

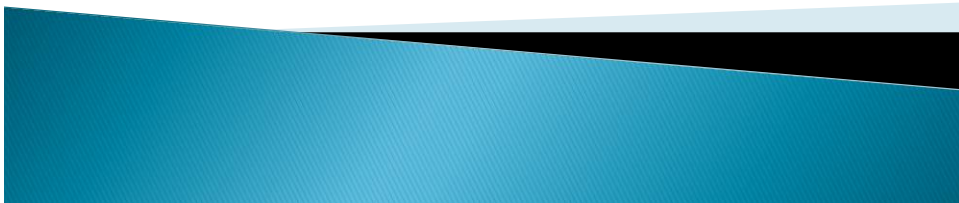
Service Tax – Audit

CA Pritam Mahure

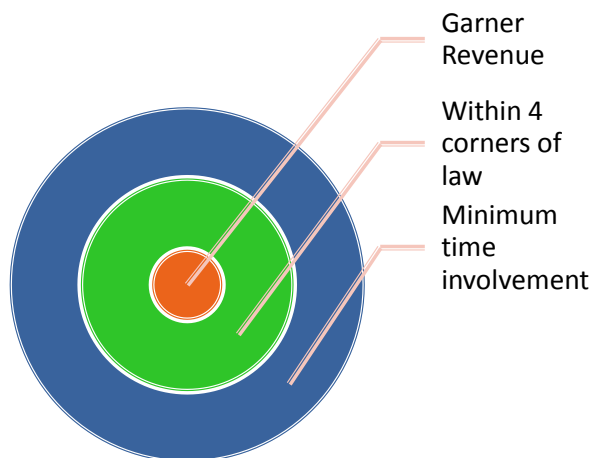
66B - Charging provision

- ✓ There shall be levied a tax (hereinafter referred to as the service tax) at the **rate** of twelve per cent.
- ✓ On the **value** of all **services**,
- ✓ Other than those services specified in the **negative list**,
- ✓ **Provided or agreed to be provided**
- ✓ In the **taxable territory**
- ✓ By **one person to another** and
- ✓ Collected in such manner as may be prescribed

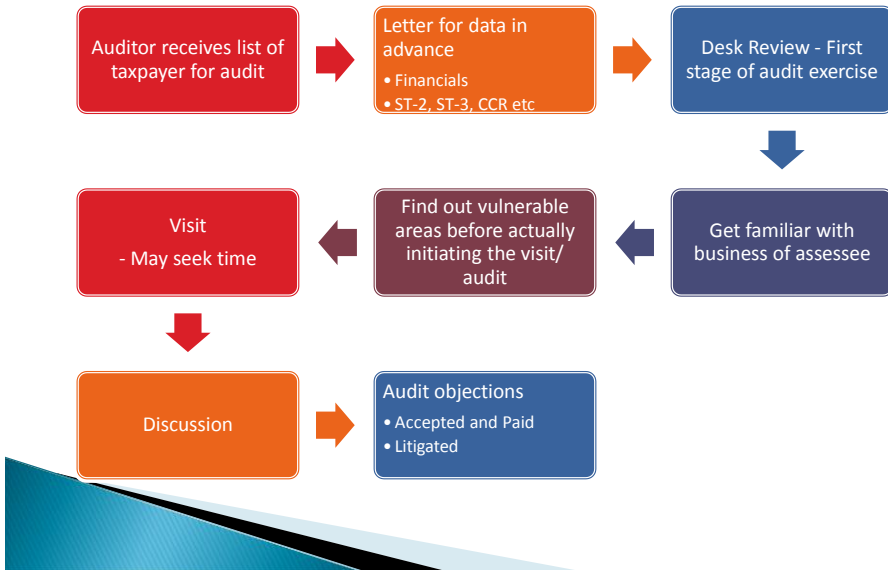
Desk Review



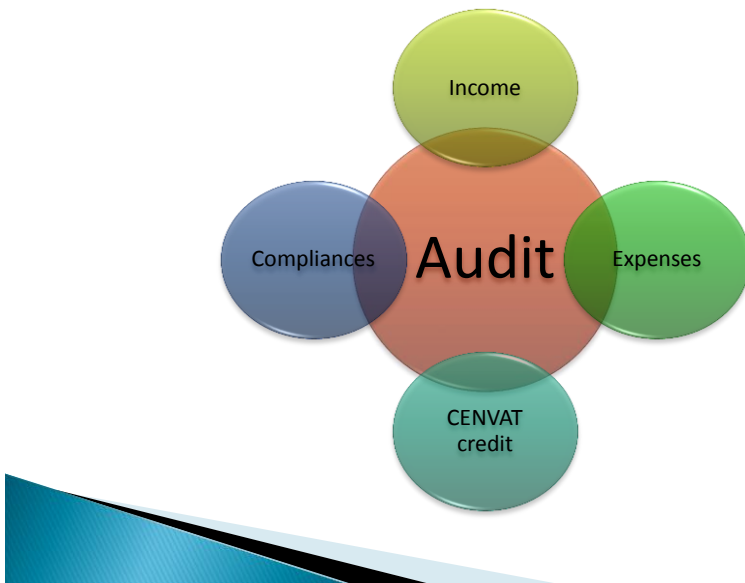
Objective



Process



Area of Audit



Records

- ▶ No prescribed records
- ▶ Furnish list of records maintained for
 - (a) Providing of any service
 - (b) Receipt or procurement of input services and payment for such input services
 - (c) Receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods
 - (d) Other activities, such as manufacture and sale of goods, if any
 - (e) All other financial records maintained by him in the normal course of business
- ▶ CCR – Rule 9
- ▶ All such records shall be preserved at least for a period of five years

Key

- ▶ Reconciliation

Particulars	1	2
Income as per Financials		
Income as per ST-3		
Remarks		

- ▶ Total Turnover
 - Details
- ▶ Miscellaneous income
 - Details
- ▶ Past litigations


Overview



IMP

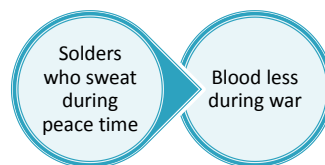
- ▶ Take Ack. of documents
- ▶ Issues
 - Discuss
 - Pay, if you agree with the issue
 - Don't pay if you do not agree
 - Reply to Audit Paras/Objections in writing

Business Knowledge

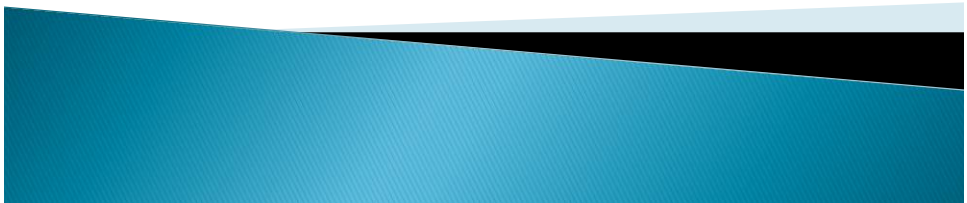
- ▶ Knowledge of business/industry as a whole
 - Type of services (Media/Logistic/Software etc)
 - ▶ Problems peculiar to the industry and the normal litigation common to the industry
 - Construction industry
 - ▶ Structure
 - Assets based or Manpower based
 - ▶ Available information of assessee
 - Past audit / Prior data
 - News reports
 - CAG Reports
- 

Legal Knowledge

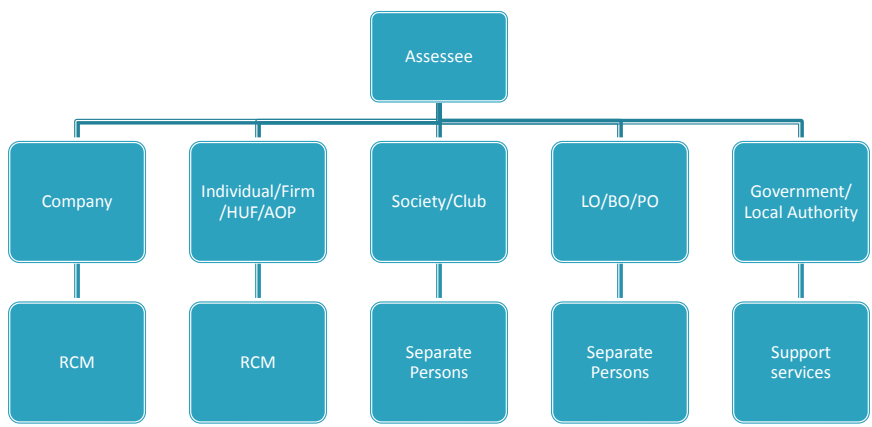
- ▶ Case laws
- ▶ Amendments during Audit period
- ▶ Notifications
 - 9/2013-ST – 25% and 30%
- ▶ Latest Circulars, Trade Notices
 - Circular dated 10.02.2012 and Education Guide



Constitution of Assessee



Constitution



Reverse Charge Mechanism

SR	Service	Service recipient	% of ST payable	
			Provider	Recipient
1	Provided by person who is located in non-taxable territory and received by any person located in taxable territory	-	Nil	100%
2	Works contract services by individual, HUF, firm or AOP	Body corporate	50%	50%
3	Manpower supply for any purposes or <u>security services</u> by individual, HUF, firm or AOP	Body corporate	25%	75%
4	Renting of vehicle to carry passenger by individual, HUF, firm or AOP -With abatement -Without abatement	Body corporate	Nil 60%	100% 40%
5	Support services by Government (excluding renting and 66D (a) (i) to (iii))	BE	Nil	100%
6	Provided or agreed to be provided by a <u>director</u> of a company to the said company (w.e.f. 7 August 2012 vide Not. 45/2012)	Company	Nil	100%
7	Individual advocate or firm of advocates	BE	Nil	100%
8	Arbitral Tribunal	BE	Nil	100%

Reverse Charge Mechanism

SR	Service	Service recipient	% of ST payable	
			Provider	Recipient
9	Sponsorship	Body corporate or PF	Nil	100%
10	GTA	Company, PF, Factory, Society, excise registered assessee	Nil	100%
11	Insurance agent to insurance companies	Insurance business	Nil	100%

- Liability of the two persons is for respective amounts and is not influenced by compliance or the lack of it by the other side
- Service provider should show only “service tax payable thereon”



65B (44) - Service

Explanation 3.— *For the purposes of this Chapter,—*

- (a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;
- (b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons

Explanation 4.— *A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory*

Export / Import

1. Service provider located in taxable territory

2. Service recipient located outside India

3. Service not included in negative List

4. PoPS outside India

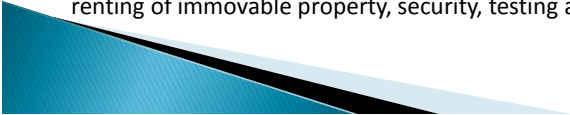
5. Payment received in convertible foreign exchange

6. Service provider and service receiver are **not merely establishments** of a distinct person by virtue of item (b) of Explanation 3 of clause 44 of section 65B of the Act

Local Authority

- ▶ SURAT MUNICIPAL CORPN. 2006 (4) STR 44
 - **Halls and stadiums let out for consideration** for various functions, social and official such as sports, garbas, educational programmes, cultural and religious programmes and also for holding official functions - Such activities covered under definition of 'mandap keeper' - **Demand upheld**
- ▶ COMMR. OF SALEM MUNICIPAL CORPORATION 2013 (31) S.T.R. 281 (Mad.)
 - Service Tax on rent from immovable properties

(49) "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;



Financials

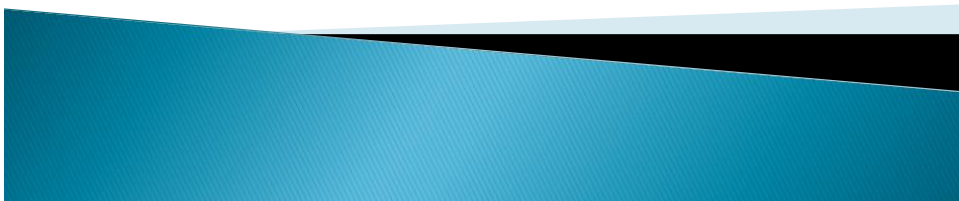


Financial Statements

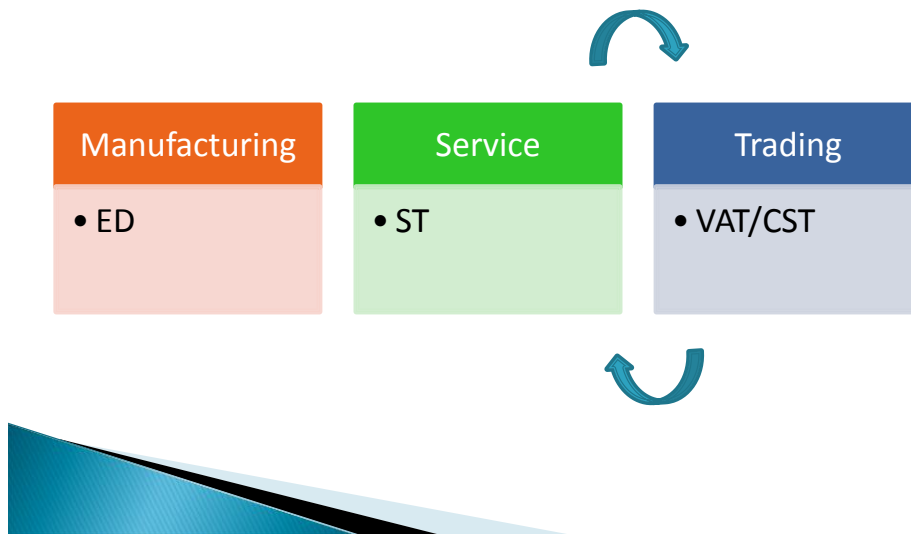
- ▶ Profit and Loss Account
- ▶ Balance Sheet
- ▶ Notes to Accounts
 - Accounting Standards
 - CENVAT credit
 - Asset – Addition, deletion and depreciation
 - Contingent Liabilities
 - Litigations
- ▶ Directors Report
- ▶ Auditor Report
- ▶ Consultants



Income



Income vis-à-vis Tax applicability



Analysis

Accounting head	Nature	Tax	Remarks, if any
Supply of services	Consulting Engineering charges	ST (12.36%)	
Sale of material	Sale of goods	MVAT	
Dividend	On shares	-	
Interest income	Fixed Deposits	-	
Profit on sale of securities			
Miscellaneous income			

Reconciliation between Income as per Financial and as per ST-3

Revenue recognition

- ▶ Invoice should be raised within 30 days from:
 - Date of completion of such taxable service or
 - Receipt of payment

- ▶ Continuous Supply of Services
 - Recognised in accounts
 - ST?
 - Refer Agreement



Analysis

- ▶ Rate Analysis
 - Applicable rate of ST

With effect from	Rate
10.09.2004 onwards	10.20%
18.04.2006 onwards	12.24%
11.05.2007 onwards	12.36%
24.02.2009 onwards	10.30%
01.04.2012 onwards	12.36%




Analysis

▶ Ratio Analysis

- Income not chargeable to tax
 - Whether there is increment?

Description	Year 1	Year 2	Year 3
Value of Taxable Services	10,00,000	20,00,000	40,00,000
Exempt services	1,00,000	4,00,000	16,00,000
Ratio	10%	25%	40%



Analysis

▶ Ratio Analysis (say cable, café, STGS)

- Fixed assets vis-a-vis income

Description	Year 1	Year 2	Year 3
Value of fixed assets (say computers)	1,00,000	2,00,000	4,00,000
No.s	4	8 (100% up)	16 (100% up)
Value of Taxable Services	10,00,000	15,00,000 (50% up)	25,00,000 (25% up)
Description	Year 1	Year 2	Year 3



Analysis

- ▶ Ratio Analysis (say rent-a-cab)
 - Consumables/ Manpower supply

Description	Year 1	Year 2	Year 3
Value of Taxable Services	10,00,000	20,00,000	40,00,000
Value of Consumables (say diesel)	3,00,000	8,00,000	20,00,000
Ratio	30%	40%	50%




Income


- ▶ Set-off of income with expenses
- ▶ Debit notes
- ▶ Employee recovery
- ▶ Penalties from vendors
- ▶ Free Service to employees /associates
 - ST Applicable on free service?
- ▶ FOC Material
- ▶ OPE
- ▶ Reimbursements
 - Employee salary, infra cost sharing
- ▶ Deduction from payment
 - Foreign bank charges



Few issues

- ▶ Services 'to' Government or Local Authority
 - ME 12, 25 and 34
 - ▶ POPSR
 - Commission vs Repairs
 - ▶ SSI Exemption
 - 10 lacs or 25 lacs
 - ▶ Commission vs Discount
 - ▶ Bio –medical waste
 - Taxable?
 - ▶ Exports – Not received within RBI time limit
- 

Industry Knowledge

- ▶ Chit Fund
 - ▶ Restaurants
 - ▶ Construction of complex
 - More than 12 units
 - ▶ Hospital
- 

Hospital

- Accommodation charges from relatives of patients
- Laundry
- Locker fees
- Canteen
- Entry fees
- Medical shop
- Training charges
- R & D
- Compensation for loss
- Ayurvedic massage



Expenses

- ▶ Value of major input services
- ▶ Details of expenditure
 - Clubbing
 - Freight clubbed with purchases or fixed assets
 - Inward freight
 - Outward freight
 - Advertisement
 - Commission etc.
- ▶ Domestic RCM
- ▶ Import RCM
 - AE?



Issues

- ▶ Manpower supply or cleaning services?
- ▶ Manpower Supply vs Manpower Recruitment Agent
- ▶ CSR/ Donation vs Sponsorship
- ▶ Gross amount or Net of OPE?
- ▶ Invoice amount or Grossed up amount?
 - Section 195A of Income Tax

CENVAT

- ▶ Whether credit taken is covered under the definition ?
 - Three Pillars
 - Inputs
 - Capital goods
 - Input service
- ▶ Documents
 - Take data from ST3 return, ER-1 and financials
 - Take soft data of CENVAT Credit availed by the assessee
 - Take one sample copy of invoice of each key service provider
 - Particulars as prescribed under Rule 4A of Service Tax Rules 1994

Reconciliation between CENVAT as per Financial and as per ST-3

Analysis

- ▶ Ratio Analysis
 - CENVAT Credit

Description	Year 1	Year 2	Year 3
Service Tax Payable	10,00,000	20,00,000	40,00,000
CENVAT	1,00,000	4,00,000	10,00,000
Ratio	10%	20%	25%



CENVAT Credit

- ▶ Changes in Eligibility
 - Major changes made w.e.f. 01-04-2011
- ▶ Industry Issue
 - Non availability of credit of commercial construction against renting services
- ▶ Both for taxable and non-taxable income
 - Rule 6 disclosed in returns?
- ▶ Rule 4 (7)
 - 3 months from date of invoice
 - Get date of invoice and date of payment
- ▶ RCM
 - CENVAT credit available on payment?
- ▶ Wrong availment
 - Interest or Penalty?
- ▶ VCES
 - CENVAT Credit



'Input service' - Analysis

Means any service	And includes services used	Excludes
<p>a. Used by the provider of taxable service for providing an output service;</p> <p>b. Used by a 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,</p>	<ul style="list-style-type: none"> - In relation to modernisation, 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, - accounting, auditing, - financing, - recruitment and - quality control, - coaching and training, - computer networking, - credit rating, - share registry, - security, business exhibition, - legal services, - inward transportation of inputs or capital goods and - outward transportation upto the place of removal; 	<ul style="list-style-type: none"> a. Construction related services except used by construction service providers b. Motor vehicle related services c. Employee related services [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 etc]

CENVAT credit

- ▶ Modernisation/ renovation / repairs Vs Construction
- ▶ Employee welfare Vs Customer welfare
- ▶ Employee welfare Vs Business Tour
- ▶ Outdoor catering Vs Manpower supply in kitchen
- ▶ Commission agent - **Sales or sales promotion**
- ▶ Transportation of goods at the destination of customer

Directors Report

- ▶ Writing off of inventories
- ▶ Major addition to capital goods
- ▶ Clarification on abnormal events
- ▶ Statutory auditor's qualification
- ▶ *Usha Rectifier 2011 (263) ELT 655 (SC)*
 - *The aforesaid position is further corroborated by the Director's report appearing at page No. 2 wherein it was mentioned that during the year the company developed a large number of testing equipments on its own for using the same for the testing of semi-conductors*



Tax Audit Report

Clause	Particulars
14	Details of Depreciation and CENVAT credit availed on CG
22	CENVAT Credit balance (can be verified with ST3)
22	Prior Period Income/ Expenditure
30	Information relating to Cost Audit
32	Accounting ratios



TDS Certificates

- ▶ Amount of income can be confirmed
- ▶ Nature of services



Compliances

- ▶ Registration certificate
 - Single/ Centralised
 - Service Categories
 - Premises
- ▶ List of Records
- ▶ Accounting Codes
- ▶ E-payment
- ▶ ST – 3 returns
 - Disclosure of Rule 6
 - Notification
 - Nil returns
 - Penalty for late filing
- ▶ Advances
 - Shown as loan?
 - ST paid when advances adjusted



Any questions...



Thank you for a patient hearing...
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