

6

Service Tax Procedures

6.1 Introduction

We have already understood the concept of service, negative list of services, declared services, principles of interpretation of specified description of services or bundled services, point of taxation, place of provision of service, valuation, exemptions and abatement in respect of various taxable services. In this chapter, discussion is focused on procedures to be followed for complying with the provisions of the law.

6.2 Registration [Section 69 & rule 4 of the Service Tax Rules, 1994]

(1) Persons requiring registration: Every person liable to pay service tax is required to register himself by making an application to the Superintendent of Central Excise [Section 69(1)].

Further, Central Government may also notify such other person or class of persons who will be required to obtain registration [Section 69(2)]. The following persons/class of persons have been notified under section 69(2):-

- (i) an input service distributor¹; and
- (ii) any provider of taxable service whose aggregate value of taxable service in a financial year exceeds ₹ 9,00,000.

(2) Procedure for registration: The procedure for registration has been laid down under rule 4 of the Service Tax Rules, 1994. It prescribes the time, manner and form for registration.

Application: Application for registration is to be made by every person liable for paying the service tax in **Form ST-1**:

- (i) within 30 days from the date on which service tax is levied
- or
- (ii) within 30 days from the date of commencement of business

whichever is later,

to the concerned Superintendent of Central Excise having jurisdiction.

¹ The concept of Input Service distributor has been discussed in Chapter 4: CENVAT Credit of Module-1: Central Excise.

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Application by input service distributor: The input service distributor shall make an application to the jurisdictional Superintendent of Central Excise in the prescribed form for registration within a period of 30 days of the commencement of business.

Application by provider of taxable service whose aggregate value of taxable service in a financial year exceeds ₹ 9,00,000: The provider of taxable service whose aggregate value of taxable service in a financial year exceeds ₹ 9,00,000 shall make an application to the jurisdictional Superintendent of Central Excise in the prescribed form for registration within a period of 30 days of exceeding the aggregate value of taxable service of ₹ 9,00,000.

Points to be noted:

(a) Meaning of aggregate value of taxable service

“Aggregate value of taxable service” means the sum total of first consecutive payments received during a financial year towards the gross amount, as prescribed under section 67, charged by the service provider towards taxable services but does not include payments received towards such gross amount which are exempt from the whole of service tax under any notification other than *Notification No. 6/2005-ST dated 01.03.2005***.

(b) Service provider providing one or more taxable services from one or more premises

Where a provider of taxable service provides one or more taxable services from one or more premises, the aggregate value of all such taxable services and from all such premises and not separately for each services or each premises shall be taken into account for computation of aggregate value of taxable service.

**In view of the fact that the negative list approach of taxation of services has been introduced and *Notification No. 6/2005-ST dated 01.03.2005* has been superseded by *Notification No. 33/2012-ST dated 20.06.2012*, the said definition needs to be revisited.

Documents to be submitted along with the application of service tax registration: The following documents have been prescribed by the CBEC to be submitted along with the application for registration under service tax:

- (a) Copy of Permanent Account Number (PAN)
- (b) Proof of Residence
- (c) Constitution of the Applicant
- (d) Power of Attorney in respect of authorized person (s).

The above documents must be submitted within a period of 15 days from the date of filing of the application, otherwise the application may be rejected. The time limit of seven days within which the registration is to be granted by the Superintendent of Central Excise/Service Tax would be reckoned from the date the application for registration is complete in all respects.

Grant of Registration Certificate: The Superintendent of Central Excise shall after due verification of the application form (Form ST-1), or an intimation of change in any information

or details under sub-rule (5A), as the case may be, grant a certificate of registration in **Form ST-2 within 7 days** from the date of receipt of the application or intimation.

If the registration certificate is not granted within the said period, the registration applied for shall be deemed to have been granted. This may not be a solution for non-granting of the certificate since the registration number is required for payment of service tax, filing of returns, etc. [Sub-rule (5)].

(3) Centralised registration: Where a person, liable for paying service tax on a taxable service:

- (i) provides such service from more than one premises or offices; or
- (ii) receives such service in more than one premises or offices; or
- (iii) is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable for paying service tax,

and has **centralised billing system or centralised accounting system** in respect of such service, and such centralised billing or centralised accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralised billing or centralised accounting systems are located [Sub-rule (2)].

Registration to be granted by the Commissioner having jurisdiction: Registration shall be granted by the Commissioner of Central Excise having jurisdiction over the premises/offices for which centralized registration is sought (i.e., the premises from where centralized billing/accounting is done) [Sub-rule (3)].

Separate applications in case the assessee does not have centralized billing/accounting systems: Where an assessee providing taxable service from more than one premises or offices, who does not have any centralized billing systems or centralized accounting systems, as the case may be, shall make separate applications for registration in respect of each of such premises or offices to the jurisdictional Superintendent of Central Excise [Sub-rule (3A)].

(4) Single application in case of assessee providing more than one taxable service: Where an assessee is providing more than one taxable service, he may make a single application mentioning therein all the taxable services provided by him [Sub-rule (4)]. Certificate of registration in Form ST-2 should indicate the details of all the taxable services provided by the service provider. Thus, an assessee rendering multiple taxable services will be assessed by one Superintendent of Central Excise in respect of all the taxable services rendered by him.

(5) Intimation of change in any information or details in the registration certificate: Change in any information or details furnished by an assessee at the time of obtaining registration or any additional information or detail intended to be furnished should be intimated in **Form ST-1** in writing by the assessee to the jurisdictional Assistant/Deputy Commissioner of Central Excise. Such intimation should be made within a period of 30 days of such change [Sub-rule (5A)].

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(6) **Fresh registration certificate in case of transfer of business:** When a registered assessee transfers his business to another person, the transferee shall obtain a fresh certificate of registration [Sub-rule (6)].

(7) **Surrender of registration certificate:** Every registered assessee who ceases to provide taxable service shall surrender his registration certificate immediately to the Superintendent of Central Excise [Sub-rule (7)].

On receipt of the certificate under sub-rule (7), the Superintendent of Central Excise shall ensure that the assessee has paid all monies due to the Central Government under the provisions of the Act/Rules/Notifications and thereupon cancel the registration certificate [Sub-rule (8)].

6.3 Issue of invoice, bill or challan or consignment note [Rule 4A & 4B of the Service Tax Rules, 1994]

(1) Issue of invoice, bill or challan

Rule 4A merits importance as the credit on invoices which are not in accordance with rule 4A can be denied. As per rule 4A, every person providing taxable service shall issue an invoice or a bill, or a challan signed by such person or a person authorized by him in respect of such taxable service provided or agreed to be provided. The invoice, bill or challan shall be serially numbered.

A. CONTENTS OF INVOICE/BILL/CHALLAN

The invoice, bill or challan shall be serially numbered and shall contain the following details, namely:

- (i) Name, address and the registration number of such person;
- (ii) Name and address of the person receiving taxable service;
- (iii) Description of service provided or agreed to be provided;
- (iv) Value of the taxable service provided or a agreed to be provided and
- (v) Service tax payable thereon.

Relaxations:

- (i) **Banking companies and financial institution:** A banking company or a financial institution including non-banking financial company providing services to any person enjoys the relaxation that invoice may not be serially numbered and may not contain the address of the service receiver.

Meaning of important terms

1. **Banking company:** "Banking company" means a banking company as defined in section 5 of the Banking Regulation Act, 1949, and includes the State Bank of India any subsidiary bank as defined in the State Bank of

India (Subsidiary Banks) Act, 1959, any corresponding new bank constituted by section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and any other financial institution notified by the Central Government in this behalf [Rule 2(1)(bb)].

As per section 5 of the Banking Regulation Act, 1949, "banking company" means any company which transacts the business of banking in India;

Explanation. — Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause.

2. Financial institution: Financial institution means any non-banking institution which carries on as its business or part of its business any of the following activities, namely:—

- (i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own;
- (ii) the acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature;
- (iii) letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in clause (c) of section 2 of the Hire-Purchase Act, 1972*;
- (iv) the carrying on of any class of insurance business;
- (v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;
- (vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lumpsum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person,

but does not include any institution, which carries on as its principal business,—

- (a) agricultural operations; or
- (aa) industrial activity; or
- (b) the purchase or sale of any goods (other than securities) or the providing of any services; or
- (c) the purchase, construction or sale of immovable property, so however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons [Rule 2(1)(bd)].

3. Non-banking financial company: Non-banking financial company means—

* It may be noted that the Hire-Purchase Act, 1972 has been repealed.

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- (i) a financial institution which is a company;
- (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;
- (iii) such other non-banking institution or class of such institutions, as the RBI may, with the previous approval of the Central Government and by notification in the Official Gazette, specify [Rule 2(1)(ccc)].

- (ii) **Goods transport agency:** In case the service provider is a goods transport agency, an invoice, a bill or, a challan shall include a document containing the details of the consignment note number and date, gross weight of the consignment and other required information. It implies that the document issued by a goods transport agency need not necessarily be nomenclatured as "challan".
- (iii) **Passenger transport service:** In case of transport of passengers [by any mode of transport], the ticket (in any form, including electronic form, whatever may be the name) would be deemed to be the invoice/bill/challan for the purposes of the rule. The ticket would be a valid invoice/ bill /challan even if it does not contain registration number of the service provider or address of the service receiver.

For instance, in case of air-travel, the airlines or the agent may not issue a separate invoice to the passenger but may issue the ticket showing the price of such ticket as well. In such a case, the ticket issued by the airlines would be a valid invoice.

- (iv) **Invoice not required in case where payment upto ₹ 1,000 received in excess of the invoiced amount:** Wherever the provider of taxable service receives an amount ₹ 1,000 in excess of the amount indicated in the invoice and the provider of taxable service has opted to determine the point of taxation based on the option as given in the Point of Taxation Rules, 2011 (date of invoice or completion of service), no invoice is required to be issued to such extent.

Reminder letter to pay renewal premiums is not an invoice: Life insurance companies issue reminder notices/letters to the policy holders to pay renewal premiums. Such reminder notices only solicit furtherance of service which if accepted by policy holder by payment of premium results in a service. No tax point arises on account of such reminders. Thus, reminder letters/notices for insurance policies not being invoices would not invite levy of service tax [Circular No. 166/1/2013 ST dated 01.01.2013].

B. TIME LIMIT FOR ISSUE OF INVOICE/BILL/CHALLAN

Such an invoice has to be issued within 30 days from the date of:-

- (i) completion of such taxable service
- or
- (ii) receipt of any payment towards the value of such taxable service whichever is earlier.

Time limit for issue of invoice/bill/challan in case of:**(a) Continuous supply of service**

In case of continuous supply of service, every person providing such taxable service shall issue an invoice, bill or challan, as the case may be, within **30 days** of the date when each event specified in the contract, which requires the service receiver to make any payment to service provider, is completed.

(b) Banking and other financial institution including NBFC

The time-limit for issuance of invoice, bill or challan, as the case may be, shall be **45 days** in case where the service provider is:

- (i) A banking company
- (ii) A financial institution including a non-banking financial company providing service to any person.

C. DOCUMENTS TO BE ISSUED BY INPUT SERVICE DISTRIBUTOR

Every input service distributor distributing credit of taxable services shall, in respect of credit distributed, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him, for each of the recipient of the credit distributed, and such invoice, bill or, as the case may be, challan shall be serially numbered.

(a) Contents of invoice/bill/challan: It shall contain the following details, namely: -

- (i) Name, address and registration number of the person providing input services and the serial number and date of invoice, bill, or as the case may be, challan;
- (ii) Name and address of the said input services distributor;
- (iii) Name and address of the recipient of the credit distributed;
- (iv) Amount of the credit distributed.

(b) Exemption to banking companies and financial institution: An input service distributor which is an office of a banking company or a financial institution including non-banking financial company providing services to any person enjoys the relaxation that invoice may not be serially numbered.**(c) Centralized registration and Input Service Distributor (ISD) being mutually exclusive:** It may be noted that the centralized registration and ISD are mutually exclusive. One can be centrally registered, but still would have to be registered as ISD to enable credit from those locations where there is no service being provided. Further, one who is not centrally registered may like to accumulate the credits at one point and redistribute the same to the units whenever there is a need.**(2) Issue of Consignment Note**

Provisions of rule 4B of the Service Tax Rules, 1994 are as follows:-

Any goods transport agency, which provides service in relation to transport of goods by road in a goods carriage, shall issue a **consignment note** to the recipient of service.

(a) "Consignment note" means a document, issued by a goods transport agency against

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the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered.

(b) Contents of consignment note

A consignment note shall contain the following details -

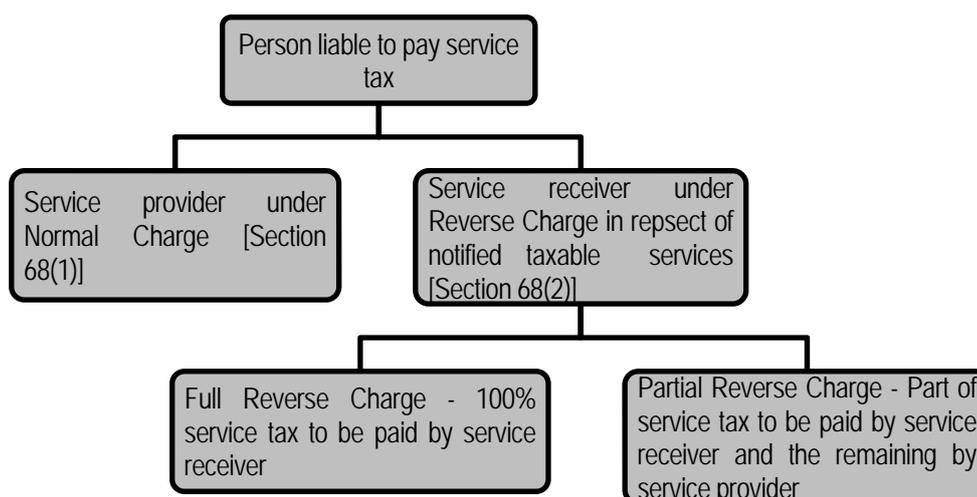
- (i) Name of the consignor and consignee,
- (ii) Registration number of the goods carriage in which the goods are transported,
- (iii) Details of the goods transported,
- (iv) Details of the place of origin and destination,
- (v) Person liable for paying service tax whether consignor, consignee or the goods transport agency.

Relaxation for exempted goods: Where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted under section 93 of the Act, the goods transport agency shall not be required to issue the consignment note.

6.4 Person liable to pay service tax [Section 68 & Rule 2(1)(d) of the Service Tax Rules, 1994]

Section 68 of the Finance Act, 1994 is the principal section which fixes responsibility to pay service tax. The powers to decide time and manner of payment of service tax have been granted to the Central Government vide rule 6 of the Service Tax Rules, 1994.

Generally, it is the *service provider* rendering taxable services who is liable to pay service tax to the Central Government at regular intervals of time (normal charge). However, in certain cases, Government finds it convenient to collect service tax from the *service receiver* (reverse charge).



(a) **NORMAL CHARGE – Service provider to pay service tax:** Every person providing taxable service to any person shall pay service tax at the rate specified in section 66B

(12.36%) in the prescribed manner and within the prescribed period [Section 68(1)].

(b) REVERSE CHARGE – Prescribed persons to pay service tax: When service tax is paid by service receiver, it is known as reverse charge. Payment of service tax under reverse charge is effected in two ways – one where entire service tax is payable by the service receiver and the other where only a part of service tax is payable by the service receiver and the remaining part is payable by the service provider. The first one is referred to as full reverse charge and the latter as partial reverse charge.

Section 68(2) empowers Central Government to notify taxable services in respect of which, service tax shall be paid by prescribed persons in the prescribed manner. Further, the extent of service tax which shall be payable by such person may also be notified and the provisions of service tax law shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.

In pursuance of this power, the Central Government has issued *Notification No. 30/2012 dated 20.06.2012* which provides as follows:

SERVICES WHERE ENTIRE SERVICE TAX IS PAYABLE BY THE SERVICE RECEIVER:-

1. **Insurance agent's services:** The taxable services provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;
2. **Goods transport agency's services:** The taxable services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—
 - (a) any factory registered under or governed by the Factories Act, 1948.
 - (b) any society registered under the Societies Registration Act, 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 or the rules made thereunder.
 - (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.

Note: The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

3. **Sponsorship services:** The taxable services provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory.

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4. **Legal services:** The taxable services provided or agreed to be provided to any business entity located in the taxable territory by,-
- (a) an arbitral tribunal, or
 - (b) an individual advocate or a firm of advocates
- by way of legal services.

Note: Services provided to a business entity by an arbitral tribunal or by an individual advocate or a firm of advocates by way of legal services are exempt from service tax provided the turnover of such business entity in the preceding financial year does not exceed ₹ 10 lakh.

5. **Support services by Government:** The taxable services provided or agreed to be provided to any business entity located in the taxable territory by Government or local authority by way of support services excluding,-
- (i) renting of immovable property, and
 - (ii) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994.
6. **Renting of a motor vehicle:** The taxable services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on **abated value** to any person who is not engaged in the similar line of business by any individual/HUF/partnership firm (whether registered or not) including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory.
7. **Services provided by a person located in non-taxable territory:** The taxable services provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory.
8. **Director's services:** The taxable services provided or agreed to be provided by a director of a company *or a body corporate* to the said company *or the body corporate*.
9. **Recovery agent's services:** *The taxable services provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company.*

SERVICES WHERE SERVICE TAX IS PARTIALLY PAYABLE BY SERVICE PROVIDER AND PARTIALLY BY SERVICE RECEIVER:-

S.No.	Service provided by any individual/ HUF/ partnership firm (whether registered or not) including association of persons, located in taxable territory to a business entity registered as body corporate, located in the taxable territory	Percentage payable by the service provider	Percentage payable by the service receiver
1	provided or agreed to be provided by way of	50%	50%

	renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business		
2	provided or agreed to be provided by way of supply of manpower for any purpose	25%	75 %
3.	provided or agreed to be provided by way of security services for any purpose	25%	75 %
4.	provided or agreed to be provided in service portion in execution of works contract	50%	50%

Note: In works contract services, where both service provider and service receiver are the persons liable to pay tax, service receiver has the option of choosing the valuation method as per choice, independent valuation method adopted by the service provider.

Definition of person liable to pay service tax under rule 2(1)(d): As per rule 2(1)(d)(i) of Service Tax Rules, 1994, person liable to pay service tax in respect of the taxable services notified under sub-section (2) of section 68 of the Act means -

(A) in relation to service provided or agreed to be provided by an insurance agent to any person carrying on the insurance business, the recipient of the service.

(AA) in relation to service provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company, the recipient of the service.

(B) in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

- any factory registered under or governed by the Factories Act, 1948;
- any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India;
- any co-operative society established by or under any law;
- any dealer of excisable goods, who is registered under the Central Excise Act, 1944 or the rules made thereunder;
- any body corporate established, by or under any law; or
- any partnership firm whether registered or not under any law including association of persons;

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage:

However, when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

(C) in relation to service provided or agreed to be provided by way of sponsorship to anybody

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- corporate or partnership firm located in the taxable territory, the recipient of such service;
- (D) in relation to service provided or agreed to be provided by,-
- an arbitral tribunal, or
 - an individual advocate or a firm of advocates by way of legal services,
- to any business entity located in the taxable territory, the recipient of such service;
- (E) in relation to support services provided or agreed to be provided by Government or local authority except
- (i) renting of immovable property, and
 - (ii) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994
- to any business entity located in the taxable territory, the recipient of such service;
- (EE) in relation to service provided or agreed to be provided by a director of a company *or a body corporate* to the said company *or the body corporate*, the recipient of such service;
- (F) in relation to services provided or agreed to be provided by way of :-
- (a) renting of a motor vehicle designed to carry passengers, to any person who is not engaged in a similar business; or
 - (b) supply of manpower for any purpose; or
 - (c) security services; or
 - (d) service portion in execution of a works contract
- by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as a body corporate, located in the taxable territory, both the service provider and the service recipient to the extent notified under sub-section (2) of section 68 of the Act, for each respectively.
- (G) in relation to any taxable service provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory, the recipient of such service.

Important definitions

1. **Partnership firm** includes limited liability partnership [Rule 2(1)(cd)].
2. **Body corporate:** 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 [Rule 2(1)(bc)].

3. **Goods carriage:** Goods carriage means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods [Rule 2(1)(c1a)].
4. **Insurance agent:** Insurance agent means an insurance agent licensed under Section 42 of the Insurance Act, 1938 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 [Rule 2(1)(cba)].
5. **Legal service:** 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 [Rule 2(1)(cca)].
6. **Supply of manpower:** means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control [Rule 2(1)(g)].
7. **Security services:** means services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity [Rule 2(1)(fa)]

(c) **Sub-contractors liable to service tax:** A taxable service provider outsources a part of the work by engaging another service provider, generally known as sub-contractor. Service tax is paid by the service provider for the total work. A question arises as to whether service tax is liable to be paid by the service provider known as sub-contractor who undertakes only part of the whole work.

A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor.

The rationale is that the sub contractor's service tax charge can be availed as a credit by the main contractor whose burden of paying the tax would reduce to that extent. This is the essence of value added tax (VAT) of which service tax is part. The fact that the sub contractor in India is generally not literate and may not be able to understand or comply with these requirements is only mitigated upto ₹ 10 lakhs of small service provider exemption.

The advantage of the sub contractor being in the CENVAT chain is that the credit of inputs, capital goods or input services utilized by him for providing the services can be passed onto the main contractor whereby the transaction would become tax efficient.

Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.

6.5 Payment of service tax

(a) **Payment both on receipt and accrual basis:** As per rule 6(1) of the Service Tax Rules,

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1994, service tax is payable on service deemed to be provided as per Point of Taxation Rules, 2011. As per the Point of Taxation Rules, 2011:-

In case the invoice is issued within the prescribed period of 30 days from the date of completion of provision of service, service tax is payable on:-

- (i) date of invoice
 - or
 - (ii) date of payment
- whichever is earlier.

However, in case the invoice is not issued within 30 days of the completion of the provision of the service, service tax is payable on:-

- (i) date of completion of service
 - or
 - (ii) date of payment
- whichever is earlier.

Further, in case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is ₹ 50 lakh or less in the previous financial year, service tax on taxable services provided or to be provided by him up to a total of ₹ 50 lakh in the current financial year is payable on receipt basis. Also in case of advance, service tax is payable on receipt basis, i.e. when the consideration for the services are received. Hence, service tax is payable on both cash and accrual basis.

(b) Service tax not payable on free services: Section 67(1)(iii) and Service Tax (Determination of Value) Rules, 2006 make provisions for valuation even when consideration is not ascertainable. However, these provisions apply only when there is consideration. If there is no consideration i.e., in case of free service, section 67 and Service Tax (Determination of Value) Rules, 2006 cannot apply.

Thus, no service tax is payable when value of service is zero as the charging section 66B provides that service tax is chargeable on the value of taxable service. Hence, if the value is zero the tax will also be zero even though the service may be taxable. However, this principle applies only when there is really a 'free service' and not when its cost is recovered through other means.

(c) Service tax liable to be paid even if not collected from the client: Section 68 casts the liability to pay service tax upon the service provider or upon the person liable to pay service tax as per Rule 2(1)(d). This liability is not contingent upon the service provider realizing or charging the service tax at the prevailing rate. The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver.

However, sometimes it may happen that the assessee is not able to charge service tax because of the nature of service or he fails to recover the service tax from the client/customer as he is not aware that his services are taxable. Hence, in these cases the amount recovered

from the client in lieu of having rendered the service will be taken to be inclusive of service tax and accordingly tax payable will be calculated by making back calculations.

For example, if bill amount is ₹ 5,000 and service tax is not shown separately in invoice, then service tax payable shall be computed as follows:

$$5000/112.36 \times 12.36 = ₹ 550$$

It may be noted that service tax payable is not ₹ 618 computed by applying 12.36% to ₹ 5000. The value of the taxable service in this case is ₹ 4,450.

The example given above can be solved by using the following formulae:

Value of taxable service = [Gross amount charged/(100 + rate of tax)] x 100

Service tax = [Gross amount charged/(100 + rate of tax)] x rate of tax

(d) Service tax payable on advance received: As per general rule 3 of the Point of Taxation Rules, 2011, service tax is payable on any advance by whatever name known, received by the service provider towards the provision of taxable service.

Example: A security agency takes a contract to provide security services to a client for the month of October for a consideration of ₹ 50,000. It receives an advance of ₹ 25,000 from the client in the month of September. In this case, service tax shall be payable by the security agency on the amount of ₹ 25,000 received as an advance even though the service has not been provided at that time.

(e) Advance payment of service tax: The assessee has been provided a facility to make advance payment of service tax on his own and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period. Such facility shall be available when the assessee:

- (i) intimates the details of the amount of service tax paid in advance, to the Jurisdictional Superintendent of Central Excise within a period of 15 days from the date of such payment, and
- (ii) indicates the details of the advance payment made, and its adjustment, if any in the subsequent return to be filed under section 70 [Sub-rule (1A) of rule 6].

(f) Self adjustment of service tax where services are partly or wholly not rendered: As per rule 6(3), where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract, the assessee may take the credit of such excess service tax paid by him, if the assessee:

- (a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or
- (b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued.

Note: Rule 6(3) does not allow adjustment of excess payment of service tax per se, say due to clerical mistake etc. In such cases the assessee has to follow the procedure laid down in section 11B of Central Excise Act to claim the refund of excess tax paid.

(g) Service tax collected from the recipient of service must be paid to the Central Government [Section 73A]: Section 73A covers the amounts collected by any person in the guise of service tax. At times tax payers who are unsure of tax liability collect the service tax, but do not remit the amount so collected. In such a case, they would be charged with both interest and penalty. Therefore, even if one is not sure whether tax is payable or not, the same should be remitted to the revenue authorities. The provisions of section 73A are:

Service tax collected to be deposited with the Central Government: Service tax collected has to be paid to the credit of the Central Government in the following cases—

- (a) Person liable to pay service tax has collected service tax in excess of the service tax assessed or determined and paid on any taxable service or
- (b) Any person has collected the service tax which is not required to be collected [Sub-section (1) and (2)].

Notice to be served in case the service tax not so deposited with the Central Government: If any person, who is liable to pay any of the abovementioned amounts, does not pay such amount to the credit of the Central Government, a notice shall be served on him by the Central Excise Officer. The notice will require such person to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government [Sub-section (3)].

Such person may make a representation to the Central Excise Officer after receiving the notice. The Central Excise Officer shall consider the said representation and then determine the amount due from such person. Such amount will however, not exceed the amount specified in the notice. Thereupon, such person shall pay the amount so determined [Sub-section (4)].

Adjustment of amount paid to the credit of the Central Government against the service tax payable [Sub-section (5) & (6)]: Such amounts paid shall be adjusted against the service tax payable by the person on finalization of assessment or any other proceeding for determination of service tax relating to the taxable service referred to in sub-section (1).

Surplus amount: Where any surplus amount is left after the adjustment, such amount shall be:-

- (i) credited to the Consumer Welfare Fund, or
- (ii) refunded to the person who has borne the incidence of such amount (in accordance with the provisions of section 11B of the Central Excise Act, 1944).

Time-limit for filing refund claim: Such person may make an application within six months from the date of the public notice to be issued by the Central Excise Officer for the refund of such surplus amount.

(h) Interest on amount collected in excess [Section 73B]

Cases where interest is to be levied: Where an amount has been collected in excess of the tax assessed/determined and paid for any taxable service under this Chapter/rules made thereunder from the recipient of such service.

Who is liable to pay interest and on what amount?: Such person who is liable to pay such amount as determined under sub-section (4) of section 73A above, shall, in addition to the amount, be liable to pay interest.

Rate of interest: The interest could be ranging between 10% to 24% p.a. At present, the rate of interest @ **18% p.a.** has been notified vide *Notification No. 15/2011 dated 01.03.2011*.

Period for which interest would be charged: The interest shall be payable from the first day of the month succeeding the month in which the amount ought to have been paid till the date of payment of such amount.

No interest payable subject to certain conditions: No interest shall be payable where the amount becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B, subject to fulfillment of the following conditions:

- (i) the full amount is paid voluntarily within 45 days from the date of issue of such order, instruction or direction; and
- (ii) no right to appeal against such payment at any subsequent stage is reserved.

In other cases, the interest shall be payable on the whole amount, including the amount already paid.

Change in amount of interest: Where the amount determined by the Central Excise Officer under section 73A is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal, or the Court, the interest payable thereon under this section shall be on such reduced or increased amount.

Concession of 3% for specified assesses: In the case of a service provider, whose value of taxable service provided in a financial year does not exceed ₹ 60 lakh during any of the financial years of the notice issued under section 73A(3) or during the preceding financial year, as the case may be, such rate of interest shall be reduced by 3% per annum.

Hence, a concessional rate of interest of 15% per annum is available to the tax payers whose turnover during any of the years covered in the notice issued under section 73A(3) or the preceding financial year is upto ₹ 60 lakh.

(i) **Due date for payment of service tax:** Provisions of rule 6(1) inter alia provides as follows:

Due date for payment of service tax on the service which is deemed to be provided (as per the Point of Taxation Rules, 2011) by an individual or a proprietary firm or a partnership firm:-

S.No.	Particulars	Due date for payment of service tax
1.	If the service tax is paid electronically through internet banking	6 th day of the following quarter
2.	In any other case	5 th day of the following quarter
3.	In the case service is deemed to be provided in the quarter ending in March	31 st day of March

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Due date for payment of service tax on the service which is deemed to be provided (as per the Point of Taxation Rules, 2011) in any other cases (company and HUF):-

S.No.	Particulars	Due date for payment of service tax
1.	If the service tax is paid electronically through internet banking	6 th day of the following month
2.	In any other case	5 th day of the following month
3.	In the case service is deemed to be provided in the month of March	31 st day of March

Individuals/partnership firms with aggregate value of taxable services of ₹ 50 lakh or less in previous year allowed to pay service tax on receipt basis in current year upto a total of ₹ 50 lakh [Third proviso to sub-rule (1)]

In case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is ₹ 50 lakh or less in the previous financial year, the due dates for payment of service tax on taxable services provided or agreed to be provided by him up to a total of ₹ 50 lakh in the current financial year, at the option of service provider, is as follows:-

S.No.	Particulars	Due date for payment of service tax
1.	If the service tax is paid electronically through internet banking	6 th day of the following quarter in which the payment is received
2.	In any other case	5 th day of the following quarter in which the payment is received
3.	In the case payment is received in the quarter ending in March	31 st day of March

Partnership firm includes limited liability partnership [Rule 2(cd)].

(j) Manner of payment

A. **Conventional mode of payment:** Where the assessee is allowed to pay service tax by GAR-7 challan (i.e., otherwise than by e-payment), following procedure would be followed:

Bank to have EASIEST facility: Duty is payable in authorized bank by way of GAR-7 challan where Bank is having 'EASIEST' facility (Earlier, it was a TR-6 challan).

Single copy challan: GAR-7 challan is a single copy challan with tax payer's counterfoil at the bottom of challan. Both challan and counterfoil are to be filled in by assessee. The challan should be on white paper with black printing.

Challan to be serially numbered: The challans should be serially numbered from 1st April onwards.

Details required in GAR-7 challan: Details to be filled in GAR-7 challan are as follows-

(a) Full name of assessee

- (b) Complete Address
- (c) Telephone number
- (d) PIN code
- (e) Assessee's STC Code (15 digit)
- (f) Commissionerate name
- (g) Commissionerate Code
- (h) Division Code
- (i) Range Code
- (j) Accounting Code of service tax/cess
- (k) Amount tendered in ₹ (6 columns)
- (l) Total
- (m) Total Rupees in words
- (n) Cash/Cheque/Draft/Pay order No. and date
- (o) Bank on which Cheque/Draft/Pay order No. is drawn.

Relevant details to be repeated on counterfoil: Relevant among these details like assessee code, amount tendered in ₹, accounting code of service tax/cess etc. are repeated in the Tax payer's counter-foil. Details filled in the challan and Taxpayer's counter-foil should be identical.

Receipt of payment: The counterfoil duly receipted by Bank with stamp of Bank will be given by receiving Bank to assessee.

The stamp of receiving bank will contain Challan Identification Number (CIN). This CIN will have to be quoted in the return.

Evidence of payment of service tax: The Taxpayers acknowledgement is the evidence of payment. The Challan Identification Number (CIN) appearing on this acknowledgement will have to be quoted in the return. The banks will be giving the tax payer a computer generated acknowledgement/receipt with the various details including the CIN.

Payment in case of multiple service provider: A multiple service provider (a service provider rendering more than one taxable service) can use single GAR-7 challan for payment of service tax on different services. However, amounts attributable to each such service along with concerned accounting codes should be mentioned clearly in the column provided for this purpose in the GAR-7 challan. Alternatively, separate GAR-7 challans may be used for payment of service tax for each service provided by the service provider.

B. E-payment of service tax: *Every assessee shall electronically pay the service tax payable by him, through internet banking. However, the jurisdictional Assistant/Deputy Commissioner of Central Excise may for reasons to be recorded in writing, allow the assessee to deposit service tax by any mode other than internet banking.*

Procedure for e-payment of service tax: E-payment of service tax facilitates anytime, anywhere payment of the service tax. Moreover, after the payment of service tax online, the

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receipt of the same is generated instantly. It provides the convenience of making on line payment of Central excise and service tax through bank's Internet banking service. E-payment of the service tax can be made through ACES.

For e-payment, assessees should open a net banking account with one of the authorized banks (currently there are 28 banks). For effecting payment, assessees can access the ACES website and click on the e-payment link that will take them to the EASIEEST portal or they can directly visit the EASIEEST portal.

Procedure for e-payment of excise duty can be summarized as follows:-

- (i) To pay excise duty and service tax online, the assessee has to enter the 15 digit Assessee Code allotted by the Department under the application ACES. There will be an online check on the validity of the Assessee Code entered.
- (ii) If the Assessee code is valid, then corresponding assessee details like name, address, Commissionerate Code etc. as present in the Assessee Code Master will be displayed.
- (iii) Based on the Assessee Code, the duty / tax i.e. Central Excise duty or Service Tax to be paid will be automatically selected.
- (iv) The assessee is required to select the type of duty / tax to be paid by clicking on Select Accounting Codes for Excise or Select Accounting Codes for Service Tax, depending on the type of duty / tax to be paid.
- (v) At a time the assessee can select up to six Accounting Codes.
- (vi) The assessee should also select the bank through which payment is to be made.
- (vii) On submission of data entered, a confirmation screen will be displayed. If the taxpayer confirms the data entered in the screen, it will be directed to the net-banking site of the bank selected.
- (viii) The taxpayer will login to the net-banking site with the user id/ password, provided by the bank for net-banking purpose, and will enter payment details at the bank site.
- (ix) On successful payment, a challan counterfoil will be displayed containing CIN, payment details and bank name through which e-payment has been made. This counterfoil is proof of payment made.

Automation of Central Excise and Service Tax (ACES)

(a) What is ACES?

In continuation of its efforts for trade facilitation, CBEC has rolled-out a new centralized, web-based and workflow-based software application called Automation of Central Excise and Service Tax (ACES) in all 104 Commissionerates of Central excise, service tax and large tax payer units (LTUs) as on 23rd December, 2009. ACES is a Mission Mode project (MMP) of the Govt. of India under the national e-governance plan and it aims at improving tax-payer services, transparency, accountability and efficiency in the indirect tax administration in India. This application has replaced the earlier applications of SERMON, SACER, and SAPS used in Central Excise and Service Tax for capturing returns and registration details of the assessees.

(b) Automation of major processes: ACES has automated the major processes of Central excise and service tax-registration, returns, accounting, refunds, dispute resolution, audit, provisional assessment, exports, claims, intimations and permissions.

(c) Benefits to the assessee: The ACES offers following benefits to the assessee:-

1. Reduce physical interface with the Department
2. Save time
3. Reduce paper work
4. Online registration and amendment of registration details
5. Electronic filing of all documents such as applications for registration, returns claims, permissions and intimations; provisional assessment request, export-related documents, refund request
6. System-generated E-Acknowledgement
7. Online tracking of the status of selected documents
8. Online view facility to see selected documents
9. Internal messaging system on business-related matters

(d) Registration with ACES: To transact business on ACES a user has to first register himself/herself with ACES through a process called 'Registration with ACES'. This registration is not a statutory registration as envisaged in Acts/Rules governing Central Excise and Service Tax but helps the application in recognizing the bonafide users.

(e) E-filing of Returns: The assesses can electronically file statutory returns of Central Excise and Service Tax by choosing one of the two facilities being offered by the Department at present:-

- (a) they can file it online, or
- (b) download the off-line return utilities which can be filled-in off-line and uploaded to the system through the internet.

(f) Certified Facilitation Centres (CFCs): CBEC has set up ACES Certified Facilitation Centres (CFCs) with the help of professional bodies like Institute of Chartered Accountants of India (ICAI), Institute of Cost and Works Accountants of India (ICWAI) etc.

(i) These CFCs can provide a host of services to the assesseees such as digitization of paper documents like returns etc. and uploading the same to ACES.

(ii) Assesseees requiring the services of the CFCs may be required to pay service fees to the CFCs.

(iii) CBEC has approved the maximum rates at which CFCs can charge their customers for the services rendered by them.

(iv) For this purpose, assesseees are required to write to the Department authorizing one of the CFCs, from the approved list, to work in ACES on their behalf. They have to furnish the name and other details of the CFCs, including the registration number issued by the ICAI/ICWAI etc.

(v) At any given time, one assessee can authorize one CFC, while one CFC can provide services to more than one assessee throughout India.

(vi) In case the assessee wants to withdraw the authorization, it can do so by intimating the Department.

(vii) However, an assessee will be held liable for all actions of omission or commission of the CFC, during the period they are authorized by him/her to work in ACES.

Electronic Accounting System in Excise and Service Tax (EASIEST)

(i) What is EASIEST scheme?

EASIEST has been developed to make payment of tax easy. The facility is available with 28 banks.

(ii) Benefits of EASIEST to the taxpayer

(a) Only one copy of the challan has to be filled instead of earlier four copies.

(b) Facility of online verification of the status of tax payment using CIN.

(iii) Challan Identification Number (CIN): Challan Identification Number (CIN) is a 20 digit unique identifier which will be given on the Taxpayer's computer generated acknowledgement /receipt. This number is a combination of the BSR code of the bank branch (first 7 digits), the date of deposit (next 8 digits) and Challan Serial Number (last 5 digits).

(iv) Service Tax Code Number: Assessee code/registration number/STC code are all one and the same. It is a 15-character identification number allotted by the system to the assessee based on the PAN number or temporary number (if PAN is not submitted) when the registration details are entered in the Central Server. The 15-character assessee code will be available in the registration certificate issued to the assessee by the Assistant Commissioner/Deputy Commissioner of the Division.

The first 10 digits of the STC code are 10 character PAN issued by Income tax authorities. Next two are 'ST'. Last three are numeric codes 001, 002, 003 etc. The concerned person has to apply in a prescribed form to obtain STC.

The main objective of allocating an alphanumeric number by the Government agencies is to identify the assessee/exporters/importers. It is also used to identify in some cases the concerned office where the person would be assessed or registered. Further alphanumeric number helps in processing of the information in relation to the assessee on computers. Quoting of service tax code number on all the related documents has become compulsory from 1.7.2002.

(k) Points to be remembered while paying service tax: The following important points should be kept in mind while paying service tax:

- ◆ Service tax is to be paid on the value of taxable services which is charged by an assessee. Any income tax deducted at source is included in the charged amount. Therefore, service tax is to be paid on the amount of income tax deducted at source also.
- ◆ Payment should be rounded off in multiple of rupees.

- ◆ In case the amount of service tax is paid by cheque, the date of presentation of cheque to the bank designated by Central Board of Excise and Customs shall be considered as the date of payment, subject to realization of cheque.
- ◆ Where the amount of service tax is paid in cash, the date of payment is the date on which cash is tendered to the designated bank.

(l) Adjustment of excess amount paid towards service tax liability [Sub-rule (4A) & (4B) of rule 6]: Where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be. However, self-adjustment of excess credit shall be subject to the condition that the excess amount paid is on account of reasons not involving interpretation of law, taxability, valuation or applicability of any exemption notification.

(m) Adjustment of excess amount paid as service tax in case of renting of immovable property service: In case of renting of immovable property service, a deduction of property taxes paid in respect of the immovable property is allowed from the gross amount charged for renting of the said immovable property vide *Notification No.29/2012 ST dated 20.06.2012* (discussed in detail in Chapter 5: Exemptions and Abatements).

However, where any amount in excess of the amount required to be paid towards service tax liability has been paid on account of non-availment of such deduction, such excess amount may be adjusted against the service tax liability within 1 year from the date of payment of such property tax. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of 15 days from the date of such adjustment.

(n) Recovery of the amount of service tax short paid/not paid under self-assessment [Sub-rule (6A)]: Where an amount of service tax payable has been self-assessed under sub-section (1) of section 70 of the Act, but not paid, either in full or part, the same, shall be recoverable alongwith interest in the manner prescribed under section 87 of the Act discussed in detail in Chapter 7: Demand, adjudication and offences).

(o) Provisional payment of service tax: In case the assessee is unable to correctly estimate, at the time of the deposit, the actual amount of service tax for any month or quarter, he may make a written request to Assistant/Deputy Commissioner of Central Excise for making payment of service tax on provisional basis. The provisions relating to provisional assessment under service tax have been discussed in detail in Chapter 7: Demand, adjudication and offences.

(p) SPECIAL PROVISION FOR PAYMENT OF SERVICE TAX

A. In case of air travel agent [Sub-rule (7)]

Person liable for paying the service tax in relation to the services provided by an air travel agent, shall have the option to pay following amounts instead of paying service tax at the rate of 12%:-

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In the case of	Option to pay an amount calculated at the rate of
Domestic bookings of passage for travel by air	0.6% of the basic fare
International bookings of passage for travel by air	1.2% of the basic fare

Points to be noted

1. The option once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances.
2. **Meaning of basic fare:** For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

B. In case of insurer carrying on life insurance business [Sub-rule (7A)]

An insurer carrying on life insurance business shall have the option to pay tax:

- (i) on the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service;
- (ii) Where amount of the gross premium allocated for investment or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service equivalent to:-

First year	3% of the gross amount of premium charged
Subsequent year	1.5% of the gross amount of premium charged

towards the discharge of his service tax liability instead of paying service tax at the rate of 12%.

Option not available in certain cases: Such option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance.

Life insurance business: means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include-

- (a) the granting of disability and double or triple indemnity accident benefit, if so provided in the contract of insurance,
- (b) the granting of annuities upon human life, and
- (c) the granting of superannuation allowances and annuity payable out of any fund applicable solely to the relief and maintenance of person engaged in any particular profession, trade or employment or of the dependent of such person [Rule 2(1)(ccb)].

C. In case of sale/purchase of foreign currency including money changing [Sub-rule (7B)]

Person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, has an option to pay an amount at the following rates instead of paying service tax at the rate of 12%:-

S.No.	For an amount	Service tax shall be calculated at the rate of
1.	Upto ₹ 100,000	0.12 % of the gross amount of currency exchanged or ₹ 30 whichever is higher
2.	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 120 + 0.06 % of the (gross amount of currency exchanged-₹ 1,00,000)
3.	Exceeding ₹ 10,00,000	₹ 660 + 0.012 % of the (gross amount of currency exchanged-₹ 10,00,000) or ₹ 6,000 whichever is lower

Option not available in certain cases: However, the person providing the service shall exercise such option for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

D. In case of service of promotion, marketing or organising/assisting in organising lottery [Sub-rule (7C)]

An optional mode of payment of service tax has been provided for the taxable service of promotion, marketing or organising/assisting in organising lottery in the following manner instead of paying service tax at the rate of 12%:-

Where the guaranteed lottery prize payout is > 80%	₹ 7000/- on every ₹ 10 Lakh (or part of ₹ 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw.
Where the guaranteed lottery prize payout is < 80%	₹ 11,000/- on every ₹ 10 Lakh (or part of ₹ 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw.

Points to be noted:-

1. In case of online lottery, the aggregate face value of lottery tickets will be the aggregate value of tickets sold.
2. The distributor/selling agent will have to exercise such option within a period of one month of the beginning of each financial year. The new service provider can exercise such option within one month of providing the service.
3. The option once exercised cannot be withdrawn during the remaining part of the financial year.

Meaning of important terms

- (a) **Distributor or selling agent:** means an individual or firm or body corporate or other legal entity under law so appointed by the Organising State through an agreement to market and sell lotteries on behalf of the Organising State [Rule 2(c) of the Lottery (Regulation) Rules, 2010]
and shall include the distributor/selling agent authorized by lottery organizing State.
- (b) **Draw:** means a method by which the prize winning numbers are drawn for each lottery/lottery scheme by operating the draw machine or any other mechanical method based on random technology which is visibly transparent to the viewers [Rule 2(d) of the Lottery (Regulation) Rules, 2010].
- (c) **Online lottery:** means a system created to permit players to purchase lottery tickets generated by the computer or online machine at the lottery terminals where the information about the sale of a ticket and the player's choice of any particular number or combination of numbers is simultaneously registered with the central computer server [Rule 2(e) of the Lottery (Regulation) Rules, 2010].
- (d) **Organising State:** means the State Government which conducts the lottery either in its own territory or sells its tickets in the territory of any other State [Rule 2(f) of the Lottery (Regulation) Rules, 2010].

(q) **Interest on delayed payment of service tax [Section 75]:** Failure to pay service tax, including a part thereof within the period prescribed, attracts simple interest at a rate not below 10% p.a. but not exceeding 36% p.a. as may be notified by the Central Government. Interest would also apply in case of excess availment and utilization of CENVAT credit.

Rate of interest: Notification No. 12/2014 ST dated 11.07.2014 prescribes slab rates of interest which vary with the extent of delay. The rates of interest for delayed payment of service tax are as follows:

<i>Extent of delay</i>	<i>Simple interest rate per annum</i>
<i>Up to 6 months</i>	<i>18%</i>
<i>More than 6 months & upto 1 year</i>	<i>18% for first 6 months, and 24% for the period of delay beyond 6 months</i>
<i>More than 1 year</i>	<i>18% for first 6 months, 24% for second 6 months, and 30% for the period of delay beyond 1 year</i>

Period for which interest is payable: Interest is payable for the period by which such crediting of the tax or any part thereof is delayed.

Concession of 3% for specified assesses: In case of a service provider, whose value of taxable service provided in a financial year does not exceed ₹ 60 lakh during any of the financial years covered by the notice or during the preceding financial year, as the case may be, such rate of interest shall be reduced by 3% per annum.

6.6 Returns [Section 70, Rule 7, Rule 7B & Rule 7C of the Service Tax Rules, 1994]

Section 70(1) *inter alia* provides that every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed. Rule 7 of the Service Tax Rules, 1994 prescribes the form, manner and frequency of furnishing the return.

Section 70(2) provides that the person or class of persons notified under sub-section (2) of section 69 shall furnish to the Superintendent of the Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

(a) Manner of filing return

1.	Form of return	Return/revised return has to be furnished in Form ST-3 .
2.	Periodicity of filing return	Service tax return has to be filed on a half-yearly basis .
3.	Details to be furnished	Return must indicate <i>inter alia</i> , monthwise: (i) the value of taxable services charged/billed; (ii) the value of taxable service realised; (iii) the amount of service tax payable/paid etc.

(b) **Due dates for filing of service tax returns:** The service tax return, in Form ST-3 should be filed on half yearly basis by the 25th of the month following the particular half year. The due dates on this basis are tabulated as under:

Half year	Due date
1 st April to 30 th September	25 th October
1 st October to 31 st March	25 th April

(c) **Delayed return:** A delayed return can also be furnished by paying the prescribed late fee. Section 70(1) *inter alia* provides for filing of periodical return after the due date with the prescribed late fee of not more than ₹ 20,000.

Late fee for delayed return [Rule 7C]: The prescribed late fee for furnishing a delayed return is given in the following table:

S. No.	Period of delay	Late fee
(a)	15 days from the date prescribed for submission of the return	₹ 500

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(b)	Beyond 15 days but not later than 30 days from the date prescribed for submission of the return	₹ 1,000
(c)	Beyond 30 days from the date prescribed for submission of the return	An amount of ₹ 1,000 plus ₹ 100 for every day from the 31 st day till the date of furnishing the said return

Maximum late fees: Total late fee for delayed submission of return shall not exceed ₹ 20,000.

Further, where the assessee has paid the prescribed late fee for delayed submission of return, the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded.

Late fee may be reduced/waived where service tax payable is nil: Where the gross amount of service tax payable is nil, the Central Excise Officer may, on being satisfied that there is sufficient reason for not filling the return, reduce or waive the penalty (late fee) [Proviso to rule 7C].

Example: BCC Ltd. is engaged in providing taxable services. For the half year ended on 30th September, it filed its return on:-

Case I: 9th November

Case II: 23rd November

Case III: 25th January

Determine the amount of late fee payable by BCC Ltd. in each of the independent cases.

Solution:

Case	Particulars	Penalty as per rule 7C (₹)
I	Return has been filed with a delay of 15 (i.e. 6+9) days from the date prescribed for submission of the return	₹ 500
II	Return has been filed with a delay of 29 (i.e. 6+23) days from the date prescribed for submission of the return	₹ 1,000
III	Return has been filed with a delay of 92 (i.e. 6+30+31+25) days from the date prescribed for submission of the return	Lower of the following two amounts:- (i) ₹1,000+(₹100×62 days) (ii) ₹ 20,000 Late fees leviable is ₹7,200

Note: In case the gross amount of service tax payable by BCC Ltd. is nil, the Central Excise Officer may, on being satisfied that there is sufficient reason for not filling the return, reduce or waive the penalty (late fee).

(d) **Revised return [Rule 7B]:** An assessee can submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of **90 days** from the date of submission of the original return.

Important: It has been clarified that where an assessee submits a revised return, the 'relevant date' for the purpose of recovery of service tax, if any, under section 73 of the Act shall be the date of submission of such revised return.

(e) **Contents of the return:** General details, like financial year, half year period (April-September or October-March), name of the assessee, registration number of the premises for which return is being filed, category of taxable services are required to be furnished. Apart from this, some significant month-wise details also need to be furnished. For instance:

- (i) amount received towards taxable service(s) provided and amount received in advance towards taxable service(s) to be provided
- (iii) Gross amount billed for exempted services and services exported without payment of tax
- (iv) amount billed for services on which tax is to be paid
- (v) abatement claimed - value
- (vi) notification number of abatement and exemption
- (vii) service tax payable
- (viii) education cess payable
- (ix) GAR-7 challan date and number
- (x) credit details for service tax provider/recipient

(f) **Return by input service provider:** The input service distributor, shall furnish a half yearly return in Form ST-3 giving details of credit received and distributed during the said half year to the jurisdictional Superintendent of Central Excise, not later than the last day of the month following the half year period.

The due dates on this basis are tabulated as under:

Half year	Due date
1 st April to 30 th September	31 th October
1 st October to 31 st March	30 th April

(g) **Single return for multiple service providers:** For an assessee who provides more than one taxable service, only a single return will be sufficient. However, the details in each of the columns of the Form ST-3 have to be furnished separately for each of the taxable service rendered by him.

(h) **Nil return:** Even if no service has been provided during a half year and no service tax is payable; the assessee has to file a Nil return within the prescribed time limit.

(i) **First return:** Every assessee shall furnish to the Superintendent of Central Excise, at the time of filing of return for the first time, a list in duplicate, of-

- (i) all the records prepared or maintained by the assessee for accounting of transactions in

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regard to,-

- (a) providing of any service, whether taxable or exempted;
 - (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.
- (ii) all other financial records maintained by him in the normal course of business.

(j) E-filing of returns: E-filing of returns is mandatory for the assessees. With effect from 01.10.2011, every assessee will have to submit half-yearly service tax return electronically, irrespective of the amount of service tax paid by him in the preceding financial year.

It is convenient for the assessee to file the service tax returns from his office, residence or any other place of choice, through the Internet, by using a computer.

Central Excise and Service Tax returns, the DG (Systems) has issued comprehensive instructions outlining the procedure for electronic filing of Central Excise duty and Service Tax returns under ACES. The said instructions outline the steps for preparing and filing of return, procedure for obtaining acknowledgement of e-filed return etc.

Following points merit consideration regarding e-filing:-

- (a) In case of e-filing of service tax return, no documents are required to be filed along with the return.
- (b) Unlike income-tax return, there is no need to file a hard copy of the service tax return after e-filing of such return.
- (c) Once return is filed electronically, a unique document reference number is generated which consists of 15 digit registration number of assessee, period for which return filed etc.

(k) Scheme for submission of returns through Service Tax Return Preparers [Section 71]: Section 71 provides for the scheme for submission of returns through Service Tax Returns Preparers. A **Service Tax Return Preparer** shall assist the **person or class of persons** to prepare and furnish the return in such manner as may be specified in the Scheme framed under this section.

This section empowers the Central Board of Excise and Customs (Board) to frame a Scheme for the purposes of enabling any person or class of persons to prepare and furnish a return under section 70 and authorise a Service Tax Return Preparer to act as such under the Scheme.

“Service Tax Return Preparer” means any individual, who has been authorised to act as a Service Tax Return Preparer under the Scheme framed under this section.

“Person or class of persons” means such person, as may be specified in the Scheme, who is required to furnish a return required to be filed under section 70.

Note: CBEC has framed the Service Tax Return Preparer Scheme, 2009 notified through *Notification 7/2009 ST dated 03.02.2009*.

6.7 Large Tax Payer

LTU scheme is the beneficial scheme which would act as the single window facilitation centre for all large entities paying Central Excise Duty/Service Tax/Corporate tax. This was introduced as there was a need to monitor large tax paying entities in revenue interest [*The concept of large tax payer has been discussed in detail in Chapter 5 of Module-1: Central Excise*]. Rule 2(1)(cc) of the Service Tax Rules, 1994 defines "large tax payer" to have the meaning assigned to it in the Central Excise Rules, 2002.

Procedures and facilities for large tax payer: Rule 10 has been inserted in the Service Tax Rules, 1994 which lays down the procedure and facilities for the large taxpayer. The provisions of this rule are discussed below:

Notwithstanding anything contained in these rules, the following shall apply to a large taxpayer-

- (1) A large taxpayer shall submit the returns, as prescribed under these rules, for each of the registered premises. A large taxpayer who has obtained a centralized registration under rule 4(2) shall submit a consolidated return for all such premises.
- (2) A large taxpayer, on demand, may be required to make available the financial, stores and CENVAT credit records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification, as may be necessary.
- (3) A large taxpayer may, with intimation of at least 30 days in advance, opt out to be a large taxpayer from the first day of the following financial year.
- (4) Any notice issued but not adjudged by any of the Central Excise Officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise Officers of the said unit.
- (5) Provisions of these rules, in so far as they are not inconsistent with the provisions of this rule shall mutatis mutandis apply in case of a LTU.

6.8 Records and access to registered premises [Rule 5 & Rule 5A of Service Tax Rules, 1994]

- (1) **Nature and form of records to be maintained not prescribed:** The records (including computerised data) as maintained by an assessee in accordance with various laws in force from time to time shall be acceptable. It implies that the nature of records to be maintained and the form in which the records are to be maintained are left at the judgment of the assessee [Sub-rule (1)].
- (2) **List of accounts to be furnished to the Superintendent of Central Excise [Rule 5]:** Every assessee shall furnish to the Superintendent of Central Excise, at the time of filing of return for the first time, a list in duplicate, of-

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- (i) all the records prepared or maintained by the assessee for accounting of transactions in regard to-
 - (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.
- (ii) all other financial records maintained by him in normal course of business. [Sub-rule (2)]

All the records maintained by an assessee in this regard shall be preserved at least for a period of 5 years immediately after the financial year to which such records pertain [Sub-rule (3)].

- (3) **Access to registered premises** [Rule 5A]: An officer authorised by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue [Sub-rule (1) of rule 5A].

Furnishing of records on demand: Every assessee shall, on demand, make available to the officer authorised under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, within a reasonable time not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by such officer or the audit party, as the case may be,-

- (i) the records as mentioned in sub-rule (2) of rule 5;
- (ii) trial balance or its equivalent; and
- (iii) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961, for the scrutiny of the officer or audit party, as the case may be. [Sub-rule (2)]

6.9 Accounting codes for payment of service tax

Earlier, under the positive list approach of taxation of services, Department had issued Accounting codes [eight digit numerical codes] in respect of each taxable service to be used by the assessee while paying service tax through GAR-7 challan. Thus, 119 service specific accounting codes were there.

With the introduction of negative list approach of taxation of services, with effect from 01.07.2012, at first service specific old accounting codes were done away with and one Accounting code was prescribed for the purpose of payment of service tax i.e. "All Taxable Services" – 00441089. However, subsequently, for the purpose of statistical analysis, service specific old accounting codes have been again restored along with 120th description as "other taxable services".

Consequently, CBEC has accordingly amended Form ST-1 (Registration Form under Service Tax). The amended form has an annexure containing description of taxable services and accounting codes for payment of service tax. The assessee can choose the description as applicable to him from the annexure.