

# SEMINAR CUM WORKSHOP

ON

SERVICE TAX

ORGANISED BY :

**V.B.DALAL & CO., MUMBAI**

**&**

**BT ASSOCIATES, KOLKATA**

**AT HOTEL FOUR SEASONS, CONFERENCE HALL, JUHU, VILE PARLE WEST,  
MUMBAI**

**ON 17-12-2005**

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# BASICS OF SERVICE TAX LAWS

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The service tax provisions are governed by :

- a) Sections 64 to 96-I (chapters v and va) of the Finance Act, 1994
- b) Service tax Rules'2004
- c) Export Service Rules'2005
- d) Service Tax (Advance Ruling) Rules'2003
- e) Service Tax (Registration of Special Category of Persons) Rules'2005
- f) CENVAT Credit Rules'2004

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## CHARGEABILITY

As per the provision of section 66 of the Finance Act'1994, service tax shall be levied at the rate of 10% of the value of taxable services referred in section 65 (105) of the Finance Act, 1994.

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## VALUATION

As per the provision of section 67 of the Finance Act'1994,  
value of any taxable service shall be the gross amount  
charged by the service provider for such service provided  
or to be provided by him.

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## CLASSIFICATION

As per the provisions of section 65A of the Finance Act, 1994, classification of services shall be determined on the basis of taxable services as defined under section 65 (105) of the Finance Act'1994. Presently eighty five categories of services has been specified under the definition of taxable services.

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# REGISTRATION

- Application for registration within 30 days
- Where business commenced after the date of service tax levy within 30 days from the date of commencement.
- Registration of premises where centralized billing or central accounting system from one premises
- Where no centralized billing or central accounting system, registration of all premises from where services are provided

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# REGISTRATION

- A single application shall be made for registration of service tax where there are more than one category of taxable services.
- In case of transfer of business, a fresh application for service tax registration shall be made.
- In case provider of service ceases to provide such taxable service, the service tax registration certificate may be surrendered.

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# INVOICE

- Invoices are to be issued within 14 days from the date of completion of taxable service or receipt of payment towards value of taxable service, which ever is earlier.
- Where invoices are raised on periodical basis, the invoices is required to be issued within 14 days from end of such period.
- Invoice shall contain prescribed particulars, shall be serially numbered and shall be duly signed.
- Certain relaxation for banking and financial services and goods transport services.

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## PAYMENT OF SERVICE TAX

- The service tax is collection based tax.
- The service tax on value of taxable service received in a calendar month shall be paid to the revenue exchequer within 5<sup>th</sup> of next month. However, for the month of march, the service tax on value of taxable services received in march shall be paid within 31<sup>st</sup> March.
- For Individual, proprietorship firm and partnership firm, payment of service tax is to be made on quarterly basis.
- Date of presentation of cheque to designated bank shall be considered as date of payment subject to its realization.

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## REGISTERS AND DOCUMENTS

- As per the provisions of rule 5 of the Service Tax Rules'1994 there are no specific records and/or register and/or documents required to be maintained by an assessee.
- It has been provided that records (including computerised data) as maintained by an assessee in accordance with the various laws in force from time to time shall be acceptable.

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## SELF ASSESSED HALF YEARLY RETURNS

- Every assessee is required to submit half yearly return in form ST-3 before the Service Tax Authority within 25<sup>th</sup> of month following a particular half year.
- The return are to be self assessed and submitted alongwith a copy of TR-6 Challan, being the document under which service tax is paid.
- That there is no provision under service tax laws for filing of revised return.

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## ASSESSMENT AND RECOVERY

- The assessment under service tax laws is based on self assessment system and procedure.
- Provisions specified for recovery of service tax shot levied or short paid or not levied or not paid or erroneously refunded.
- A show cause notice is required to be issued by the central excise officer within one year from relevant date. Period of one year extended to five years where there is a) fraud; or b) collusion; or c) wilful mis-statement; or d) suppression of facts; or e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax.

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## INTEREST & PENALTY

- Section 75 : Interest on delayed payment of service tax - @ 13% p.a. for the period of delay
- Section 76 : Penalty for failure to collect or pay service tax – Rs.100/- per day to Rs.200/- per day for the period such failure continues as per discretion of the proper officer subject to maximum of service tax payable.
- Section 77 : Penalty for contravention of any provision for which no penalty is provided - Maximum of Rs.1,000/-
- Section 78 : Penalty for suppressing value of taxable service – Equivalent to amount of service tax not paid and may extend to twice the amount of service tax not paid as per the discretion of the proper officer.

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# CENVAT & SERVICE TAX

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## Eligibility of CENVAT Credit on Input Services

- A manufacturer or provider of output services shall be allowed to take credit of a) excise duty, b) CVD, c) Service tax, d) education cess and e) other specified duties paid on any input, capital goods or input services received on or after 10-09-2004
- The CENVAT Credit may be utilised for inter-alia payment of duty of excise on final product and payment of service tax on output services.
- Credit as regards input services is allowed only after the full payment of value of taxable service as indicated in invoice is made.

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## Definition of term “Input Services”

Any service :

Used by a provider of taxable service for providing an output service

Used by the manufacturer, whether directly or indirectly,

a) In or in relation to the manufacture of final products and clearance of final products from the place of removal and includes

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## Definition of term “Input Services”

**b) Services used in relation to :**

**i) Setting up,**

**ii) Modernization,**

**iii) Renovation or repairs of a factory or an office relating to such factory,**

**iv) Advertisement or**

**v) Sales promotion,**

**vi) Market research,**

**vii) Storage upto the place of removal,**

**viii) Procurement of inputs,**

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## Definition of term “Input Services”

- ix) Activities relating to business, such as accounting, auditing, financing, recruitment and quality control,
- x) Coaching and training,
- xi) Computer networking,
- xii) Credit rating,
- xiii) Share registry, and
- xiv) Security,
- xv) Inward transportation of inputs or capital goods and
- xvi) Outward transportation upto the place of removal;

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## CATEGORISATION OF INPUT SERVICES

It is our understanding that eligible input services may be divided into three groups.

.... Please refer page 8

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## Other Provisions in relation to CENVAT Credit on input services

- CENVAT Credit wrongly taken or utilized, shall lead to penal interest. Hence, one must be reasonable while taking credit.
- CENVAT Credit shall be taken on the strength of invoice issued under rule 4A of the Service Tax Rules;1994.
- Proper maintenance of documents and/or register in terms of rule 9(6) of the CENVAT Credit Rules'2004
- Input or Input services which is used in the manufacture of exempted goods or services.
- Eligibility of whole of CENVAT Credit on specified input services unless used exclusively in or in relation to manufacture of exempted goods or providing exempted services.

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# INPUT SERVICE DISTRIBUTOR

- It is an office of the manufacturer or producer of final product.
- The office has to be registered with Service Tax Authorities as Input Service Distributor.
- To maintain records and/or register for purchase of input services and its distribution.
- There is no provisions to determine distribution pattern for a multi location unit, the same has to be decided on reasonable basis.
- Rule 7 of the CENVAT Credit Rules provides distribution to its manufacturing units, different interpretation involved.

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# EXPORT SERVICE

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# EXPORT SERVICES

- POSITION PRIOR TO 15-03-2005 : Service Tax on all taxable service was exempt in respect of which payment were received in convertible foreign exchange.
- POSITION AFTER 15-03-2005 : A new “Export of Service Rules’2005” has been introduced. Taxable services may be exported without payment of any service tax under Rule 4 OR taxable services may be exported on payment of service tax, which is subsequently given as rebate..... Please refer page 11 & 12
- Export of Taxable Service is precondition for rebate.
- It is advisable to declare on service invoice that “export of service under rule 4 of Export of Service Rules” or Rebate under rule 5

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# IMPORTANT TAXABLE SERVICE

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## BUSINESS AUXILIARY SERVICE

- Payment of service Tax, Taxable Service and value of taxable service, please refer page 16 & 17.
- Certain specified exemptions and clarifications, please refer page 18 & 19
- Certain specified issues, please refer page 19

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# GOODS TRANSPORT AGENCY

- Payment of service Tax, Taxable Service and value of taxable service, please refer page 19 & 20.
- Certain specified exemptions and clarifications, please refer page 20 to 22
- Certain specified issues, please refer page 23

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# CONSTRUCTION SERVICES

- COMMERCIAL OR INDUSTRIAL CONSTRUCTION SERVICES
- CONSTRUCTION OF COMMERCIAL COMPLEX SERVICES

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# IMPORTANT AMENDMENTS MADE UNDER SERVICE TAX LAWS

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# IMPORTANT AMENDMENTS UNDER SERVICE TAX LAWS

Threshold limit of Rs. 4 lakhs for exemption of service tax to all service provider from 01-04-2005.

The exemption is optional

Applicable to service provider having aggregate value of taxable service less than Rs. 4 lakhs in preceding Financial Year

Exemption not available to a person providing taxable service under brand name or trade name of another person. For Example : Authorised Service Station, DSA in banking and financial services.

Not to take CENVAT Credit

To Apply for registration on aggregate value of taxable services exceeding Rs. 3 lakhs.

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# IMPORTANT AMENDMENTS UNDER SERVICE TAX LAWS

Scope of Service Tax widened to include “service to be provided as well”

Necessary amendment in the definition of “value of taxable service” and definition of “taxable service” has been made effective from 16-06-2005.

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# IMPORTANT AMENDMENTS UNDER SERVICE TAX LAWS

- Taxable service shall include services provided outside India by a deeming provisions. – Explanation to section 65 (105) of the Finance Act'1994.

For the removal of doubts, it is hereby declared that where any service provided or to be provided by a person, who has established a business or has a fixed establishment from which the service is provided or to be provided, or has his permanent address or usual place of residence, in a country other than India and such service is received or to be received by a person who has his place of business, fixed establishment, permanent address or, as the case may be, usual place of residence, in India, such service shall be deemed to be taxable service for the purposes of this clause

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# IMPORTANT AMENDMENTS UNDER SERVICE TAX LAWS

- Hitherto any taxable service provided by a person who **is a non-resident or is from outside India**, does not have any office in India, the recipient of taxable service in India was required to register and pay service tax. The said definition of chargeability of service provided by outsider has been widened effective from 16-06-2005.
- Presently, any taxable service provided or to be provided by a **person, who** has established a business **or** has a fixed establishment **from which the service is provided or to be provided, or** has his permanent address **or** usual place of residence, **in a country other than India, and such service provider does not have any office in India.**

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