

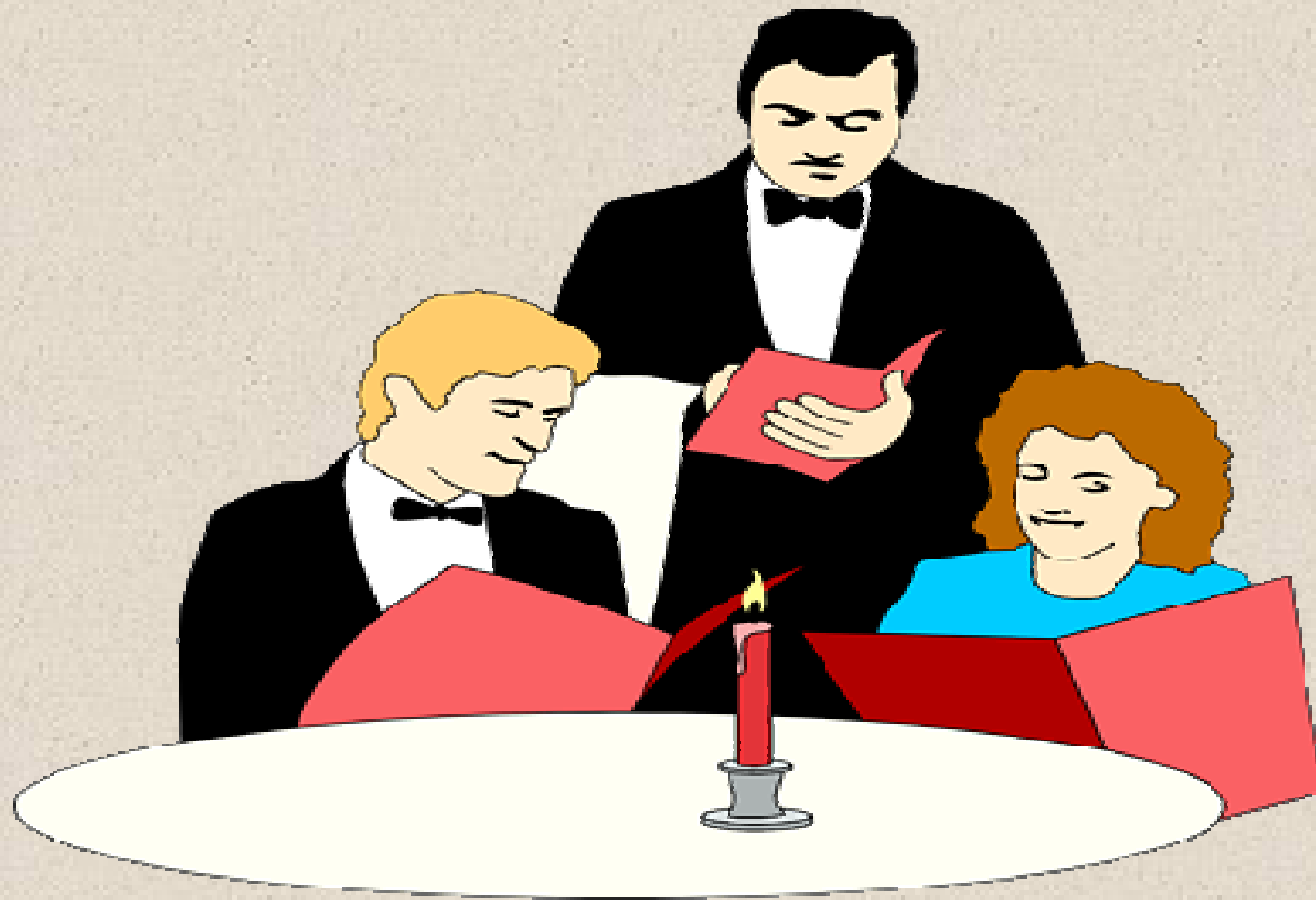
**SECTORWISE ANALYSIS OF SERVICE TAX
(EXEMPTION, ABATEMENT & VALUATION) –
HOTELS, RESTUARANTS, CATERING, ENTERTAINMENT,
SPORT & ADVERTISING**

ORGANISED
by
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29th May 2015

HOTELS, RESTAURANTS & CATERING



SERVICES BY HOTELS

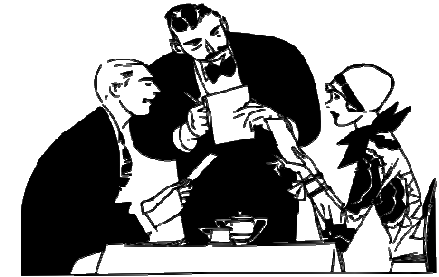


➤ Broad timeline of applicability of Service Tax

Particulars	Upto 1/3/12	1/4/12 to 30/6/12	1/7/12 to 31/5/15	W.e.f 1/6/15
Abatement	50%	50%	40%	40%
Effective rate	5.15%	6.18%	7.416%	8.4%
CENVAT Credit	No CENVAT credit		Credit of Input Service is eligible	

** Hotel/Inn etc. having **declared tariff** of a unit of accommodation **below Rs. 1,000/- per day** is exempt

SERVICES BY RESTAURANT



➤ Broad timeline of applicability of Service Tax

Particulars	1/5/11 to 31/3/12	1/4/12 to 30/6/12	1/7/12 to 31/3/13	1/4/13 to 31/5/15	W.e.f 1/6/15
Scope	Restaurant having AC and liquor license	Restaurant having AC and liquor license	Restaurant having AC and liquor license	Restaurant having AC	Restaurant having AC
Abatement	70%	70%	60%	60%	60%
Effective rate	3.09%	3.708%	4.944%	4.944%	5.6%
CENVAT Credit	No CENVAT credit		Credit allowed except for inputs under chp. 1 to 22		

SERVICES BY OUTDOOR CATERER

- Broad timeline of applicability of Service Tax



Particulars	Upto 1/3/12	1/4/12 to 30/6/12	1/7/12 to 31/5/15	W.e.f 1/6/15
Abatement	50%	50%	40%	40%
Effective rate	5.15%	6.18%	7.416%	8.4%
CENVAT Credit	No CENVAT credit		Credit of Input Service is eligible	



ISSUES

CERTAIN ISSUES:

➤ Ice Cream Parlour's:

Thanda Ice cream parlour does not having sitting facility

Cold Ice cream parlour having sitting facility

Cool Ice cream parlour only having table without sitting facility

➤ Take away centre's/counters:

Burger Maharaj having separate take-away counter in their our eating joint premises

➤ Eating joints in mall having common sitting arrangements:

Mera mall is having centralised AC system. Food courts within the mall do not have their own separate sitting facilities.

CERTAIN ISSUES:

- Any difference in ST leviability for European plan & American Plan.
- Whether Canteen in factory/office is restaurant or outdoor catering?

APPLICABLE LEGAL PROVISIONS:

➤ Definition:

- **“Service” – 65B(44)** - means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include -
 - (a) an activity which constitutes merely,—
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution;

➤ Sections:

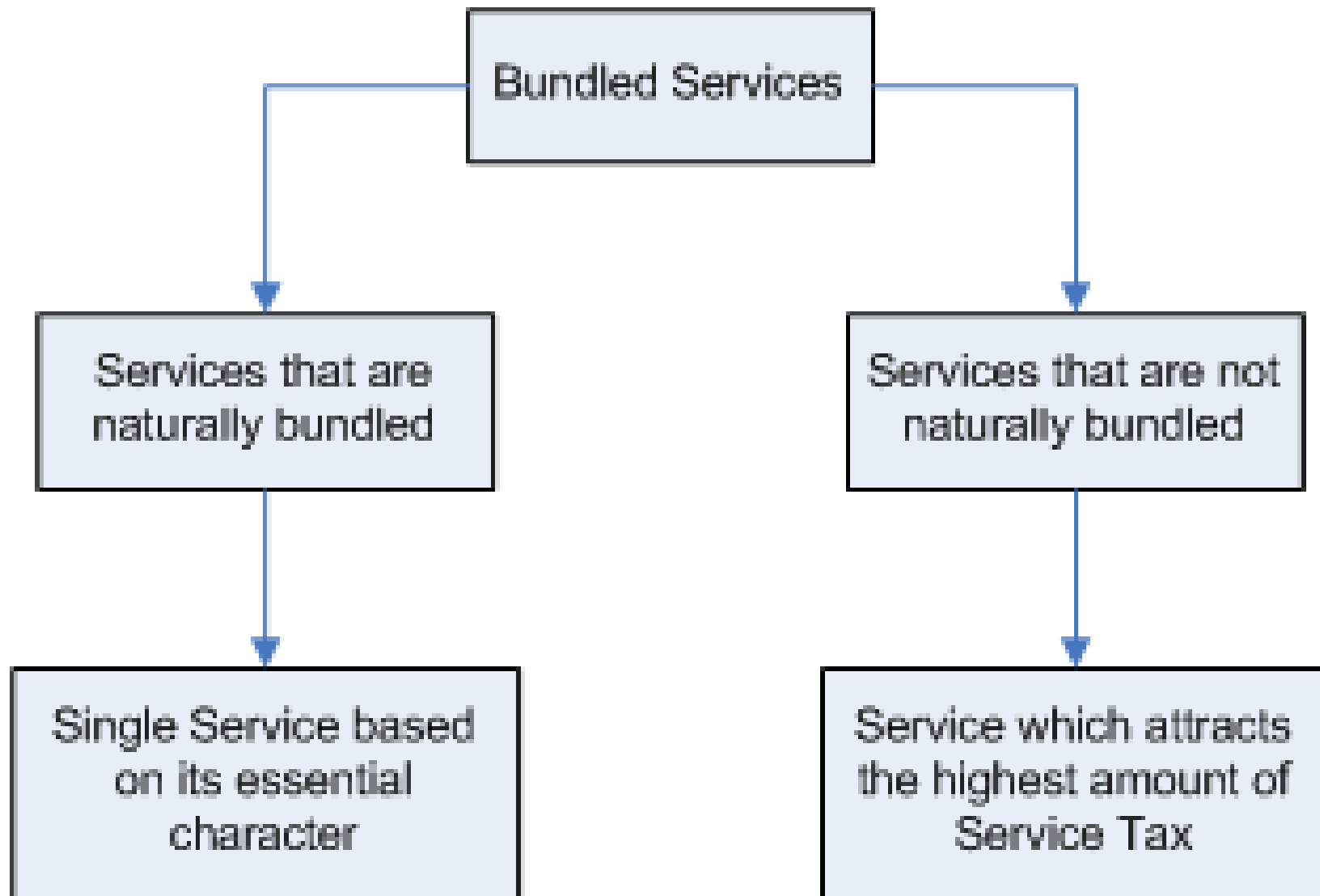
- **Article 366(29A)(f)** a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made

APPLICABLE LEGAL PROVISIONS:

- **Sec. 66E(i)***Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.*
- **Sec. 66F(2)***Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.*

"bundled service" means 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.

APPLICABLE LEGAL PROVISIONS:



APPLICABLE LEGAL PROVISIONS:

➤ Notifications:

- **Clause 19 of 25/12-ST dated 20/06/12** *Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year ~~and a license to serve alcoholic beverages.~~ (The condition of license to serve alcoholic beverages omitted w.e.f. 01/04/13)*
- **Clause 19A of 25/12-ST dated 20/06/12** *Services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948, having the facility of air-conditioning or central air-heating at any time during the year (w.e.f. 22/10/13)*

APPLICABLE LEGAL PROVISIONS:

SN	Description	Taxable amount
1	Service portion in an activity wherein goods, being food or any other article of human consumption or any drink(whether or not intoxicating) is supplied in any manner as a part of the activity, at a restaurant	40%
2	Service portion in outdoor catering wherein goods, being food or any other article of human consumption or any drink(whether or not intoxicating) is supplied in any manner as a part of such outdoor catering	60%

- *Sum total of the gross amount charged and FMV of all goods and services supplied in or in relation to the supply of food or any other article of human consumption or any drink(whether or not intoxicating), whether or not supplied under the same contract or any other contract, after deducting -*
 - (i) the amount charged for such goods or services, if any; and*
 - (ii) the value added tax or sales tax, if any, levied thereon:*
- *The service provider shall not take CENVAT credit of duties/cess paid on any goods classifiable under Chapters 1 to 22 of the CETA, 1985*

APPLICABLE LEGAL PROVISIONS:

- **Serial no. 12 & 13 of 12/12-CE dated 17/03/12** *Food preparations, including food preparations containing meat, which are prepared or served in a hotel, restaurant or retail outlet whether or not such food is consumed in such hotel, restaurant or retail outlet – Nil rate*

Food preparations, including food preparations containing fruits and vegetables, which are prepared or served in a hotel, restaurant or retail outlet whether or not such food is consumed in such hotel, restaurant or retail outlet – Nil rate

JUDICIAL PRNOUNCEMENTS:

- Decision of [Hon'ble Kerala High Court](#) in the case of [Kerala Classified Hotels & Resorts Association & Oths Vs. UOI & Otrs. 2013-TIOL-HC-Kerala-ST](#) [Service Tax on restaurants and hotels beyond the legislative competence of the parliament....](#) petitioners entitled to seek refund for taxes already paid.
- Recently, in the case of [Indian Hotels & Restaurants Association Vs. UOI 2014\(34\) S.T.R 522\(Bom.\)](#), it was held that, Service Tax chargeable as per Finance Act is a distinct tax. Sale tax on sale of food, etc. as per Article 366(29A) of the Constitution, comes under the purview of the State. Thus, [Service Tax cannot be equated with tax on goods](#). However, a contrary decision was taken in the contemporary case of [UIO Vs. Kerala Bar Hotels Association 2014-TIOL-1913-HC-Kerala-ST](#), wherein it was held that charge of [Service Tax on such transaction is conditionally invalid](#).

ENTERTAINMENT



➤ Broad timeline of applicability of Service Tax

Service by way of right to admission to-	1/7/12 to 31/5/15	W.e.f 1/6/15
Exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet	No	No
Sporting events	No	Yes*
Recognized sporting events	No	No
Award function, concert, pageant, musical performance	No	Yes*
Amusement facilities	No	Yes

* Service Tax is not chargeable if consideration for admission is upto Rs.500/- per person.

➤ Broad timeline of applicability of Service Tax

Service provided by artist	1/7/12 to 31/5/15	W.e.f 1/4/15
Performance in folk or classical art forms of: (i) music, (ii) dance, (iii) theatre,	No	Yes*
Acting as brand ambassador while performing the above	Yes	Yes

* Service Tax is not chargeable if consideration charged for such performance is upto Rs.1,00,000/- .



ISSUES

CERTAIN ISSUES:

➤ Video Parlor:

Entry to video parlor exhibiting movies played on a DVD player and displayed through a TV screen.

➤ Services by event manager:

Services by an event manager to entertainment event organizer for organising an entertainment event

➤ Services by entertainer:

Services by an entertainer to entertainment event organizer for providing entertainment

CERTAIN ISSUES:

➤ Broadcasting Services:

ABC, a broadcasting agency, raised an invoice on XYZ, an advertising agency, for an amount of Rs.100/- and shown a deduction of Rs.15/- towards commission or discount.

➤ Entertainment Services:

Entertainment & Co. has organised a dance show in Mumbai, Kolkata and Canada. For these shows, it has signed contract with Mr. Khan for performing dance for Rs.1,00,000/- per show.

What if, the contract is signed for a lump-sum amount of Rs.2,00,000/-.

APPLICABLE LEGAL PROVISIONS:

Negative list (Section 66D):

Clause (j): *“Admission to entertainment events or access to amusement facilities”*
(Omitted w.e.f 1 June 2015)

Mega Exemption Notification (25/2012-ST dated 29 June 2012):

Clause 47. *Services by way of right to admission to,-*

- (i) exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet;*
- (ii) recognised sporting event;*
- (iii) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, where the consideration for admission is not more than ₹ 500 per person. (W.e.f 1 June 2015)*

APPLICABLE LEGAL PROVISIONS:

Mega Exemption Notification (25/2012-ST dated 29 June 2012):

Clause 16. *Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador; (Omitted w.e.f 1 April 2015)*

Clause 16. *Services by an artist by way of a performance in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, if the **consideration charged for such performance is not more than one lakh rupees:***

*Provided that the exemption **shall not apply** to service provided by such artist as a **brand ambassador.** (W.e.f 1 April 2015)*

APPLICABLE LEGAL PROVISIONS:

‘Entertainment event’ has been defined in section 65B as *‘an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic films, circus, concerts, sporting events, pageants, award functions, dance, musical or theatrical performances including drama, ballets or any such event or programme’* **(Omitted w.e.f 1 June 2015)**

‘Amusement facility’ has been defined in section 65B as *‘a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided’*. **(Omitted w.e.f 1 June 2015)**

SPORT



W.e.f 1 July 2012, sports activities other than below mentioned activities are brought under the scope of Service Tax:

- Services by way of training or coaching in **recreational activities**.
- Services provided by an individual as a **player, referee, umpire, coach or team manager to a recognized sports body** where such individual has participated in a sporting event organized by a recognized sports body. **However services provided by individual such as selector, commentator, curator, technical experts etc. are not exempted.**
- **Sponsorship** of sporting events organized by specified sports bodies.

CERTAIN ISSUES:

- Awards received by players as Man of the Match/Series for outstanding performance in IPL matches.
- Prize money received by the winner of IPL final.

APPLICABLE LEGAL PROVISIONS:

Notification No. 25/2012-ST dated 20 June 2012:

Clause 8: *Services by way of training or coaching in recreational activities relating to arts, culture or sports*

Clause 10: *Services provided to a recognized sports body by-*

- (i) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;*
- (ii) another recognized sports body.*

APPLICABLE LEGAL PROVISIONS:

Notification No. 25/2012-ST dated 20 June 2012:

Clause 11: *Services by way of sponsorship of sporting events organized,-*

- (i) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;*
- (ii) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;*
- (iii) by Central Civil Services Cultural and Sports Board;*
- (iv) as part of national games, by Indian Olympic Association; or*
- (v) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme.*

APPLICABLE LEGAL PROVISIONS:

Notification No. 25/2012-ST dated 20 June 2012:

The term recognized sports body is defined as under :

- (i) the Indian Olympic Association,*
- (ii) Sports Authority of India,*
- (iii) a national sports federation recognized by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations,*
- (iv) National Sports Promotion Organizations recognized by the Ministry of Sports and Youth Affairs of the Central Government,*
- (v) the International Olympic Association or a federation recognized by the International Olympic Association or*
- (vi) a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India.*

ADVERTISING



➤ Broad timeline of applicability of Service Tax

Mode of Advertisement	Upto 30/6/12	1/7/12 to 30/09/14	W.e.f 1/10/14
Television	Yes	Yes	Yes
Radio	Yes	Yes	Yes
Internet	Yes	No	Yes
Pamphlets	Yes	No	No
Newspaper / Books	No	No	No
Business Directories, Yellow Pages etc.	Yes	No	Yes
Brand endorsement made by representation in person	Yes	Yes	Yes

CERTAIN ISSUES:

- Advertisement in magazines not registered under Press and Registration of Books Act, 1867.
- Advertisement in leaflet included in newspaper or circulated hand to hand.

APPLICABLE LEGAL PROVISIONS:

Services in respect of advertising are covered in Negative list by way of clause (g). The said clause reads as follows:

W.e.f 1 July 2014 to 30 September 2014:

“selling of space or time slots for advertisements other than advertisements broadcast by radio or television.”

W.e.f 1 October 2014 till now:

“selling of space for advertisements in print media”

APPLICABLE LEGAL PROVISIONS:

“Print media” is defined in Section 65B(39a) which means:

- (i) **“book”** as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867, but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;
- (ii) **“newspaper”** as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867.

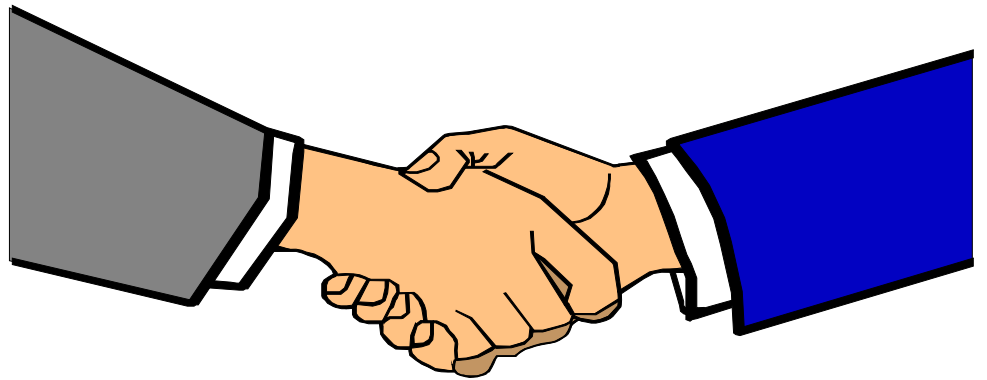
APPLICABLE LEGAL PROVISIONS:

As per section 1(1) of the Press and Registration of Books Act, 1867:

*“**Book**” includes every volume, part of division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed.*

*“**newspaper**” means any printed periodical work containing public news or comments on public news.*

Thanks



CA. Narendra Soni