward to next VAT return or the dealer can 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 notice is issued, dealer can not adjust set-off against tax of that period.
- viii. Where items of purchase cannot 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. 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
- xii. Set off is by way of adjustment in tax liability.

- xiii. When goods are sent outside the state of Maharashtra in the course of inter-state sale, tax paid locally may be refunded.
- xiv. 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.
- xv. CST paid on interstate purchase is not eligible for set off unless it is shown that VAT was paid on it in earlier transaction- Sec 49.

7. PENALTIES - sec 29

A summary of penalties prescribed is given below:

Sec	Contravention	Penalty
29(3)	Concealment of particulars or Furnishing false particulars	100% of Tax avoided + Tax
29(4)	Issue of false sales Bill , document or Misclassification of goods	100% of Tax avoided+ Tax
29(5)	Contravention of terms of exemption granted U/s 8 (3)/(3A),/(3B)/(5) in respect of goods purchased	150% of tax normally payable
29(6)	Contravention of the provision of section 86, resulting in under-assessment of tax payable	50% of amount of tax under-assessed
29(7)	Non- Compliance of Notice for any proceedings	Rs 5,000
29(8)	Not or late filing of return u/s 20	Rs 5,000
29(9)	Filing return, not complete or not self consistent	Rs 1,000
29(10)	Unauthorized collection of tax U/s 60	Forfeiture of tax & Rs 2,000
61	Not getting the Account Audited or Not filing complete audit report	One tenth percent of turnover

Notes:

- penalties will be imposed after giving the opportunity of being heard
- Penalty may be imposed within a period of 8 years from the end of the financial year in which the contravention took place

- For penalties exceeding Rs 5 lakh approval of deputy commissioner and for penalties exceeding approval of Joint commissioner of sales Tax is a pre-requisition
- Penalty for late filing will be late filing fee payable before filing the return as per the proposal in budget 2012.

8. INTEREST

Under rule 41, MVAT is payable by dealer on or before due date of filing the return, If the return is filed after the due date simple Interest @ 1.25% per month is payable by the dealer u/s.30. Interest is to be paid, along with tax before filing MVAT return.

(a) By an Unregistered Dealer on late payment or non- payment of tax due as he has failed to apply for registration in time. Interest is to be calculated from 1st April of the year in which he has defaulted in getting registration to the making payment of tax. When tax is paid in part, then interest is to be calculated to that date in respect of part payment. However the amount payable in respect of a year shall not exceed the amount of tax payable in respect of that year- Section 30 (1).

(b) By a Registered Dealer on late payment of tax, i.e. interest is paid after due date of filing return. Interest is to be calculated form due date to date of payment of tax. If tax is payable on filing of revised return or fresh return, then interest is to be calculated from due date of filing original return to date of payment of tax- Sec 30(2).

(c) By a Registered Dealer on assessment for any period. interest is to be calculated on the amount remaining unpaid; after taking into consideration the amount on which interest is paid u/s.30 (2) and has remained unpaid up-to one month after the end of the period of assessment, and Interest is to be calculated from next date following last day of the period covered by assessment order to the date of assessment -. Sec 30(3)

(d) By any Dealer on amount of additional tax paid along with one or more return filed on account of circumstances mentioned in as a consequence of audit of business of dealer for any period, or inspection of the accounts, registers and documents pertaining to any period, kept at an place of business of the dealer, or entry and search of any place of business of any other place where the dealer has kept his accounts, registers, documents pertaining to any period or tock of goods or any intimation issued section 63(7). Interest is payable @25% of Additional Tax Paid

9. BUSINESS AUDIT

MVAT relies upon self-Compliance by the dealers. To promote, the self-compliance by the dealers, concept of business audit is introduced vide Section 22. Basic feature of the business audit are as follows:

1. Selection of Dealers :

The Commissioner may arrange for Audit of the Business of any Registered Dealer selected on the following basis -

- (a) who have not filed returns by the prescribed date or
- (b) Who have claimed refund of tax or
- (c) Where the Commissioner is not prima facie satisfied with the correctness of any return filed by a dealer or with any claim made, deduction claimed or turnover disclosed in any return filed by the dealer or
- (d) Who are selected by the Commissioner on the basis of the application of any criteria or on a random selection basis or
- (e) Where the Commissioner has reason to believe that detailed scrutiny of the case is necessary

2. Appointment and Powers of the auditor :

The business audit will be conducted by any officer authorised by the Commissioner in writing U/s 22. Such Officer, during the Course of the audit, the audit officer may require the dealer

- (i) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place
- (ii) To afford him the necessary facility to check or verify the cash or stock which may be found therein
- (iii) To furnish such information as he may require as to any matter which may be useful for or relevant to any proceedings under this Act.

However, the officer conducting the audit CAN NOT remove or cause to be removed any books of account, other documents or any cash or stock in any circumstances..

Therefore, it follows that the business audit is carried out by the departmental officer at the place of business of the dealer prima facie to verify the compliance by the dealers such as .

1. To obtain Registration in time ,
2. To file correct, complete and self consistent returns(MVAT & CST)-

3. To intimate important changes in the business change in ownership, conversion of partnership into private limited, shifting of place of business, change in name and style of business, change in activity within the prescribed time
4. To pay due taxes in time in the proper forms of return;
5. To disclose correctly tax liability, classification , set-off etc
6. To Comply with the departmental notices ;
7. To maintain proper books of account, invoices, declarations etc .
8. To get the account audited and submit audit report in time , if liable

3. Scope of Audit

The department has clarified that the business audit includes:-:

1. To verify all books of account and relevant records
2. To know business and accounting system from the dealer.
3. To take statement on oath
4. To physically verify cash , stock or bank balances and seek clarification for any differences . However, the cash, stock or books cannot be removed from the dealer's premises.
5. To verify any records of any period and any issues in a financial year for which audit notice is given.
6. To take assistance of investigation branch with the approval of the JC If dealer does not co-operate .

The audit officer will inform the dealer about the discrepancies noticed by him and ensure remedial measure like filing of revised return, payment of tax etc

10. MVAT AUDIT – Section 61

Section 61 of the MVAT Act 2002, prescribes mandatory audit in the following cases:

- (a) If turnover, either of sales or purchases, of a dealer who is liable to pay tax , exceeds Rs. 60 lakhs during the financial year, or
- 2) A dealer or person who holds prescribed licences or permits for liquor spirit, beer, country liquor etc

Such dealers are required to get their returns and accounts audited by Chartered Accountants or a Cost Accountant and submit the report of the same in Form no. 704 to the department within a period of eight months from the end of the year to which the report

relates. i.e. audit report must be submitted on or before 30 November each year to avoid penalty.

The term '**Turnover of Sales**' is defined in Sections 33(2) as the aggregate of the amount of the sale price received and receivable by a dealer during the period, after deducting the sales price of the goods and amount of refund deposited with in a period of six month If a person is carrying on business at two or more places in same date under same R. C. No., the turnover of all such business shall be taken into consideration while calculating the prescribed turnover limit.

The Term '**Turnover of Purchases**' is defined in 32(2) as the aggregate of the amount of the purchase price paid or payable by a dealer in respect of any purchase of goods made by him during the year after deducting the purchase price of the goods returned and amount of deposit refunded within a period of six months.

Turnover of all sale and /or purchase will include sale/ purchase of trading goods, scrap and movable capital assets. Further turnover of purchase will also include purchase of goods, which are debited to the profit and loss account.

As per explanation, if the goods are 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, the amount of purchase price paid or payable during a given period shall mean the aggregate of the amount paid and payable, for this purpose, during the given period.

If a dealer fails to get his accounts audited and furnish the "complete 'report in form 704, he is liable to penalty equivalent to 1/10% of the turnover. Complete audit report means that all the items of Form 704, annexures, and schedules are filled up and consistent and arithmetically accurate. Such penalty will be imposed after giving opportunity f being heard.

Departments of Central and State governments, Railways and Local authorities are excluded from the purview this section, hence audit is not applicable on them.

11. ILLUSTRATIONS

- 1) A dealer purchases the following goods in Maharashtra during December 2011:

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

He also furnishes the following additional Information:

1. VAT payable on sales made during the month is Rs. 5,27,500
2. During December 2011 the dealer utilised 4% VAT Goods costing Rs. 1, 50,000 as input for manufacturing Exempted Goods.
3. On 01/02/2011 VAT Credit Receivable/Set off Account showed an opening balance of Rs. 10,000
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
<i>Tax Credit for tax Paid</i>	<i>Rs</i>	2,08,000
4% VAT Goods Rs 7,50,000	30,000	
12.5% VAT Goods Rs 15,75,000	<u>1,75,000</u>	
<i>Total Tax Paid</i>	<i>2,05,000</i>	
<i>Reduction under Rule 53 for goods used in manufacture of exempted goods – 3% of Rs 1,50,000</i>	<u>4,500</u>	
<i>Balance credit Available</i>	<i>2,00,500</i>	
<i>Add Opening balance</i>	<u>10,000</u>	
	<i>2,10,500</i>	
<i>Less –Refund Received</i>	<u>2,500</u>	
TAX CREDIT AVAILABLE	<u>2,08,000</u>	
VAT Payable	Rs	3,19,500

- 2) Prepare a statement of computation of Tax for the month of May 2012 to be paid under the provision of MVAT. 2002.

Particulars	Total	Input Tax	Net Purchases
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%.
- 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:</u> 3% on 2,00,000- fuel (Reduction under Rule 53)	6,000	
	1,39,400	
Add: Opening Balance	22,500	1,61,900
VAT PAYABLE	Rs.	63,100

- 3) Compute tax liability of M/s Sudha Enterprises for the month of December 2011 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		Rs.	1,20,000
Less: Tax Credit			
4% VAT Goods Rs		800	
12.5% VAT Goods (including office equipment)		45,000	
		45,800	
Less: Reduction under Rule 54	Rs.		
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	
<u>Add: Opening Balance</u>		10,500	52,100
VAT PAYABLE		Rs.	67,900

12. SELF EXAMINATION QUESTIONS

- 1) Explain the Composition Scheme and its main features.
- 2) Which dealers are eligible to avail the Composition Scheme?
- 3) Which dealers are not eligible to avail the Composition Scheme?
- 4) Can a retailer having total turnover Rs. 40, 00, 000, of which Rs. 12, 00,000 are of wholesale supply avail the composition Scheme?
- 5) Can a Hotel with four stars avail the Composite Scheme?
- 6) Explain who is an eligible retailer.
- 7) Show the amount of tax payable if Composition Scheme is availed
- 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.
- 10) What is set off? What are the conditions for set off?
- 11) In what circumstances tax paid can be refunded?
- 12) When the set off can be reduced?
- 13) Set off achieves the uniformity of tax rates and avoids double taxation, Comment.
- 14) What are the rules for a hotel to claim set off?



(Revised Course)**(3 Hours)****[Total Marks : 100]**

N.B. : (1) Question No.1 and Question No.2 from **Section I** are compulsory.

(2) Answer any **one** question from Question No.3 and Question No.4 from Section I.

(3) Answer **all** the questions from **Section II**.

(4) **Figures to right** indicate full marks.

(5) **Working notes** form part of answer.

(6) Use of **simple calculator** is **permitted**.

Section I

1. Profit and Loss Account of X and Company, a partnership firm, for the year ending on 31st March, 2011 is as follows : **(2)**

	Rs.		Rs.
Cost of Goods sold	18,00,000	Sales	26,00,000
Municipal taxes of house Property	30,000	Gross Rent of House property (let out through out the year)	1,20,000
Sundry Expenses	42,100		
Other expenses	1,35,000		
Interest on Partners Capital @ 10% p.a.	1,20,000		
Remuneration to partners	1,80,000		
Depreciation	45,500		
Net Profit	3,67,400		
	27,20,000		27,20,000

Other Information :

- a) Other expenses of Rs.12,000/- is not deductible under section 36 and 37 of Income Tax Act.
- b) Depreciation as per Section 32 is Rs.31,500/-.
- c) All the conditions of section 40(b) are satisfied.

Calculate the Taxable Income and Income Tax liability of the firm for the Assessment Year 2011-12.

2. (a) Select most appropriate answer. **(5)**

- i) Salary received by Member of Parliament is taxable under the head _____. (Salary / Business of Profession / Other Income)
- ii) Dividend Declared by unit Trust of India is _____. (Fully Taxable / Fully exempt / Taxable with deduction)
- iii) If any asset is used for less than _____ days in the year of acquisition the depreciation rate will be only 50% of normal rate. (182 / 180 / 200)
- iv) The first installment of Advance Tax for Non-Corporate is due _____. (By 15th June / By 15th September / By 5th October)
- v) Income deemed to accrue or arise in India is taxable in case of (Resident only / Non-resident / All the Assessee)

(b) State whether the following statement is **true / false**. **(5)**

- i) Life insurance premium paid in cash for self on 01-04-2011 is allowed as deduction u/s 80C in the previous year 2010-11.
- ii) Family pension received is fully exempt.
- iii) Deduction under section 80D can be claimed only by an individual and HUF.
- iv) Salary received by a Partner of the Partnership firm is Taxable as Business / Professional Income.
- v) Advance Tax is payable only when the Tax liability is Rs.10,000/- or above.

(c) Match the column. **(5)**

“A”	“B”
1. Highest Tax Liability	a) Fully Exempt
2. Compulsory Acquisition of Capital Asset	b) Allowed as Business Expenditure only when paid
3. Gift from Relatives	c) Amount paid
4. Bonus to employee	d) Treated as Transfer
5. Maximum interest claim U/S 80E	e) Fully Taxable
	f) Ordinary Resident

3. (a) Details regarding the house of Mr. Z is as under for the year ending 31st March, 2011. **(10)**

	Rs.
1) Municipal Valuation	3,00,000
2) Fair Rent	2,70,000
3) Rent Received	2,50,000
4) Municipal Tax paid on 01-03-2011 by him	30,000
5) Fire insurance premium paid	5,000
6) Collection Charges	1,000
7) Land revenue payable	2,400
8) Interest paid on loan taken for construction of the house property	40,000
9) Repayment of principal amount of above loan	10,000
10) Date of loan was 25-01-1999	

Compute his income from house property for the assessment year 2011-12.

- (b) M/s. A Ltd., an Indian Company, gives the following details to determine advance tax liability for the assessment year 2011-12. **(5)**

	Rs.
Taxable professional Income	8,56,000
Income from other sources	1,24,000
Expected TDS from Professional Income	67,000

4. Write short notes (any three) (As per Income Tax Act) **(15)**
- Pre-Construction period interest on House Property
 - Assets not treated as Capital Asset
 - Deduction u/s 80 U
 - Taxability of Pension under salary
 - Types of Provident fund and its exemption under the head salary.

SECTION - II

5. (a) Mr. AK Agency, an advertising firm, started providing the services from 3rd May, 2011. He gives the detail of his services (excluding Service Tax) to determine the date of liability of his registration :

Date	Services	Value of Services Rs.
05-05-2011	Taxable services in India	2,11,000
10-05-2011	Services to M/s. KT Ltd. at Jammu & Kashmir	1,01,000
15-05-2011	Services to Mr. Mehta at Japan	5,11,000
22-05-2011	Taxable Services to RBI	3,00,000
25-05-2011	Services to SEZ	2,00,000
29-05-2011	Taxable Services in India	4,00,000
01-06-2011	Taxable Services in India	3,45,000
05-06-2011	Taxable Services in India	2,33,000
15-06-2011	Taxable Services in India	3,45,000

- (b) M/s. Intime courier agency, registered and liable for service tax, provided the following details. Calculate the Service Tax Liability. **(5)**

	Rs.
i) Value of service for letters delivered to diplomatic mission	40,000
ii) Value of service provided to corporate client	3,00,000
iii) Value of Parcel under VPP (Included in the above service charge of Rs.20,000/-)	2,00,000
iv) Charges for letters delivered to charitable trust.	85,000
v) Charges for letters delivered at Jammu & Kashmir (Amounts are excluding service Tax).	50,000
vi) Rate of service tax is 10.30%	

6. (a) Select the correct answer (Apply Service Tax) **(5)**
- Maximum penalty for non filing of ST-3 return within due date is Rs._____. (2,000 / 20,000 / 15,000)
 - Revised Return should be filed within _____ days of submission of original Return. (30 / 40 / 90)

- iii) Return of Service Tax is to be filed _____ (Monthly / Quarterly / Half yearly)
- iv) Due date of payment of service tax for the month / quarter ending 31st March is (By 5th of April / By 31st March / By 5th June)
- v) Service tax is not payable if the aggregate value of taxable services does not exceed Rs. _____ (8,00,000 / 9,00,000 / 10,00,000)

(b) State whether the following statements are **True or False**.
(Apply Service Tax) **(5)**

- i) Service tax is an Indirect Tax levied by Central Government.
- ii) Service tax is paid and borne by service provider.
- iii) Service provided to Developer of special Economic Zone is a taxable service.
- iv) Service provided free of cost is exempt from service tax.
- v) Service Tax is applicable to whole of India except Jammu & Kashmir.

7. (a) Mr. XY is a registered service provider. He gives the details to calculate his interest liability till 31st March, 2012 for the year 2011-12. Ignore the exemption of small service provider.

Quarter	Taxable Services Rs.	Service Tax @ 10.30% Rs.	Date of Payment of Service Tax
First	2,50,000	25,750	15 th July 2011
Second	6,45,000	66,435	2 nd October 2011
Third	9,00,000	92,700	4 th January 2012
Forth	8,00,000	82,400	3 rd April 2012

(b) Mr. RC is an Architect, registered service provider, gives the following details to calculate his service tax liability for the quarter ended 30th June, 2011. (Exemption of small service, provider is not available). Service tax rate is 10.30%. **(5)**

	Amount Rs. (excluding service tax)
Map drawing fees from M/s. BB Builders in Mumbai	2,00,000
Map drawing fees from M/s. KK Builders of UK for building in Mumbai	3,00,000
Elevation fees from Mr. ZX at Thane for site at Thane	4,34,000
Elevation fees from Mr. Neno for site at Navi Mumbai	2,45,000

8. Mr. Vijay started the business in January 2012. Determine from when he is liable for registration and payment of VAT under MVAT Act 2002. **(10)**

Date	Purchase Rs.		Sales Rs.	
	Taxable	Tax Free	Taxable	Tax Free
04-01-2012	4,000	2,00,000	3,000	1,97,000
05-02-2012	5,000	1,86,000	2,000	1,98,000
14-03-2012	1,000	1,90,000	4,500	95,500
15-04-2012	6,000	1,00,000	18,000	1,22,000
19-05-2012	8,000	2,00,000	24,000	1,96,000
20-06-2012	12,000	2,20,000	30,000	1,80,000
15-07-2012	20,000	2,40,000	40,000	1,60,000

9. (a) State the following as **True or False. (As per MVAT Act) (5)**
- Dealer as per MVAT Act, 2002 does not include an agriculturist.
 - Goods as defined under MVAT Act, 2002 include News papers, Immovable Properties and shares.
 - As per MVAT Act, 2001, Sale price does not include the excise / customs duties as goods levied or leviable by the dealer.
 - For the purpose of section 42 of MVAT Act, 2002, a dealer shall be considered to be engaged in the business of selling at retail if 90% of his turn over of sales consists of sales made to persons who are dealers.
 - As per MVAT Act, 2002 packing materials shall also be charged at same rate of VAT as charged on the concerned goods packed therein.

- (b) State whether the following transactions can be considered as "Sale" under the MVAT Act, 2002. **(5)**
- i) Transfer of goods from head office to branch
 - ii) Pledge of goods
 - iii) Sale of goods under Hire Purchase
 - iv) Sale of scrap
 - v) Exchange of old goods against new goods

