

## **VALUATION OF TAXABLE SERVICES:-**

By Sec.68 (D) of the Finance Act, 2006, the provisions of sec.67 of the Finance Act, 1994 have been substituted. Now, the amended provisions are as follows: -

- (1) *Valuation of the taxable services for charging service tax:* - Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall, -
  - (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;
  - (ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;
  - (iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.
- (2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable is equal to the gross amount charged.
- (3) 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.
- (4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

**Explanation:** — For the purposes of this section:

- (a) "consideration" includes any amount that is payable for the taxable services provided or to be provided;
- (b) "money" includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;
- (c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment.

**Analysis:** - Vide Notification No.12/2006, the Service Tax (Determination of Value) Rules, 2006 came into existence. Now, the point by point analysis is as follows: -

- (A) Gross amount of consideration:- The gross amount charged for the taxable service provided or to be provided shall be the value for calculating service tax. The consideration recovered for providing service

is wholly or partly [not in terms of money] than the non monetary consideration shall also be part of the value of taxable service.

(B) Non monetary consideration :-Where the provision of service is for the consideration which is totally non monetary, then the value of similar services provided by the same person shall be the assessable value. However, if the value could not be determined in the above method, then the cost of provision of such service shall be the basis to determine the assessable value.

(C) The value shall be Ex-Service Tax: - Where the gross amount of consideration is inclusive of service tax payable, the value in such case shall be the amount as, with the addition of tax payable is equal to the gross amount charged i.e.

$$\frac{\text{Cum tax value}}{1+R} \quad \text{i.e} \quad \frac{\text{Cum tax price}}{100+\text{rate of tax}} \quad *100$$

(D) Time of Recovery has no relevance: - 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.

(E) Rejection of Value - Verification of Record: - Rule 4(1) of Service Tax (Determination of Value) Rules, 2006 provides the power in hands of the Central Excise Officers to verify the records and documents to satisfy himself about the accuracy of the value. In case where there is a short valuation in opinion of the Department, a show cause notice shall be issued prior to reassessing the value.

(F) Reimbursement expenditure: - There is no provision to deduct any expenditure or cost while determining the assessable value except the exclusions provided under Rule 5 and 6 of the Valuation Rules, 2006. In other words, with certain exceptions, the entire expenditure or cost recovered from the service receiver shall be the part of the gross consideration to determine assessable value.

(G) Indication of such cost or expenditure on invoice: - To determine whether the expenditure or cost are reimbursed, not only form but also the substance shall be taken into account.

**SERVICE TAX (Determination of Value) Rules, 2006):** – In exercise of the powers conferred by clause (aa) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely: -

1. Short title and commencement: –(1) These rules may be called the Service Tax (Determination of Value) Rules, 2006.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions: –In these rules, unless the context otherwise requires, –

- (a) "Act" means the Finance Act, 1994 (32 of 1994);
- (b) "section" means the section of the Act;
- (c) "value" shall have the meaning assigned to it in section 67;
- (d) words and expressions used in these rules and not defined but defined in the Act shall have the meaning respectively assigned to them in the Act.

2A. Determination of value of services involved in the execution of a works contract:

(1) Subject to the provisions of section 67, the value of taxable service in relation to services involved in the execution of a works contract (hereinafter referred to as works contract service), referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act, shall be determined by the service provider in the following manner: -

(i) Value of works contract service determined shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.

*Explanation.*- For the purposes of this rule,-

(a) gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include,-

- (i) labour charges for execution of the works;
- (ii) amount paid to a sub-contractor for labour and services;
- (iii) charges for planning, designing and architect's fees;
- (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- (v) cost of consumables such as water, electricity, fuel, used in the execution of the works contract;
- (vi) cost of establishment of the contractor relatable to supply of labour and services;
- (vii) other similar expenses relatable to supply of labour and services; and
- (viii) profit earned by the service provider relatable to supply of labour and services;

(ii) Where Value Added Tax or sales tax, as the case may be, has been paid on the actual value of transfer of property in goods involved in the execution of the works contract, then such value adopted for the purposes of payment of Value Added Tax or sales tax, as the case may be, shall be taken as the value of transfer of property in goods involved in the execution of the said works contract for determining the value of works contract service under clause (i).

3. Manner of determination of value: – Subject to the provisions of section 67, the value of taxable service, where the consideration received is not wholly or partly consisting of money, shall be determined by the service provider in the following manner:–

(a) the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person

in the ordinary course of trade and the gross amount charged is the sole consideration;

- (b) where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service.

4. Rejection of value:– (1) Nothing contained in rule 3 shall be construed as restricting or calling into question the power of the Central Excise Officer to satisfy himself as to the accuracy of any information furnished or document presented for valuation.

(2) Where the Central Excise Officer is satisfied that the value so determined by the service provider is not in accordance with the provisions of the Act or these rules, he shall issue a notice to such service provider to show cause why the value of such taxable service for the purpose of charging service tax should not be fixed at the amount specified in the notice.

(3) The Central Excise Officer shall, after providing reasonable opportunity of being heard, determine the value of such taxable service for the purpose of charging service tax in accordance with the provisions of the Act and these rules.

5. Inclusion in or exclusion from value of certain expenditure or costs: – (1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely: -

- (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 authorizes 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.

*Explanation1:* –For the purposes of sub- rule (2), “pure agent” means a person who–

- (a) 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;
- (b) 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;
- (c) does not use such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services.

*Explanation2:* – For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.

*Illustration 1:* – X contracts with Y, a real estate agent to sell his house and thereupon Y gives an advertisement in television. Y billed X including charges for Television advertisement and paid service tax on the total consideration billed. In such a case, consideration for the service provided is what X pays to Y. Y does not act as an agent on behalf of X when obtaining the television advertisement even if the cost of television advertisement is mentioned separately in the invoice issued by X. Advertising service is an input service for the estate agent in order to enable or facilitate him to perform his services as an estate agent

*Illustration 2:*– In the course of providing a taxable service, a service provider incurs costs such as traveling expenses, postage, telephone, etc., and may indicate these items separately on the invoice issued to the recipient of service. In such a case, the service provider is not acting as an agent of the recipient of service but procures such inputs or input service on his own account for providing the taxable service. Such expenses do not become reimbursable expenditure merely because they are indicated separately in the invoice issued by the service provider to the recipient of service.

*Illustration 3:*– A contracts with B, an architect for building a house. During the course of providing the taxable service, B incurs expenses such as telephone charges, air travel tickets, hotel accommodation, etc., to enable him to effectively perform the provision of services to A. In such a case, in whatever form B recovers such expenditure from A, whether as a separately itemised expense or as part of an inclusive overall fee, service tax is payable on the total amount charged by B. Value of the taxable service for charging service tax is what A pays to B.

*Illustration 4.*– Company X provides a taxable service of rent-a-cab by providing chauffeur-driven cars for overseas visitors. The chauffeur is given a lump sum amount to cover his food and overnight accommodation and any other incidental expenses such as parking fees by the Company X during the tour. At the end of the tour, the chauffeur returns the balance of the amount with a statement of his expenses and the relevant bills. Company X charges these amounts from the recipients of service. The cost incurred by the chauffeur and billed to the recipient of service constitutes part of gross amount charged for the provision of services by the company X.

6. Cases in which the commission, costs, etc., will be included or excluded:– (1) Subject to the provisions of section 67, the value of the taxable services shall include,–

- (i) the commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker;
- (ii) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;
- (iii) the amount of premium charged by the insurer from the policy holder;
- (iv) the commission received by the air travel agent from the airline;
- (v) the commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;
- (vi) the reimbursement received by the authorised service station, from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer;
- (vii) the commission or any amount received by the rail travel agent from the Railways or the customer;
- (viii) the remuneration or commission, by whatever name called, paid to such agent by the client engaging such agent for the services provided by a clearing and forwarding agent to a client rendering services of clearing and forwarding operations in any manner; and
- (ix) the commission, fee or any other sum, by whatever name called, paid to such agent by the insurer appointing such agent in relation to insurance auxiliary services provided by an insurance agent.

(2) Subject to the provisions contained in sub-rule (1), the value of any taxable service, as the case may be, does not include—

- (i) initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;
- (ii) the airfare collected by air travel agent in respect of service provided by him;
- (iii) the rail fare collected by air travel agent in respect of service provided by him; and
- (iv) interest on loans.

7. Actual consideration to be the value of taxable service provided from outside India:— (1) The value of taxable service received under the provisions of section 66A, shall be such amount as is equal to the actual consideration charged for the services provided or to be provided.

(2) Notwithstanding anything contained in sub-rule (1), the value of taxable services specified in clause (ii) of rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, as are partly performed in India, shall be the total consideration paid by the recipient for such services including the value of service partly performed outside India. [Notification No.12/2006 ST. dtate.19/04/2006]

### **The Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007**

1. Short title and commencement.— (1) These rules may be called the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007.

(2) They shall come into force with effect from the 1<sup>st</sup> day of June, 2007.

2. Definitions.– In these rules, unless the context otherwise requires,-

- (a) "Act" means the Finance Act, 1994 (32 of 1994);
- (b) "section" means the section of the Act;
- (c) "works contract service" means services provided in relation to the execution of a works contract referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act;
- (d) words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. (1) Notwithstanding anything contained in section 67 of the Act and rule 2A of the Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to four per cent. of the gross amount charged for the works contract.

"Explanation.-For the purposes of this sub-rule, gross amount charged for the works contract shall be the sum,-

- (a) including-
  - (i) the value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise; and
  - (ii) the value of all the services that are required to be provided for the execution of the works contract;
- (b) excluding-
  - (i) the value added tax or sales tax as the case may be paid on transfer of property in goods involved; and
  - (ii) the cost of machinery and tools used in the execution of the said works contract except for the charges for obtaining them on hire:  
Provided that nothing contained in this Explanation shall apply to a works contract, where the execution under the said contract has commenced or where any payment, except by way of credit or debit to any account, has been made in relation to the said contract on or before the 7th day of July, 2009.";

(2) The provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

(3) The provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract.

(4) The option under sub-rule (3) shall be permissible only where the declared value of the works contract is not less than the gross amount charged for such works contract."

[Notification No.32/2007-ST., dated.22-5/2007 as amended vide Notf. No. 23/2009 S.T. dt 7/7/2009]

