

# **REVERSE CHARGE, JOINT CHARGE, BUNDLED SERVICE, REIMBURSEMENTS & TYPES OF REFUNDS**

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# Reverse Charge and Joint Charge Mechanism

## 1. What is Reverse Charge?

As per Finance Act 1994, generally **Service Provider** is liable to collect the service tax amount from the service receiver and to pay the same to the Government. But in some cases liability has to be discharged by **any person other than service provider**. This is referred to as **Reverse Charge Mechanism**. If liability is paid partially by service Provider and partially by any person other than service provider then it is called as **Joint Charge Mechanism**.

It should be noted that in the reverse charge mechanism the ultimate burden of service tax is that of the service receiver as it was in the old regime.

## 2. Applicability Of Reverse Charge Mechanism:

Section 68(2) of the Finance Act, 1994 read with Rule 2(1)(d) of Service Tax Rules, 1994 provides for reverse charge mechanism. Notification No. 30/2012 – ST, dated 20/06/2012, is issued to provide that in case of certain types of services, the recipient is liable to tax and in other cases, both the provider of service and person other than provider of service are liable to pay tax on percentage basis. Further, Notification No. 45/2012 – ST, dated 7th August, 2012, 10/2014-ST dated 10<sup>th</sup> July, 2014 and 7/2015-ST dated 1<sup>st</sup> March, 2015 was issued to amend the aforesaid notification .

### 2.1 Services by an insurance agent:

<b>Nature of service:</b> Insurance agent to any person carrying insurance business.	
<b>Service provider</b>	<b>Service Receiver</b>
Insurance Agent	Person carrying on insurance business
0 %	100%

### Important Definitions

#### Insurance Agent [Rule 2(1)(cba) of Service Tax Rules, 1994]:

- ✓ Rule 2(1)(cba) of the Service Tax Rules, 1994 defines Insurance Agent as has the meaning assigned to it in clause (10) of section 2 of the Insurance Act, 1938 (4 of 1938).
- ✓ As per Section 2(10) of the Insurance Act, 1938 it means an insurance agent licensed under Sec. 42 who receives agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance.



2.2 **Services by an recovery agent to Banking Company, Financial Institution, Non Banking Financial Company<sup>1</sup>**

<b>Nature of service:</b> Recovery agent to Banking Company, Financial Institution, NBFC.	
<b>Service provider</b>	<b>Service Receiver</b>
Recovery Agent	Banking Company, Financial Institution, NBFC
0 %	100%

2.3 **Services provided by a mutual fund agent or distributor to a mutual fund or asset management company<sup>2</sup>**

<b>Nature of service:</b> Mutual fund agent or distributor to a mutual fund or AMC.	
<b>Service provider</b>	<b>Service Receiver</b>
Mutual Fund Agent/Distributor	Mutual Fund / AMC
0 %	100%

2.4 **Services provided by selling or marketing agent of lottery tickets to a lottery distributor or selling agent<sup>3</sup>**

<b>Nature of service:</b> Selling or marketing agent of lottery tickets to a lottery distributor or selling agent	
<b>Service provider</b>	<b>Service Receiver</b>
Selling or marketing agent	Lottery distributor or selling agent
0 %	100%

<sup>1</sup> Inserted w.e.f. 11<sup>th</sup> July, 2014

<sup>2</sup> Inserted w.e.f. 1<sup>st</sup> April, 2015

<sup>3</sup> Inserted *ibid*

**2.5 Services by Goods Transport Agency (GTA):**

<b>Nature of service:</b> Transportation of goods by road.	
<b>Service provider</b>	<b>Service Receiver</b>
A goods transport agency	Specified Person (Defined below)
0 %	100%

**Important Definitions****Goods Transport Agency [Section 65B(26) of the Finance Act, 1994]:**

Goods Transport Agency (GTA) means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

**Consignment Note [Explanation to Rule 4B of the Service Tax Rules, 1994]:**

Consignment Note means a document, issued by a GTA against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.

**Specified Persons**

- a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- c) any co-operative society established by or under any law;
- d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under;
- e) any body corporate established, by or under any law; or
- f) any partnership firm whether registered or not under any law including association of persons.



Reverse charge in GTA can be understood from the following table:-

Consignor	Consignee	Person liable to pay freight	Liable to Pay Service Tax	
			Upto 30-06-2012	W.e.f 01-07-2012
Not a Specified person	Not a Specified person	Consignor or Consignee, freight is paid by himself or through his agent	GTA	GTA
A Specified person	Not a Specified person	Consignor, freight is paid by himself or through his agent	Consignor	Consignor
A Specified person	Not a Specified person	Consignee, freight is paid by himself or through his agent	Consignee	<b>GTA</b>
Not a Specified person	A Specified person	Consignor, freight is paid by himself or through his agent	Consignor	<b>GTA</b>
Not a Specified person	A Specified person	Consignee, freight is paid by himself or through his agent	Consignee	Consignee

**Notes:**

Where the person liable to pay the freight is not covered in the 6 category then the GTA is liable to pay service tax to the department. If the person paying the freight is covered in the 6 category then he shall be liable to pay the service tax to the department.

**Specific Exemption**

- a) An abatement of 70%<sup>4</sup> can be claimed on GTA as per amended Notification No. 26/2012-Service Tax dated 20<sup>th</sup> June, 2012.
- b) Services in relation to transport of Agricultural Produce.
- c) Services where the gross amount charged on consignments transported does not exceed 1,500/- (applicable where GTA is transporting goods in a single goods carriage).
- d) Goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage is less than 750/-. (Applicable where GTA is transporting multiple consignments of various consignors).
- e) Transport of [Milk, food grain including pulses and rice]<sup>5</sup>, salt.
- f) Transport of chemical fertilizer, organic manure and oilcakes<sup>6</sup>.

<sup>4</sup> Substituted for 75% w.e.f. 1<sup>st</sup> April, 2015

<sup>5</sup> Substituted *ibid*



- g) Transport of newspaper or magazines registered with the Registrar of Newspapers.
- h) Transport of relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap.
- i) Transport of defence or military equipments.
- j) cotton, ginned or baled.<sup>4</sup>;

## 2.6 **Sponsorship Services:**

<b>Nature of service:</b> Sponsorship	
<b>Service provider</b>	<b>Service Receiver</b>
Any assessee	Any Body corporate or partnership firm <sup>7</sup> located in taxable territory
0 %	100%

### **Erstwhile Definition of 'Sponsorship'**

**Section 65 (99a):** Sponsorship includes naming an event after the sponsor, displaying the sponsor's company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition; but does not include any financial or other support in the form of donations or gifts, given by the donors subject to the condition that the service provider is under no obligation to provide anything in return to such donors.

### **Specific Exemption**

As per Notification No. 25/2012-Service Tax dated 20<sup>th</sup> June 2012, services by way of sponsorship of sporting events organized has been exempted from payment of service tax:

- a) By a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
- b) By Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympics Committee of India or Special Olympics Bharat;
- c) By Central Civil Services Cultural and Sports Board;
- d) As part of national games, by Indian Olympic Association; or
- e) Under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme.

## 2.7 **Services provided by arbitral tribunal:**

<sup>6</sup>Exempt as per notification No. 25/2012-Service Tax dated 20th June 2012 as amended by notification No. 6/2014-ST dated 10th July, 2014

<sup>7</sup> Partnership firm includes limited liability partnership (LLP).



<b>Nature of service:</b> Arbitration	
<b>Service provider</b>	<b>Service Receiver</b>
An arbitral tribunal	Any business entity
0 %	100%

### **Important Definitions**

#### **Arbitral Tribunal [Clause 2(c) of Notification No. 25/2012-ST, dated 20<sup>th</sup> June, 2012]:**

- ✓ It has the meaning assigned to it in clause (d) of Section 2 of the Arbitration and Conciliation Act, 1996.
- ✓ As per clause (d) of section 2 of Arbitration and Conciliation Act, 1996 Arbitral tribunal means “a sole arbitrator or a panel of arbitrator.”

#### **Business Entity [Section 65B(17) of the Finance Act, 1994]:**

Business entity is defined as “any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.”

### **Specific Exemption**

The following services are exempted by exemption notification 25/2012-Service Tax dated 20<sup>th</sup> June 2012.

If Service provided by an arbitral tribunal to -

- Any person other than a business entity or
- A business entity with a turnover up to rupees ten lakh in the preceding financial year.

### 2.8 **Legal Services:**

<b>Nature of service:</b> Legal Service	
<b>Service provider</b>	<b>Service Receiver</b>
Individual advocate or a firm of advocates.	Any business entity.
0 %	100%

**Important Definitions****Legal Services [Rule 2(1)(cca) of the Service Tax Rules, 1994]:**

Legal services means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.

**Specific Exemption**

Following Services are exempt as per Notification No. 25/2012-Service Tax dated 20<sup>th</sup> June 2012, Services provided by-

An individual as an advocate or a partnership firm of advocates by way of legal services to-

- an advocate or partnership firm of advocates providing legal services,
- any person other than a business entity or
- a business entity with a turnover up to rupees ten lakh in the preceding financial year.

**2.9 Services provided by a Director of a company / body corporate<sup>8</sup> to the company/body corporate.**

<b>Nature of service:</b> Directorship	
<b>Service provider</b>	<b>Service Receiver</b>
Non-executive, Nominee and Independent Directors.	A Company/Body Corporate.
0 %	100%

**Important Definitions/Notifications:**

As per Rule 2(1)(d) of the Service Tax Rules inserted w.e.f. 7-8-2012 and Notification No. 30/2012-ST, dated 20-6-2012 amended w.e.f. 7-8-2012 vide Notification No. 45/2012-ST, dated 7<sup>th</sup> August, 2012, provides that the company receiving the services of directors is liable to pay service tax under reverse charge mechanism.

**Notes:**

- Service tax is not payable in case of Managing Director or whole-time director or executive director, if the said directors are in full time employment of the company and getting salary.

<sup>8</sup> Inserted w.e.f. 11<sup>th</sup> July, 2014



2.10 **[Support]<sup>9</sup>Services by Government or Local Authority**

<b>Nature of service:</b> Support Services by Government or Local Authority	
<b>Service provider</b>	<b>Service Receiver</b>
Government or local authority.	Any business entity.
0 %	100%

**Important Definitions****Support Services [Section 65B(49) of the Finance Act, 1994]:<sup>10</sup>**

Support Services means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis.

**Notes:**

Following services provided by the government or local authority are not covered under reverse charge:

- a) Services provided by the Department of Posts by way of speed post, express parcel post, life insurance and agency services to a person other than government.
- b) Services in relation to a vessel or an aircraft inside or outside the precincts of a port or an airport.
- c) Transport of goods and / or passengers.
- d) Renting of Immovable Property service.

2.11 **Renting of a Motor vehicle designed to carry passengers**

<b>Nature of service:</b> Renting of a Motor vehicle designed to carry passengers	
<b>Service provider</b>	<b>Service Receiver</b>
Any individual, Hindu Undivided Family or partnership firm whether registered or not, including association of persons, LLP located in taxable territory.	Business Entity registered as Body Corporate.
Refer the explanation below.	Refer the explanation below.

<sup>9</sup> Proposed to be deleted from date to be notified after enactment of Finance Bill, 2015

<sup>10</sup> Proposed to be deleted *ibid*



### **Important Definitions**

#### **Body Corporate [Rule 2(1)(bc) of the Service Tax Rules, 1994]:**

- ✓ It has the meaning assigned to it in clause (7) of section 2 of Companies Act, 1956.
- ✓ As per Section 2(7) of the Companies Act, 1956 "Body corporate" or "corporation" includes a company incorporated outside India but does not include
  - (a) A corporation sole,
  - (b) A co-operative society registered under any law relating to co-operative societies and
  - (c) Any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

#### **Explanation:**

1. If service tax charged on abated value then service tax on 100% of the value of service by the service Recipient.
2. If service tax charged on non abated value then service tax on 50% of the value of service by the service Recipient and 50% by the service Provider.<sup>11</sup>

#### **Specific Exemption:**

As per notification 26/2012-Service tax dated 20<sup>th</sup> June, 2012 assessee can claim an abatement of 60% and pay only service tax on 40% of the value subject to fulfilment of conditions as mentioned in the above said notification.

#### **2.12 Supply of Manpower and Security Services:**

<b>Nature of service:</b> Supply of manpower and Security services	
<b>Service provider</b>	<b>Service Receiver</b>
Any individual, Hindu Undivided Family or partnership firm whether registered or not, including association of persons, LLP located in taxable territory.	Business Entity registered as Body Corporate, located in the taxable territory.
0% <sup>12</sup>	100% <sup>13</sup>

<sup>11</sup>Amended w.e.f. 1<sup>st</sup> October, 2014. Prior to that service tax on 40% of the value of service by the service Recipient and 50% by the service Provider.

<sup>12</sup> Substituted for 25% w.e.f. 1<sup>st</sup> April, 2015

<sup>13</sup> Substituted for 75% *ibid*

**Important Definitions****Supply of Manpower [Rule 2(1)(g) of the Service Tax Rules, 1994]:**

Supply of manpower means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control.

**Security services Rule 2(1)(fa) of the Service Tax Rules, 1994]:**

Security Services is defined as " Service given by a security agency in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity."

As per the definition security service may include supply of security guard, dogs for security purpose. Further it may also include investigations, detection or verification of any fact.

**2.13 Works Contract Services:**

<b>Nature of service:</b> Service portion in execution of works contract	
<b>Service provider</b>	<b>Service Receiver</b>
Any individual, Hindu Undivided Family or partnership firm whether registered or not, including association of persons, LLP located in taxable territory.	Business Entity registered as Body Corporate, located in the taxable territory.
50 %	50 %

**Important Definitions****Works contract [Section 65B(54) of the Finance Act, 1994]:**

Works Contract means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any **movable** or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.

**Notes:**

- It is preferable for the service provider to mention on the invoice that he has paid his part of tax and the balance Tax on 50% is payable by the recipient.
- The service recipient may adopt valuation method as per Rule 2A of the Service Tax (Determination of Value) Rules, 2006.



## 2.14 Import of Services:

<b>Nature of service:</b> Import of any service	
<b>Service provider</b>	<b>Service Receiver</b>
by any person which is located in a non-taxable territory	any person located in the taxable territory
0 %	100 %

### Important Definitions

As per Finance Act 2012 Taxable territory means the territory to which the provisions of this Chapter apply.

### Notes:

1. SEZ is also part of taxable territory that means any services provided by the service provider located in SEZ is not taxable in the hands of Service Receiver.

## 2.15 Services involving an Aggregator<sup>14</sup>

<b>Nature of service:</b> Services involving an Aggregator	
<b>Service provider</b>	<b>Person other than Service provider</b>
Any assessee	Aggregator/ Representative of Aggregator/ Person appointed by aggregator
0 %	100%

### Important Definitions Rule 2(1)(aa) of The Service Tax Rules, 1994

- ✓ **Aggregator** [Rule 2(1)(aa) of The Service Tax Rules, 1994]: Aggregator” means a person who owns and manages a web based software application and by means of the application and a communication device enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator.
- ✓ **Brand Name or Trade Name** [Rule 2(1)(bca) of The Service Tax Rules, 1994]: “brand name or trade name” means, a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as an invented word or writing, or a symbol, monogram, logo, label, signature, which is used for the purpose of indicating, or so as to

<sup>14</sup> Inserted w.e.f. 1<sup>st</sup> March 2015



indicate a connection, in the course of trade, between a service and some person using the name or mark with or without any indication of the identity of that person.

- ✓ Person liable to pay Service Tax [Rule 2(1)(d)(AAA) of The Service Tax Rules, 1994]: in relation to service provided or agreed to be provided by a person involving an aggregator in any manner, the aggregator of the service.

Provided that if the aggregator does not have a physical presence in the taxable territory, any person representing the aggregator for any purpose in the taxable territory shall be liable for paying service tax.

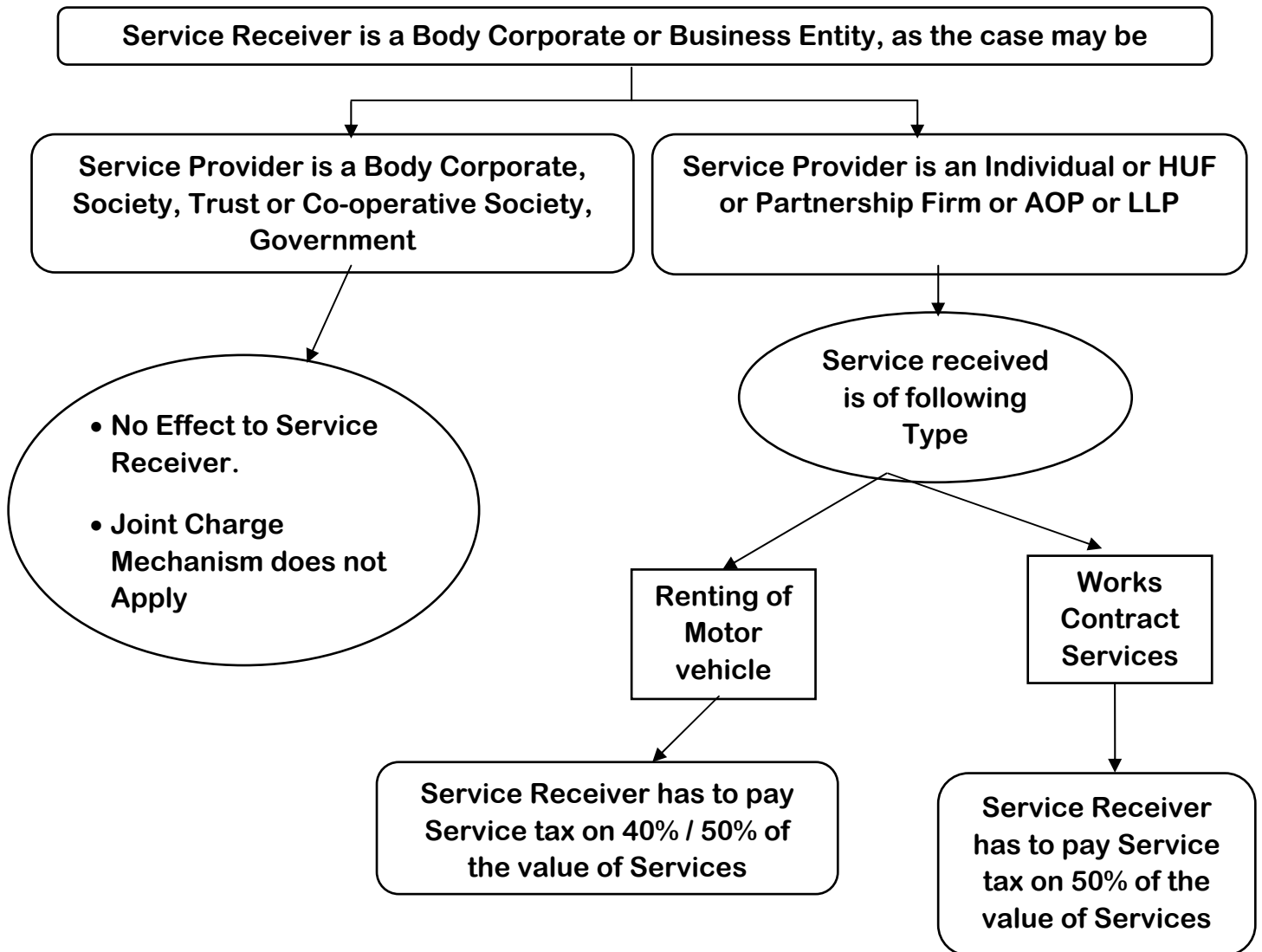
Provided further that if the aggregator does not have a physical presence or does not have a representative for any purpose in the taxable territory, the aggregator shall appoint a person in the taxable territory for the purpose of paying service tax and such person shall be liable for paying service tax.

**Notes:**

The scope of existing reverse charge mechanism has been expanded to include services provided by any person to a customer which involves an aggregator – 100% of service tax to be paid by aggregator or person representing the aggregator or person appointed by aggregator to pay service tax.



3. The working of Joint Charge Mechanism (JCM) is explained diagrammatically as under:





## **PRINCIPLES OF INTERPRETATION – SECTION 66F**

4. The new dispensation under the service tax regime, Section 65A providing rules for classification has been deleted in absence of various definitions of taxable services. However, the classification of service still remains necessary even in the negative list regime, as there are certain services covered under Negative List, Mega exemption, different rules for abatements, valuations, payment under reverse charge mechanism, rules relating to place of provision of service, etc. for different kind of services. Further, as per Circular No. 165/16/2012-ST dated 20<sup>th</sup> November, 2012, payment of service tax is required to be made under accounting code prescribed for the respective services. Section 66F seeks to achieve the following goals:

4.1. Sub-section 1 provides that, unless otherwise specified, reference to service referred to as main service shall not include reference to a service which is used for providing main service. For example, Transportation of goods on an inland waterway is a specified entry in the negative list in section 66D of the Act. Services provided by an agent to book such transportation of goods on inland waterways or to facilitate such transportation would not be entitled to the negative list entry.

An illustration has also been added to the said section which clarifies that any services provided by any banks to the Reserve Bank of India for which the consideration by way of fee or commission or any other amount is received by the banks does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) – “Services by Reserve Bank of India” of the negative list as an agent of Reserve Bank of India and hence such service is leviable to service tax

4.2. Sub-section 2 provides for prevalence of more specific description over general description where a service is capable of differential treatment on account of peculiarity of its description. This is in line with erstwhile Section 65A. For example, Pandal and shamiana (which may only include giving space on rent for an event), is an old entry which will remain subject of taxation. Likewise service provided by way of catering is a taxable service and entitled to abatement. There is abatement when the two i.e. giving space on rent along with catering service, are provided in combination. Since the combination is more a specific entry than the two provided individually, there is no need to apply the later rule of bundled services, where the character could be judged by the service which provides it the essential character.

4.3. Sub-section 3 is a novel concept of “bundled service”. It applies where two or more services are bundled together in the ordinary course of business or not in such ordinary course of business. In the former case, it is described as “naturally bundled service” and



in such case it shall be treated as provision of single service which gives such bundle its essential character. If two or more services are not naturally bundled, all the services shall be treated as provision of single service which results in the highest liability of service tax.

Bundled service is defined as a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.

Two rules have been prescribed for determining the taxability of such services in sub-section (3) of Section 66F. These provisions are subject to provisions of rule contained in sub-section (2) of S. 66F.

4.3.1. Naturally bundled service:

4.3.1.1. The rule is, 'If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character'. For example,

4.3.1.2. A 5-star hotel in Gurgaon (Haryana) provides a 4-D/3-N package with the facility breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle, the essential character and would, therefore, be treated as service of providing hotel accommodation.

4.3.2. Services which are not naturally bundled:

4.3.2.1. The rule is, If various elements of a bundled service are not naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which attracts the highest amount of service tax. For example,

4.3.2.2. A house is given on rent one floor of which is to be used as residence and the other for housing a printing press. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Therefore, if a single rent deed is executed it will be treated as a service comprising entirely of such service which attracts highest liability of service tax. In this case renting for use as residence is a negative list service while renting for non-residence use is chargeable to tax. Since the latter category attracts highest liability of service tax amongst the two services bundled together, the entire bundle would be treated as renting of commercial property.

4.3.3. Manner of determining if the services are bundled in the ordinary course of business:

4.3.3.1. This would depend upon the normal practice followed in the business. Such practice adopted in the business can be ascertained from the terms of the contract, perception of the recipient of service, the nature of various services in the bundle,





the prevailing practice of majority service provider in a particular business and such other factors. Other illustrative indicator would be that there is a single price the consumer pays for a package, or the elements are normally advertised as a package, or where the different elements are not available separately and they are integral to one or overall supply that if one or more is removed from that, the nature of supply would get affected. However, no straight jacket formula can be laid down and each case has to be individually examined.

4.3.4. Determination of taxability of “composite transactions”:

4.3.4.1. The manner of treatment of such composite transaction wherein an element of provision of service is combined with an element of sale of goods for the purpose of taxation. The test is laid down in case of *Bharat Sanchar Nigam Limited v/s. UOI* [2006 (2) STR 161] wherein the Hon'ble Supreme Court has applied test of “dominant nature” for the purpose of discerning whether a transaction is of sale of goods or service. This test would equally apply to composite transactions involving element of transfer of title in immoveable property.



## Reimbursement of Expenses

### 5. Background to Reimbursement of expenses

Determination of value of taxable service was very simple till 17<sup>th</sup> April, 2006. The gross amount charged by service provider for service provided or to be provided was only considered as value of taxable service. Any amount received by service provider from service recipient as reimbursement of expenditure was not taxable. Further, a barter transaction wherein there was no actual exchange of money between the service provider and service receiver was also not taxable. In other words life of service tax payer was very simple and the value of taxable service could be calculated very easily but life of service tax payer is not so simple after amendment in section 67 on 18<sup>th</sup> April, 2006 and introduction of Service Tax (Determination of Value) Rules, 2006 vide Notification No. 12/2006-ST, dated 19<sup>th</sup> April, 2006.

### 6. Consideration includes

- (i) any amount that is payable for the taxable services provided or to be provided;
- (ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;
- (iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.'

### 7. Inclusion in or exclusion from value of certain expenditure or cost [Rule 5 of The Service Tax (Determination of Value) Rules, 2006]

#### 7.1. Inclusions in the value of taxable service- Rule 5(1)

All expenditure or costs incurred by service provider in the course of providing taxable service should be included.

- In the case of **Sri Bhagavathy Traders Vs CCE, Cochin [2011 (24) S.T.R.**



**290 (Tri. - LB)],** it has been held that in so far reimbursements of expense are concerned, it has to be seen whether the service receiver had a legal or contractual obligation to make payment to third party or not and whether the amount is paid by the service provider on behalf of the service recipient. The service provider cannot treat costs for inputs services and inputs used in rendering services as reimbursable costs. The claim that such expenses incurred by service provider to provide service are reimbursable costs gives a view that the service provider can render his services in vacuum i.e. without incurring such costs. Hence it was held that only where costs are incurred on behalf of service receiver, who was originally liable to pay such costs and service provider has merely acted as agent while paying such costs, such amounts can be held to be reimbursable costs.

- However Delhi High Court in case of **Intercontinental Consultants And Technocrats Pvt Ltd Vs Union Of India &Anr [2012-TIOL-966-HC-DEL-ST]**, has held that provisions of Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 are ultra vires to provisions of Section 66 and Section 67 of the Act in so much as they seek to levy tax twice on the same service by including costs and expenditure incurred in the value of service provided. Section 67, authorises the determination of the value of the taxable service for the purpose of charging service tax under Section 66 as the gross amount charged by the service provider for such service provided or to be provided by him, in a case where the consideration for the service is money. The underlined words i.e. “for such service” are important in the setting of Section 66 and 67. The quantification of the value of the service can therefore never exceed the gross amount charged by the service provider for the service provided by him. Thus double taxation cannot be enforced by implication.
- To nullify the effect of said above judgment in future, the term consideration has been amended to include any reimbursable expenditure or cost incurred by the service provider and charged.

Value of the taxable service in relation to provision of telecommunication service shall be the gross amount paid by the person to whom telecom service is provided by the telegraph authority.



## 7.2. Exclusion from the value of taxable service- Rule 5(2)

**“Pure agent”** means a person who—

- (i) *Enters into a contractual agreement* with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
- (ii) *Neither intends to hold nor holds any title to the goods or services* so procured or provided as pure agent of the recipient of service;
- (iii) *Does not use such goods or services so procured*; and
- (iv) *Receives only the actual amount* incurred to procure such goods or services.

All expenditure or costs incurred by service provider as a pure agent of the recipient of service are to be excluded if ***all the following eight conditions are satisfied***:

- (i) The service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;
- (ii) The recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
- (iii) The recipient of service is liable to make payment to the third party;
- (iv) The recipient of service authorises the service provider to make payment on his behalf;
- (v) The recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;
- (vi) The payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
- (vii) The service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and



- (viii) The goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

The above has also been confirmed by the Service Tax department vide Circular No. 119/13/2009-ST Dated 21<sup>st</sup> December, 2009. It has also been mentioned in the circular that divergent practices of records and documentation are being followed by CHA's. However, the exclusion shall still be valid subject to the fact that the above conditions are fulfilled and the nexus between the expenses and taxable service is proved.



## **Types of Refund under Service Tax**

8. Refund of Service Tax/ CENVAT credit can be claimed in terms of the following Rules and Notifications thereto;
  - 8.1. Refund to Exporter of Service: Rule 6A(2) of Service Tax Rules, 1994 read with Notification No. 39/2012-ST
  - 8.2. Manufacturer/ Service provider exporting goods/ service: Rule 5 of CENVAT Credit Rules, 2004 read with Notification No. 27/2012–CE(N.T.)
  - 8.3. Service Provider covered under Reverse Charge: Rule 5B of CENVAT Credit Rules, 2004 read with Notification No.12/2014-CE(N.T.)
  - 8.4. Service Provider located in SEZ: Notification No.12/2013-ST
  - 8.5. Exporter of Goods (Trader): Notification No. 41/2012-ST

**Detailed conditions and procedure for Refund/rebate application is provided in relevant Notifications, which may be referred.**

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### **DISCLAIMER**

*The opinion and views expressed in this compilation are those of the compiler. The WIRC of ICAI does not necessarily concur with the same. While every care is taken to ensure the accuracy of the contents of this compilation, neither the compiler nor the WIRC of ICAI are liable for any inadvertent errors.*

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